

**RACING APPEALS TRIBUNAL**

**QUEENSLAND**

**NOTICE OF DECISION**

APPEAL NUMBERS: RT014-08  
RT017-08

DATE: 12 June 2008

APPELLANT: **William John PEARSON**

RESPONDENT: Queensland Racing

APPEAL FROM: Decision of the Stewards to impose a 12 months' disqualification for failing to give a sample and 3 years' disqualification for improper conduct to be served concurrently.

BREACH OF RULE: Australian Rules of Racing AR81A(1)(b) and AR175(q)

DECISION: In respect of RT014-08, appeal against the finding of guilt and the 12 month disqualification for breach of AR81A(1) be upheld.

In respect of RT017-08, the appeal in respect of penalty allowed as to penalty imposed. Penalty be reduced to 24 months, the first 18 months of which be served as a disqualification with the remaining 6 months to be served as a suspension with the proviso that during such 6 month suspension the appellant be allowed to undertake trackwork riding and such other duties as determined by the stewards.

APPEARANCES: Mr J E Murdoch SC instructed by Paul Carter from Southern Gold Coast Lawyers appeared on behalf of the Appellant.

Mr A J MacSporran SC instructed by Michael O'Connor from Gabriel Ruddy & Garrett, Solicitors, appeared on behalf of the Respondent.

**REASONS FOR TRIBUNAL'S DECISION**

Mr Leo Williams AO – Chairman  
Mr Brockwell Miller – Deputy Chairman  
Mr Dennis Standfield – Member

There are 2 appeals by jockey, William John Pearson.

FIRST APPEAL RT014-08

Pearson was charged by the Stewards with a breach of AR81A(1)(b) and convicted and disqualified for 12 months.

AR81A(1)(b) provides:

- “(1) Any rider commits an offence and may be penalized if:
  - (b) he refuses or fails to deliver a sample as directed by the Stewards so to do.”

The Notice of Appeal set out the following grounds as a basis for setting aside the conviction:

“The conviction was against the evidence, in particular, that he was not, at the material time, in a physical condition which enabled him to provide a urine sample.”

At the appeal, Mr Murdoch SC put the argument on the basis that Pearson had not breached the Rule by either failing or refusing to provide a sample. The evidence was that Pearson had been requested by the Stewards at about 3pm on the day in question to provide the sample. He had not done so by 9pm and the Steward Wade Birch took the view that sufficient time had passed to enable Pearson to provide the sample, having regard to the fluid (a little over 2 litres) he had consumed since the request was made. He told Pearson he would be charged and sent him home. Pearson maintained that he was trying to comply with the request and there was no other evidence to the contrary.

No evidence, medical or other, was adduced about what would constitute a reasonable time for a jockey in Pearson's condition to be able to comply with the Stewards' request.

One could think that this was a reasonable approach adopted by the Stewards but unfortunately AR81A has no time limit written into it and the Tribunal certainly does not have the power to insert one. Clearly, the Rule needs amendment or the authorities need to make alternative testing arrangements.

**Finding:**

The appeal against the finding of guilt and 12 months' disqualification for breach of AR81A(1)(b) be upheld.

SECOND APPEAL RT017-08

Pearson was charged under AR175(g) (improper conduct) and was disqualified for 3 years.

The appeal is against the severity of the penalty and sets out the following grounds:

- (a) his racing record;
- (b) his criminal history;
- (c) his young age;
- (d) his antecedents;
- (e) his prospects for rehabilitation;
- (f) his inability to obtain other suitable employment if subject to a disqualification;
- (g) the economic hardship resulting from the penalty;
- (h) comparative penalties.

The facts giving rise to the charge were fully set out in a memorandum prepared by Steward Wade Birch. They arise out of a series of incidents which took place at the Gold Coast Turf Club on Saturday, 29 March 2008:

- “Approximately 15 minutes before Race 5 scheduled at 2.45pm Jockey Terry Treichel and Steward Jamie Dart approached me in the steward’s room. Jockey Treichel raised concerns regarding the behaviour of Jockey’s Pearson and Peisley in the toilets of the jockey’s room.
- Between the running of Race 5 and Race 56 scheduled at 3.25pm jockeys Pearson and Peisley were interviewed on record. I directed steward J Dart to accompany Peisley to retrieve his gear and steward I Brown to accompany

Pearson to retrieve his gear so it could be searched by stewards in the steward's room.

- Prior to conducting a search of Pearson's gear, I noticed a race colours bag beside Pearson's case which was now located at the doorway of the stewards room. I questioned Mr Brown in regards to its owner and he indicated that it had been positioned on a seat between Jockey Pearson and Apprentice L Rolls in the jockey's room. Brown further explained that he questioned Pearson as to whether it was his and Pearson then posed the same question to Apprentice Rolls. Rolls indicated the colours bag was his. As a result the colours bag was not searched at this stage.
- I searched Pearson's gear and located a satchel of Ural and a container of white powder, Pearson indicated it was glucoden powder.
- Shortly after the running of Race 6 I contacted Mr Sanders and he advised me that he would have the police attend.
- Between the running of Race 6 and Race 7 scheduled at 4.02pm both jockey Peisley and Pearson were interviewed on record and advised they would be required to provide a urine sample prior to leaving the races.
- Approximately 10 minutes before the running of Race 7 scheduled at 4.02pm Clerk of Scales J Robinson provided information to me after being approached by Jockey Daniel Griffin regarding a container in a colours bag belonging to a horse that Pearson had been replaced by jockey D Griffin on. I entered the jockey's room and found a cylinder shaped lolly container in the colours bag of the horse 'Well of Souls'. This was the same colours bag that I had noticed beside Pearson's case prior to searching his gear.
- I asked Jockey Pearson to accompany me to the steward's room and remain with Mr Brown a steward with Queensland Racing Limited (QRL) until I returned from watching the running of Race 7.
- On returning to the steward's room following Race 7, Jockey Peisley had left the course without providing a urine sample and the police had arrived. I handed over the cylinder to them and advised jockey Pearson that the police wished to interview him in regards to its contents.
- After Race 7 and during the evening various other parties namely Jockey D Griffin, Clerk of Scales J Robinson, Stablehand M Waiwerie, Apprentice Jockey L Rolls and Trainer M Eggleston were interviewed on record.
- Jockey Pearson was again interviewed on record following the completion of the meeting of stewards.
- At approximately 8.45pm I advised Pearson that he had had reasonable time to provide a urine sample and he would be allowed a further 15 minutes at which stage if he did not provide the sample he would be stood down.
- At 9.05pm Pearson had still failed to provide a sample and I advised him that he was now stood down from riding until he appeared at a stewards inquiry regarding this failure."

The transcripts of the Stewards' hearings confirm that Stewards became concerned about the behaviour of Pearson and another jockey, Peisley, after the running of Race 5 at around 2.30pm. Some time shortly after this race the bags of Pearson and Peisley were searched by Stewards.

As Mr Birch stated, the container was found in Pearson's bag containing a white substance which Pearson said was Glucoden. Next to Pearson's bag was a colours bag containing the colours of the mount Pearson was engaged to ride in Race 7 called "Well of Souls".

During the search Pearson was asked if this bag was his and said it was not. After the search the Stewards called the Police. Stewards meanwhile stood Pearson down from further riding engagements.

Pearson was replaced on "Well of Souls" by Jockey Griffin who reported to Stewards that there was a container in the colours bag for that horse. After searching the colours bag Stewards found a "Skittles" (lolly) container containing white powder.

After the interview with Police on course, the Police records state:

**"CHARGE ONE AND TWO**

Police attended and spoke with witness Senior Steward Wade BIRCH from Queensland Racing. The witness stated that the defendant, William John PEARSON, was seen to enter a shower cubical with another jockey. This behaviour is not allowed and both jockey's personal items were searched by stewards. A blue 'colours' bag was located next to the defendant in the jockey room. A search of the blue bag has located a blue skittles canister containing two small clip seal bags. One clip seal bag contained .45grams of a yellow crystal substance and the other clip seal bag contained 1 gram of a white power substance.

The defendant has participated in an Electronic Record of Interview where he stated that the skittles container and two clip seal bags in the container belonged to him. The defendant stated an unknown person had given him the two clip seal bags at a party a few weeks prior to the offence date. The defendant stated that he knew that the clip seal bags contained drugs and that it is an offence to possess a dangerous drug. The defendant stated that he was quite drunk at the party where he received the clip seal bags and can not recall if he had used anything from the clip seal bags. The defendant stated that he had received the clip seal bags while he had his racing equipment bag with him and had placed the clip seal bags into his racing bag in which he had forgotten that he had placed the clip seal bags into his racing bag. The defendant stated that he suspected the crystal to be amphetamine and the white power to be cocaine.

The defendant was subsequently issued with a Notice to Appear in the Southport Magistrates Court on the 18th day of April 2008.

BAIL – Not opposed

HISTORY – No criminal History.”

Pearson was subsequently charged by Police with possession of dangerous drugs and pleaded guilty in the Southport Magistrates Court. The Court ordered Pearson to participate in what is called a Drugs Diversion Program. As a first offender, the Order of the Court was that if he remains drug free and participates in a counseling program no conviction will be recorded.

It is hard to argue with the submissions of Mr A J MacSporran SC for Queensland Racing.

“In respect of the appeal concerning penalty the following factors are relevant:

- (a) The background circumstances concerning the discovery of the drugs in Pearson’s possession. These circumstances include what can be clearly inferred to be a lack of cooperation if not deliberate obstruction of the investigation being carried out by the Stewards into the circumstances surrounding the toilet incident. It can also be safely inferred from the circumstances that Pearson took steps to actively conceal his possession of the drugs by concealing them in a bag containing the colours of ‘Well of Souls’.
- (b) Although Pearson does not have any prior breaches in respect of the possession or testing for dangerous drugs, he does not have an unblemished record, having been disqualified for a period of 10 months whilst he was an apprentice;
- (c) Having possession of banned substances at a racetrack on race day is a particularly serious form of this offence. The conduct, receiving as it did wide spread exposure in the media, brought the industry as a whole into disrepute;

- (d) Although there are no comparable comparative penalties so far as can be ascertained in Australia some guidance can be gleaned from the case of Fallon, the champion Irish jockey who was tested positive to a banned substance in France and was suspended for 18 months in January 2008. Although he had previously served a 6 months ban following a positive test for cocaine in France in 2006 both instances were less serious in the sense that they were tested outside competition and away from the track;
- (e) Some guidance may be obtained by reference to the World Anti-Doping Agency (WADA) and NRL anti-doping which uniformly provide for a person found in possession of a prohibitive substance to be ineligible for a period of 2 years to take part in any competition following a first breach of the code. This is an indication of how seriously possession of such substances is viewed. A second such offence results in a lifetime ban.”

Mr Murdoch argued strongly that in determining penalty rehabilitation should be a major factor for authorities such as the Stewards and this Tribunal to take into account. When pressed Mr A J MacSporran SC, Counsel for Queensland Racing, would make no concession that rehabilitation should be a major consideration.

In this case it is hard to accept that Pearson deserves sympathetic consideration when his actions on course are looked at i.e. his persistent and intentional lying to the Stewards, his attempt to conceal the drugs and simply his incredible stupidity and disregard for the Rules of Racing in bringing drugs onto a racecourse.

The central issue is what is a proper penalty for a licensed person who is in possession of drugs on a racecourse. This Tribunal dealt with penalties and the criteria which should be considered in arriving at them in the appeal of Janel Ryan (RT002-06).

The industry process for conviction and penalty is inquisitorial in nature in which the Stewards not only conduct the inquiry but also determine the guilt and impose the penalty. It is not surprising that the major theme in all Stewards' hearings is deterrence. Issues such as rehabilitation do not feature as they do in the criminal justice system. Contrast the penalties in

this case where the criminal system allows Pearson to be dealt with without even recording a conviction and the industry system takes his livelihood away for 3 years.

While taking drugs onto a racecourse is undoubtedly a serious matter, some balance needs to be maintained in relation to the appropriate penalty. There is nothing much in the way of comparable penalties in the decisions formerly handed down by this Tribunal.

Mr MacSporran referred to the European case of Fallon who was sent out for 2 years.

Interestingly, Mr MacSporran also tendered extracts from the "World Anti-Doping Policy" which has been adopted by most major sporting bodies and applies to athletes and the like competing in high level competition. The sanction which parallels this appeal would draw a ban of 2 years for a first offence and life for a second.

Apart from this conviction, Pearson has a relatively clean record with only one other conviction relating to not allowing a horse to run on its merits.

Notwithstanding all this, the Tribunal feels that the disqualification for a period of 3 years is too severe.

**Finding:**

The appeal against the finding under AR175(q) be allowed as to the penalty imposed. The penalty be reduced to a period of 2 years, the first 18 months of which be served as a disqualification and the remaining 6 months to be served as a suspension with the proviso that during the 6 month suspension the appellant be allowed to undertake trackwork riding, and

such other duties as determined by the Stewards. The deposits are refunded and Liberty to Apply is granted to both parties.

**Leo Williams AO**  
Chairman

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**Brockwell Miller**  
Deputy Chairman

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**Dennis Standfield**  
Member

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