

RACING APPEALS TRIBUNAL

QUEENSLAND

NOTICE OF DECISION

APPEAL NO: RT018-07

DATE: 6 August 2007

APPELLANT: Leith Gerald Innes

RESPONDENT: Queensland Racing

APPEAL FROM: Decision of the Stewards of Queensland Racing imposing a penalty of 6 months suspension for a breach of AR81A(1)(a). Appeal against penalty.

BREACH OF RULE: AR81A(1)(a)

DECISION: Appeal upheld. Penalty varied to 4 months suspension and a fine of \$2,000.00.

APPEARANCES: Mr Peter Boyce, Solicitor of Butler McDermott & Egan Solicitors appeared on behalf of the Appellant.

Mr Norm Torpey, Senior Steward appeared on behalf of the Respondent.

REASONS FOR TRIBUNAL'S DECISION

Mr Brock Miller - Deputy Chairman

Mr Dennis Standfield - Member

It is noted that the Notice of Appeal in this matter was lodged on 28 June 2007. The Tribunal extends the time for hearing the appeal to the date hereof pursuant to Section 171(2) of the *Racing Act 2002*.

The Appellant, Leith Gerald Innes is a New Zealand jockey who was riding in Queensland during the 2007 Winter Carnival on a Visiting Jockey's Permit.

At the Eagle Farm meeting on Saturday, 2 June 2007 the Appellant was required to provide a urine sample. The results of that sample showed the concentration of Methylenedioxymethamphetamine ("MDMA") (commonly known as Ecstasy) was 799 ugs per litre where the permitted threshold before there is deemed to be a positive finding is 300 ugs per litre.

The Stewards Inquiry as to the positive finding of MDMA was held at the Office of Queensland Racing at Deagon on Friday, 22 June 2007.

After being presented with the documentation concerning the positive finding at the Inquiry, the Appellant was asked how the substance came to be in his system. To his credit the Appellant readily admitted that he had taken an Ecstasy tablet at a Hotel on the night of Sunday, 27 May or early Monday morning, 28 May 2007. The Appellant advised the tablet was offered to him by persons he had just met. While the Appellant states that he advised those persons that he did not take drugs it is submitted by Mr Boyce that the Appellant's judgement was clouded by the effects of alcohol which with the celebration of riding a winner that day at the Caloundra Races and some personal problems resulted in him accepting the drug.

The Appellant advised the Stewards that he was told at the time the tablet would be out of his system in "2 to 3 days" and he accepted that advice as the person who told him said that she was a nurse.

The Stewards charged the Appellant under AR81A(1)(a) which reads:

AR81A(1)

*"Any rider commits an offence and may be penalised if -
(a) a sample taken from him is found upon analysis to contain
the presence of a substance banned by AR.81B."*

AR81B reads

“For the purposes of AR.81A the following substances and/or their metabolites, artifacts and isomers are banned.”

Section (f) of AR81B reads:

“All other substances listed in the Australian and New Zealand standard 4308, at the relevant concentrations set out therein.”

It is understood that MDMA is a listed substance in the standard 4308.

The Appellant readily pleaded guilty to the charge and the Stewards commented on his honesty in that regard.

The Stewards then took certain personal particulars from the Appellant and when assessing penalty stated the following:

THE CHAIRMAN: Thank you, jockey Innes. Jockey Innes, the stewards have given consideration to the matter of penalty in relation to your pleading guilty to providing a urine sample which upon analysis found you had prohibited substances in you when you rode at the Queensland Turf Club meeting on Saturday, 2 June 2007.

You made numerous submissions in relation to the matter of penalty – about you being up front, the effects on your family, New Zealand racing, your contacts in New Zealand, your father, who has been a trainer for numerous years, your partner. You’ve recently gone through a divorce. You pay rent on a house. You left school when you were 15. You have ridden in 5 countries. You were licensed for 13 years, and your partner stops work at the end of the month due to pregnancy.

We have considered all those. We have also considered that you are a visiting jockey riding in another jurisdiction. You are well aware that it is an offence to have illicit drugs in your system. When you took the tablet you said you knew of the outcomes, the consequences that were associated with it, but in effect you gambled on advice received from you say an unknown person that it would be out of your system within 2 to 3 days.

You were well aware at the time when you took the tablet Ecstasy that at any time you could be drug tested, and the repercussions of that returning positive should have been and were well known to you at the time of partaking in the taking of an illegal substance.

We also have to take into account you are a Group 1 rider. You ride in Group 1 races, of which fields were at their optimum. Riders ride tight. You were riding expensive animals, putting - by having this drug in your system, you're putting yourself and other riders in danger, and also the equine animal which you were on and other ones in the race, and your judgment may or could have been erred or affected by this drug in your system.

We are also mindful that the drug is an illegal substance, and that it has no place in racing in any jurisdiction in the world, especially not in Queensland. Queensland take a tough stance when it comes to illicit drugs in their rider population, and we believe that, given precedents before us, that the appropriate penalty is a suspension of your jockeys licence in full, and that is for a period of 6 months, and that is effective from 19 June 2007 - that was the day on which you were stood down - and is up to and including 18 December 2007. You are right to resume riding trackwork, trials and/or races on 19 December 2007.

So it is in full. You are not disqualified. You are still able to participate as a spectator but your jockey's licence is suspended in full. Prior to resuming you must provide a clear urine sample to the New Zealand Racing Conference stewards or inspector, which they will provide the results to us.

It is from this 6 month suspension of his jockey licence which the Appellant appeals with the grounds of appeal stated in Notice of Appeal to be:

1. *That the penalty in all the circumstances was excessive.*
2. *That the Stewards failed to take into account all of the relevant evidence submitted in respect of mitigation.*
3. *That the Stewards failed to give proper weight to the plea of guilty made by the Appellant.*

Mr Boyce has provided to the Tribunal a statement from the Appellant dated 3 August 2007 as well as written submissions on penalty for which the Tribunal is grateful.

From those submissions it is clear the Appellant is an international jockey having ridden in Hong Kong, Japan, Singapore, New Zealand and Australia. He is obviously

a talented jockey having previously won the New Zealand Premiership and 15 Group 1 winners. It is unfortunate that he has chosen to blot his record in the industry with a conviction under this Rule by taking the Ecstasy tablet from unknown persons when it was offered to him. While the Appellant states that he does not have a drug problem, he did at the urging of his partner attend Care NZ Auckland Clinic for alcohol and drug assessment. The report from the Councillor of Care NZ refers to the Appellant's initial assessment and a follow-up session which indicated a low-risk pattern of drinking and no dependency on Ecstasy. The report from Care NZ also refers to the guilt and disappointment which the Appellant is suffering in having let his family and other people down. The Tribunal accepts the Appellant's remorse for the incident is genuine.

One matter which is relevant to the penalty imposed is that as an international jockey the Appellant may not be able to obtain a Visiting Jockey Licence from the Singapore Turf Club. It is noted that as a requirement for a Visiting Jockey's Licence that there must not be a disqualification or suspension of six months or more and if such a penalty is imposed it could be devastating to the Appellant's future international riding career.

While it is clear that the Appellant "should have known better" and his actions have tarnished the image of the industry, the Tribunal is of the opinion that the period of six months suspension is excessive. With his acceptance of his actions, that he is not dependant on drugs, his international jockey career would be effected and his remorsefulness the Tribunal considers that a more appropriate penalty would be a period of four months suspension and a fine of \$2,000.

The decision of the Tribunal is:

1. Appeal against penalty upheld.

2. Penalty varied to a period of 4 months suspension of jockey's licence to commence from 22 June 2007 and expire 21 October 2007 and a fine of \$2,000 to be paid by 21 October 2007.

3. Appeal deposit fee to be refunded.

Mr Brock Miller
Deputy Chairman

Mr Dennis Standfield
Member