

**GREYHOUND AND HARNESS RACING APPEALS TRIBUNAL  
NEW SOUTH WALES**

**TRIBUNAL: JUDGE J. C. MCGUIRE**

**ASSESSORS: MR A. G. MULLINS  
MR J. SCHRECK**

**APPEAL OF MR MICHAEL SHADOW**

**DECISION**

On 26 November 2008, at a stewards inquiry, the Appellant Michael Shadlow was found guilty of a charge that he had breached Harness Rule of Racing 190(1), (2) and (4), which provides:

- (1) A horse shall be presented for a race free of prohibited substances.*
- (2) If a horse is presented for a race otherwise than in accordance with sub rule (1) the trainer of the horse is guilty of an offence.*
- (4) An offence under sub rule (2) or sub rule (3) is committed regardless of the circumstances in which the prohibited substance came to be present in or on the horse.*

The particulars of the charge were that licensed trainer Michael Shadlow, the trainer of River Of Money, did present that horse to race at Penrith on 25 September 2008 in the Penrith Lockup Storage Units Pace, where a blood sample taken from that horse was found on analysis to have a TCO<sub>2</sub> level in excess of the allowable threshold.

Upon being charged and supplied with the said particulars, he pleaded guilty. I will return to this matter.

By way of background, it was established at the stewards inquiry, conducted on 26 October 2008 and on 26 November 2008, that a pre-race blood sample was taken from River Of Money, a horse trained by the Appellant and presented by him for racing, and which in fact raced in race 6, at Penrith on the date aforesaid.

The screening analysis report revealed a plasma total carbon dioxide level greater than 39 millimoles. A confirmatory analysis by the Racing Science Centre in Queensland found the sample to contain a plasma total carbon dioxide at a level greater than 39

millimoles. The certificates of analysis and a letter from Dr Suann, Senior Official Veterinarian of Racing NSW, were exhibits admitted during the stewards inquiry. Dr Suann reported:

*The confirmation in sample number B1106601 of a concentration of TCO<sub>2</sub> in plasma of greater than 39.0mmol/L during the referee analysis would constitute the finding of a prohibited substance in that sample. The detection in plasma of a concentration of greater than 39.0mmol/L (taking into account the uncertainty of measurement of ± 1.0mmol/L) would be a contravention of Rule 188A(2)(a) which specifies an excepted level of plasma TCO<sub>2</sub> as being at or below 36.0 millimoles per litre. Such a finding would be due to the administration of an "alkalinising agent" thereby implying the administration of a prohibited substance as defined in Rule 188A(1)(b).*

*An elevated level of plasma total carbon dioxide at the concentration measured in this sample would most likely be the result of the administration of sodium bicarbonate or other alkalinising agent, possibly by the use of a naso-gastric tube. The pre-race administration of sodium bicarbonate and/or other alkalinising agents has been postulated to delay the onset of fatigue during a race by, amongst other mechanisms, buffering or neutralising the accumulation of lactic acid produced by the muscles during strenuous exertion.*

Mr Matters, who appeared for the Appellant by leave, without any scientific confirmation for his proposition, proffered the suggestion that the large amount of water consumed by the horse pre-race may have contained an extraordinarily high TCO<sub>2</sub> level. He informed the stewards of his understanding that the Penrith river had a high level of bicarbonate in the water arising from the limestone bedrock in the river. He did not provide any evidence by way of literature or any expression of opinion, scientific or otherwise, to support his theory, and he was not questioned as to how he gained his asserted understanding of the qualities of the water comprising the Penrith river. Indeed, Mr Matters was unable to identify the source of his suggested knowledge that the water used at the Penrith Raceway originated from the Nepean River, other than to claim that it was anecdotal evidence.

It is not the function of the Tribunal to oversee the conduct of stewards inquiries. However, it does have a legitimate concern as to what occurs as it is called upon to examine the evidence presented and to ensure that procedural fairness is offered and as to whether a person appearing before an inquiry is questioned appropriately.

This Tribunal is curious as to why the stewards entertained Mr Matters's totally unsubstantiated theories with regard to the qualities of the water in the Penrith river. He had been given leave to assist the Appellant. That leave should not have extended to the waste of time involved in listening to his fanciful views. If he had any evidence with regard to the water's qualities, he should have produced it. For reasons best known to the stewards, but not revealed, the matter was adjourned to allow Mr Matters to make "scientific investigations".

On 26 November 2008, the date of the adjourned hearing, it was unsurprising that Mr Matters did not present any evidence of any description to bolster his theory. Indeed, he did not appear at all; for whatever reason, the Appellant appeared alone. The Appellant

indicated that he was willing to proceed in the absence of Mr Matters. At this point, the Chairman of Stewards announced:

*The stewards would like to just say that they have investigated that matter in relation to Penrith race course. The water that is used on Penrith race course does not come directly piped from the Nepean River. It in fact is part of the water from Warragamba Dam, which is controlled by Sydney Water, and it is the same water that goes to Prospect Reservoir and is then used right across Sydney.*

Consistent with his usual approach to these inquiries, Mr Matters queried the validity of the Australian Racing Forensic Laboratory's sample identity card, which was not signed by Mr O'Toole, a steward from the Greyhound and Harness Racing Regulatory Authority, who took the subject blood sample. However, it was the Appellant's evidence that he was present when the sample was taken from his horse River Of Money by Mr O'Toole and, further, that he signed the sample identity card, which indicated the presence of Mr O'Toole. He did not suggest any irregularity in Mr O'Toole's conduct.

Mr O'Toole stated that it was a regular part of his duties to assist the veterinarian in the collection of blood samples for TCO<sub>2</sub> analysis. His evidence was to the effect that, although he did not sign the subject card, he had completed it and entered the time that the sample was taken, and the Appellant's name. He satisfactorily explained the procedure he adopted.

It is patent that, apart from his oversight in failing to sign the certificate, it was properly prepared. Simply put, there was no substance in the submission raised by Mr Matters that the certificate was invalid.

Mr Shadlow came before this Tribunal on 20 November 2008, when he was disqualified for two years and six months. That disqualification arose out of his breach of Rule 190(1), (2) and (4)—for the very same offence which gives rise to the penalty the subject of this appeal. He administered a prohibited substance on 18 September 2008 to a horse which demonstrated a TCO<sub>2</sub> level of 37.5 millimoles. On that occasion he was subjected to questioning by stewards, and accordingly he was well aware of the seriousness of his conduct. Yet on 25 September 2008, one week later, he administered the same prohibited substance which demonstrated an even higher concentration of TCO<sub>2</sub>.

The Appellant's record discloses prior convictions for presenting a horse with TCO<sub>2</sub> levels in excess of the threshold. On 9 September 2002 he was found guilty and disqualified for ten months. Again, on 3 August 2006, he was found guilty of a like offence and was disqualified for twelve months.

He has, by his serial offending, demonstrated a total contempt for his obligations to the industry. Indeed, he appeared to deliberately defy the rules. It was submitted that there was no evidence as to intent. The Tribunal considers that the conclusion is inescapable that, with three prior offences, his administration of a prohibited substance on the occasion in question was calculated and intentional.

In the course of the stewards inquiry he was twice given the opportunity to explain his actions. First, he was asked:

*All right, Mr Shadlow, what can you put to us by way of an explanation as to why the sample taken from River Of Money was found to have an elevated TCO<sub>2</sub>?*

Mr Shadlow replied:

*I don't have one. I don't have one. I've got no explanation for it.*

He was subsequently asked:

*Are you able to offer any explanation, other than what you have already put to us, as to how this occurred?*

He answered:

*No.*

There was no suggestion raised of any accidental or inadvertent administration.

The Appellant's record discloses further, unrelated offences, being failures to ensure that his horse was given full opportunity to win or obtain the best possible position. These offences resulted in suspensions for eight weeks and six weeks. Although these offences are of a less serious nature, they, with his other drug offences, are indicative of a complete disregard for the rules and his obligations thereunder.

It was submitted that the offences on 18 September 2008 and 25 September 2008 should be regarded as but two counts of the same offence. This submission fails to take into account (1) that the offences occurred on two separate occasions, and (2) that they involved different horses. True it is that on three occasions guilty pleas were entered. However, no such plea was forthcoming regarding the offence on 18 September 2008, and his guilt was only admitted regarding the 25 September 2008 offence after the overwhelming evidence as to his breach had been presented. At that point his conviction was inevitable, and his plea was not reflective of remorse or contrition.

The stewards fixed a penalty by way of a disqualification of 4½ years, cumulative upon the 2½ years disqualification imposed by the Tribunal on 20 November 2008. In fixing penalty, the chairman clearly indicated that he had taken into account the guilty plea, albeit that he did not nominate the extent of the discount. He was not obliged to do so, and the Tribunal holds no doubt that the penalty was ameliorated by reason of the belated admission of guilt.

It was submitted that the Tribunal should recognise that the Appellant is a young man aged 27 years. This is a matter which would have been well known to the Chairman of Stewards. Obviously, the consequences of any lengthy disqualification will have a devastating effect upon the Appellant's career as a trainer and, quite probably, on his other occupation as a farrier. However, he was fully aware of this and simply gambled upon his conduct being undetected. The Appellant's record is a clear testament of his

contempt for his obligations as a trainer. He deliberately acted dishonestly, seeking an unfair advantage for himself. He was first licensed on 17 April 2000, and over the past eight years would have learned of many instances of trainers being disqualified for breaches of Rule 190(1), (2) and (4), yet he clearly decided that the rules did not apply to him; he was above them.

The Mr Shadlows of this world bring the harness racing industry into disrepute. He and others of his ilk destroy the confidence of the public in the honest conduct of racing. The imposition of lengthy disqualifications must be seen by other would-be Mr Shadlows as the natural consequences of such breaches of the rules. It must also be seen by the public, owners, trainers and punters that the stewards, and in turn this Tribunal, will act responsibly in imposing disqualifications which are designed to deter the dishonest and to protect the industry.

In considering the appropriate penalty for this offence the Tribunal is obliged to have regard to the principles as to totality. The Tribunal considers that the disqualification of 4½ years, cumulative upon the disqualification of 2½ years imposed by the Tribunal on 20 November 2008, is excessive. The disqualification of 4½ years is set aside, and in lieu the Appellant is disqualified for 2½ years, cumulative upon the disqualification of 2½ years to which he is at present subject. This will result in a total disqualification of five years, to date from 20 November 2008.

The appeal deposit is forfeited.

J. C. McGuire, Judge  
13 January 2009