

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

TRIBUNAL: JUDGE B. R. THORLEY

**ASSESSORS: MR K. RUSSELL
MR J. SCHRECK**

APPEAL OF MR ANTHONY BERTWISTLE

DECISION

Mr Bertwistle, a licensed trainer, presented the horse Pinkstwotter for a race at Harold Park on 17 August 2007. A post-race urine sample taken from the horse has returned on confirmatory analysis as positive to theobromine. This finding resulted in a stewards inquiry, which was held on 12 November 2007. Mr Bertwistle was charged at that inquiry with a breach of Rule 190(1), and he pleaded guilty. He was then subjected to a penalty of six months disqualification, to run from the date of the hearing, by the Major Inquiry Steward, Mr Callaghan S.C. Mr Bertwistle has appealed to this Tribunal against the severity of that order.

The structure of the drug rules is that, speaking generally and in short terms, in proof of a breach the stewards have but to prove the presentment of the horse for a race and at that time the existence within the horse of the relevant prohibited substance. It is not required that the stewards demonstrate how it was that the horse came to have that substance within it. The rules recognise that there would be virtually no case in which the stewards could so demonstrate, unless there were perhaps admissions on the part of the person charged. The necessary consequence of this structure then is that the person alleged to be in breach carries at least an evidentiary onus to show the circumstances in which the horse was so presented in any endeavour to escape or mitigate the penalty which would otherwise result.

In this case, the Appellant is unable to identify with any certainty the way in which his horse came to have theobromine in it, but he advances as a possible solution that one of his six children was eating chocolate around the stabling area at his training establishment and dropped a section of that chocolate in a place where the

horse could access it and eat it. We ourselves would have had some difficulty in accepting this explanation, but the fact is that the matter was investigated by Mr Callaghan and he has recorded his acceptance of that explanation.

If that be the way in which the horse came to have the prohibited substance in it, then we would but comment that there appears to be, on the face of it, a departure from the standard of professionalism which this Tribunal at least expects of all trainers. This Appellant has, we understand, about ten horses in work; that is to say, he has a reasonably sized establishment. If you are a full-time trainer, then you have to demonstrate to the satisfaction of the harness racing community that you are capable of performing all of the activities that accompany that lifestyle, and that you do so with proper regard to the rules of the harness racing industry. This includes, of course, taking all necessary steps to avoid any possible contamination with any prohibited substance.

We have here, time and time again, expressed the view that prima facie for a breach of the drug rules a penalty of twelve months disqualification is not untoward. We have also expressed our view that this sort of penalty might well be mitigated when there are circumstances which appeal to the sentencer, just as there will no doubt be circumstances which will aggravate and which entitle the sentencer to increase the penalty at stake.

In this case, Mr Callaghan has recognised the plea of guilty which was entered by the Appellant; specifically recorded his appreciation of the way in which the Appellant contributed to the proceedings before him, as, we interpolate, he has indeed contributed to the hearing of this appeal; and noted his very good record in relation to any drug offences, and the fact that there had been swabs of horses under his control which have been negative. All of those matters were proper to be taken into account, whereupon Mr Callaghan was of the view that it was appropriate to mitigate the penalty which might otherwise have followed. So he arrived at the period of six months.

Whilst we have some sympathy for the Appellant, and we recognise his contribution to the harness racing industry, we see no error on the part of Mr Callaghan in reaching the decision which he did.

The Appellant also argues before us that because of the advent of equine influenza he has been doubly punished, and pointed to the fact that indeed his training establishment is still within a so-called red zone from which he may not move any of his horses. We do not think that this is a relevant factor to be taken into account. Whatever has been the result of the outbreak of EI, it has been common to the whole industry and Mr Bertwistle is in no different position to anybody else who is within a like area.

In the result then the appeal is dismissed and the Major Inquiry Steward's finding and assessment of penalty are confirmed.

The disqualification will run from the date of its imposition on 12 November last.

The Appellant's appeal deposit is forfeit.

B. R. Thorley, Judge
12 December 2007