

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

TRIBUNAL: JUDGE J. C. MCGUIRE

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

APPEAL OF MR MICHAEL RUSSO

DECISION

Michael Russo, the Appellant, appealed to this Tribunal against: (a) a finding that he was guilty of an offence under Harness Rule of Racing 190 (1), (2) and (4); and, (b) a consequent disqualification of eleven months. The rules provide:

- (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.*

On 7 August 2008 the Appellant presented "Will Star", a horse he trained, for racing at Penrith. A stewards inquiry was conducted into an elevated level of plasma total carbon dioxide in the blood sample taken from Will Star. This Tribunal has available to it the transcript of the stewards inquiry which was tendered by consent. Mr Matters appeared, by leave, to represent Mr Russo.

The matters raised before the stewards by way of defence were not pursued before this Tribunal. The challenge raised by Mr Matters to the stewards' findings related to the various documentary evidence said to establish the breach charged. Various certificates relating to the post-race blood sample and a confirmatory analysis were admitted into evidence. Details of those certificates are set out at pages 6 and 7 of the transcript of the stewards inquiry and need not be detailed here.

Mr Matters sought to rely upon a typographical error in a letter dated 19 August 2008 from Dr Suann. Dr Suann gave a perfectly acceptable explanation for that error, and it does not appear to this Tribunal that anything of significance resulted therefrom. In any event, Dr Suann's letter containing the typographical error was not an evidentiary certificate and it was written well after exhibit B came into existence on 8 August 2008.

The primary submission advanced by Mr Matters was that the evidentiary certificate exhibit B constituted insufficient evidence to establish that the Appellant had breached Rule 190(1) and accordingly there could be no finding of guilt. He challenged the original certificate, claiming that it should not have been admitted because it was erroneous in that it contained a typographical error. There was of course no evidentiary certificate containing any typographical error. Such error was that referred to in the letter from Dr Suann.

With regard to the confirmatory certificate produced by the Queensland Government Racing Science Centre, Mr Matters contended that the laxness which gave rise to that certificate would reflect upon the integrity of exhibit B, that is, the certificate of analysis certifying that the sample taken from the Appellant's horse demonstrated an excessive plasma total carbon dioxide level, that is, in excess of the permissible level.

Mr Matters further contended that the reference by Dr Suann to an incorrect blood sample should not have been allowed to be corrected orally or by a subsequent letter explaining the typographical error—that his simple bold statement describing the error should not have been accepted. Furthermore, he submitted that, in any event, the Queensland confirmatory certificate is not an evidentiary certificate and that there is no evidence that the Queensland laboratory referred to is an approved blood testing laboratory.

In short, Mr Matters submitted that the original evidentiary certificate would be doubted as to its veracity and accuracy, and that little or no weight should be afforded to it. It was, he put, somehow tainted by reason of the typographical error referred to. He maintained that there was the possibility of a mistake in the evidentiary certificate and that there was a real possibility that an incorrect sample had been analysed.

There was no substance in this submission. The typographical error in Dr Suann's letter could not possibly have affected the validity of the certificate. Mr Matters made a bare submission without any evidence or logical argument to support it.

It is the firm view of this Tribunal that there has been no demonstration of the possibility of mistake in the evidentiary certificate. Accordingly, this Tribunal is not persuaded that any such mistake occurred.

As to the submission that the evidentiary certificate does not carry weight, again this was a bare and totally unsupported proposition. The Tribunal is comfortably satisfied that the certificate was regularly prepared and obtained and that the doubt suggested by Mr Matters as to the wrong sample being sent or certified simply does not exist.

With regard to the status of the certificate upon which the stewards relied, reference is made to Rule 191(1), which provides:

"191. (1) A certificate from a person or drug testing laboratory approved by the Controlling Body which certifies the presence of a prohibited substance in or on a horse at, or approximately at, a particular time, or in blood, urine, saliva, or other matter or sample or specimen tested, or that a prohibited substance had at some time been administered to a horse is prima facie evidence of the matters certified."

Whether or not the certificate from the Queensland laboratory is a certificate from an approved drug testing laboratory, it certainly provided confirmatory evidence of what was certified in exhibit B.

With respect, this Tribunal adopts the reasoning demonstrated at the stewards inquiry as set out in pages 39 and 40 of the transcript:

"We would say, in relation to your submission, Mr Matters, that the documents which the stewards rely upon are exhibit A, which is the swab card that identifies that B1105338 is the certificate number for the blood sample taken from Will Star; and exhibit A clearly defines that.

Exhibit B, we believe, is the first of the certificates referred to under Rule 191(1), and that is the Screening Analysis Report from the Australian Racing Forensic Laboratory which details the same swab card number, B1105338, and has a plasma total carbon dioxide level of 38.3. I will not read the whole document, because it has been read in a number of times.

The next document is exhibit C, which is a "Request for Confirmatory Analysis" by the Acting Laboratory Director of blood sample B1105338. There is no request for any confirmatory analysis of the other blood sample that was mentioned in Dr Suann's later letter, and that is dated 11 August 2008. That is the request to have the original certificate confirmed.

The Queensland Government laboratory, which is exhibit D, is their confirmatory analysis, which says that they received sample B1105338 on 11 August. Again, there is no reference to the other blood sample of B1104107. And on 11 and 12 August there is evidence and a Certificate of Analysis from the Queensland Government laboratory, declaring that sample to have a "total plasma carbon dioxide" concentration above the required level.

The stewards further say that in the document in which an error occurred—which was marked as exhibit E—that that error is clearly an error. They are satisfied that there is no possibility whatsoever that sample B1104107 was transported to the Queensland Government Racing Science Centre on 11 and 12 August 2008; and the reason that there is no possibility of that is that all documentation in regard to that previous sample shows that it was in fact received at the Queensland laboratory on 22nd and tested on the 23rd of July 2008, and, as has been pointed out earlier in this investigation, that number does relate to a horse Barzona Highway, and in the mind of the stewards that is not at issue—despite the fact we accept there is a typographical error.

Further, it should be said that the stewards rely upon the photographic evidence as detailed in exhibit G. I point you to the pages numbered 5, 6, 7, 8, 9, 10 and 11, which is clear evidence that the blood that was received at the Queensland laboratory was from B1105338, or in fact the racehorse Will Star.

So we have listened to your submissions, and we have given consideration to them, but we do not believe that there is an evidentiary difficulty in relation to those matters; that the evidence of a number of certificates and photographic evidence far outweighs the one typographical error that is not a typographical error that cannot be investigated. It has been investigated, it has been identified

and, as I said, it was approximately two to three weeks prior to the sample even being collected from Will Star."

This Tribunal finds proved the evidentiary basis justifying the charge preferred under Harness Rule of Racing 190 (1), (2) and (4).

The Appellant contended before the stewards inquiry that he had presented his horse drug-free. However, this Tribunal is comfortably satisfied, on the balance of probabilities, that he did not do so and that the charge was proved. Accordingly, the appeal as to conviction is dismissed.

On the question of penalty, Mr Matters put to this Tribunal that the Appellant is a young trainer with an unblemished record, that he is enthusiastic and the type of young trainer which the industry should be encouraging, that he is a person of good character and, further, that the level of TCO₂, whilst in excess of the permissible level, was not significantly greater. He put to the Tribunal that the discount of one month allowed to the Appellant did not give sufficient weight to his previous good character and previous unblemished history.

The Appellant has been associated with the training of horses for approximately five years, commencing as a stablehand and subsequently being granted a C-grade and then a B-grade trainer's licence. It is the view of this Tribunal that he has been a trainer and has been associated with the presentation of horses for racing for a sufficient period to have a full awareness of the seriousness of presenting a horse that is not drug-free. There is widespread publicity about the administration of prohibited substances and the seriousness with which that is viewed by the Authority, the Tribunal and the public.

The Appellant must have considered the consequences of his actions when administering a prohibited substance to his horse Will Star. In so doing he sought an unfair, and indeed an illegal, advantage which potentially jeopardised the prospects of other runners that raced within the rules. The connections of those horses and the punters who supported them would have been rightly indignant to learn that a rival horse was receiving assistance to their detriment.

The element of deterrence, both personal and general, looms large in a matter such as this. Mr Russo must be turned away permanently from such misconduct. He must see, as must all other trainers, that there is a real penalty to pay in the event of presenting a horse that is not drug-free. The industry is entitled to see that this Tribunal takes its obligations seriously and that it will confirm the imposition by stewards of penalties that send a message that the industry is to remain clear of drugs.

The Tribunal considers that the penalty imposed by the stewards of eleven months disqualification was well within their discretion, and finds no good reason to interfere with same. This Tribunal confirms the disqualification of eleven months, which is to date from today.

The appeal deposit is forfeited.

20 November 2008
J. C. McGuire, Judge