

**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 SHADLOW

DECISION

Michael Shadlow, the Appellant, appeals to the Tribunal against a finding of guilt on a charge under Rule 190 (1), (2) and (4) of the Rules of Harness Racing and against the severity of the penalty imposed, that is, a disqualification of two years.

Mr Paul Matters was granted permission to appear on behalf of the Appellant.

The Tribunal has before it the transcript of the stewards interview of Mr Shadlow on 18 September 2008 and the transcript of the inquiry of 28 October 2008, both of which were tendered by consent. Briefly stated, the evidence that emerged was to the following effect. The Appellant was the licensed trainer and driver of Grinwhenwewin at Penrith on 18 September 2008. The horse was in his care. A blood sample was taken, and on analysis it displayed a TCO₂ level above the permissible threshold.

The stewards received into evidence a screening analysis report showing a plasma total carbon dioxide level of 37.5 millimoles/litre. A referee's report from the Queensland Government Racing Science Centre demonstrated a plasma total carbon dioxide level at a concentration of 37.3 millimoles/litre. No issue was taken with these reports and the findings disclosed.

At the conclusion of the race on the subject occasion the Appellant was questioned by stewards and stated:

"I've already just gave her a big drink ... a big drink of molasses, with Carbolene in it. I've done it now, straight away ... because they haven't told me then that they were going to take her for a piss, so I gave her a drink. No-one mentioned till now."

The Appellant was asked:

"Who brought the Carbolene? Was it in your bag, was it?"

He responded:

"I already had it mixed up in the molasses. I always have it mixed up every time."

He was further questioned:

"CHAIRMAN: So that was in your gear?"

Mr SHADLOW: Yes, down there, yes.

CHAIRMAN: All right. So you used it all?

Mr SHADLOW: No. Oh, probably a little bit in it. There mightn't be that much left."

The Appellant then indicated the bucket that he claimed had been used to give the horse a drink. A steward was directed to go down and inspect the bucket. In fact its contents were analysed, and this analysis disclosed no trace of Carbolene either in the bucket or in the molasses contained therein.

Mr Branch, the Appellant's employee, told the stewards inquiry that straight after the race he had given the horse a drink which contained Carbolene, that he had placed Carbolene in a bucket and added water, and that he did this as a matter of normal procedure. He claimed that he had then rinsed the bucket and placed molasses in it, and gave the horse a further drink of water and molasses. His procedure, he said, was to place 200 mils of Carbolene in a bucket at the stables, put a lid on it and take it to the track.

After the Appellant left the stewards room, he returned to the horse. It was Branch's evidence that he then told the Appellant that he had given the horse the Carbolene and the molasses separately. At that point in the stewards inquiry, the stewards took the view that there was a conflict between what the Appellant had told them—that is, that the horse was treated post-race with Carbolene and molasses which had been premixed—and what Mr Branch had stated, when he described giving the horse firstly a drink containing Carbolene and secondly a drink of water containing molasses. The evidence of the appellant and Mr Branch was to the effect that the analysis demonstrating the prohibited substance could be explained by the carbolene ingested post race.

The Appellant was charged with contravening Harness Rule of Racing 190 (1), (2) and (4), which 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.*

The particulars of the charge were that Michael Shadlow, the licensed trainer of Grinwhenwewin, did present that horse to race at Penrith on 18 September 2008 in the Westfield Pace where a post-race blood sample was found, on analysis, to have a TCO₂ level in advance of the allowed threshold. The Appellant pleaded not guilty to that charge.

The stewards chose to disregard the evidence of Mr Branch and found that the horse had not been treated post-race with Carbolene. This is readily understandable having regard to the fact that the Appellant gave clear and unequivocal answers when first spoken to by the stewards with regard to giving that horse a premixed drink. That version of events was entirely inconsistent with what the Appellant told the stewards at the inquiry conducted on 28 October 2008.

This Tribunal simply rejects as totally unreliable the accounts of both the Appellant and Branch.

This Tribunal has no hesitation in finding:

- (1) that the Appellant did not administer Carbolene on 18 September post-race; and,
- (2) that Branch did not administer Carbolene on 18 September post race. The only sensible conclusion to be drawn is that a prohibited substance was administered to the horse pre-race and that is the finding of this Tribunal. A finding established comfortably on the balance of probabilities.

The stewards had regard to the Appellant's extremely poor record with regard to prohibited substances. He had been subjected to two previous disqualifications for breaches of Rule 190 (1). On 9 September 2002 he was disqualified for ten months, and on 3 August 2006 he was disqualified for twelve months. Those offences involved the administration of an alkalising agent.

Mr Shadlow has demonstrated contempt for his obligations as a trainer. He has persisted in the very same dishonest conduct which previously attracted disqualifications. Those disqualifications clearly did not deter him.

He was, of course, entitled to maintain his innocence. However, in so doing, he does not attract consideration extended to those who demonstrate remorse and contrition.

Without strict policing of the policy of drug-free racing, the industry would be destroyed. The public, owners and trainers must have confidence in the proposition: "may the best horse win". If it is perceived that a horse's performance is hindered or enhanced by the administration of drugs, then the punter, the owner, the trainer or persons simply interested in the sport will turn away and the sport will die. Persons willing to invest substantial amounts in purchasing horses, those prepared to own and race them, trainers and drivers and all associated with the sport will turn elsewhere if they feel that their endeavours are thwarted by those who seek to manipulate results by the use of chemicals, rather than breeding, expertise in training, expert preparation and skills in driving. A strong, and enforced, drug-free policy is basic to the integrity of the sport and must be maintained.

At the beginning of the proceedings here today Mr Shadlow was given a clear warning that if the appeal proceeded there was a very substantial risk that the penalty would be increased. That warning was repeated. However, it was ignored. This Tribunal considers that, having regard to the Appellant's persistent breach of the rules, this being his third offence, the stewards erred in imposing a two-year disqualification. That penalty was manifestly inadequate. Accordingly, the disqualification is increased to 2 years and 6 months, and is to date from today. Insofar as it is necessary, this Tribunal confirms the disqualification of the horse on the subject occasion.

The appeal deposit is forfeited.

J. C. McGuire, Judge
20 November 2008