

GREYHOUND AND HARNESS RACING APPEALS TRIBUNAL

Tribunal : B. R. Thorley, Judge

Assessors: Mr K. Russell
Mr J. Schreck

APPEAL OF Mr MICHAEL SHADOW

DECISION

This is an appeal against a finding of guilt and the severity of the penalty imposed upon Mr Michael Shadlow, the trainer of Dream Somemore, which he presented for a race at Penrith on 3 August 2006 when that horse was not free of prohibited substances in that the pre-race blood sample taken from the horse was shown to be positive to plasma total carbon dioxide at a level of ± 39.5 millimoles per litre.

The hearing of the charge that followed was conducted in front of Mr Callaghan SC, the Major Inquiry Steward. He found Mr Shadlow guilty and, after hearing submissions on the issue of penalty, subjected him to a period of disqualification of twelve months, to date from 30 October 2006.

Mr Matters has appeared before this Tribunal on behalf of the Appellant. We understand Mr Matters is not a lawyer, although he has legal knowledge, and the Tribunal has given him permission to appear and has been assisted by his submissions. The primary issue raised, whether or not there should have been a conviction, depends upon a submission based on the proper meaning of Rule 191 sub-rule (7). The evidence that was given to Mr Callaghan SC in support of the charge depended upon the admission into evidence of a certificate from the appropriate laboratory. Sub-rule (7) of Rule 191 provides:

"... certificates do not possess evidentiary value nor establish an offence, where it is proved that the certification procedure or any act or omission forming part of or relevant to the process resulting in the issue of a certificate, was materially flawed."

The evidence before Mr Callaghan SC, and accepted before this Tribunal by the General Counsel for the Authority, is that there was a defect in the security arrangements which attached to the transit of the blood sample from the racetrack to the Australian Racing Forensic Laboratory. A number of matters were pointed to but, primarily, what we are concerned about is the undoubted fact that the outer security bag had not been totally secured. We understand that it had been left in a position whereby somebody so minded would have been able to get hold of the inner security bag and thence the containers within it.

What is argued is that the failure to seal completely the outer security bag was an act or omission which was relevant to the process, that is, the certification process, and was an act or omission which was by its very nature materially flawed. That being so, the argument runs, the certificate should have been rejected from evidence, whereupon there would have been no evidence before the Major Inquiry Steward which would have justified a finding of guilt.

It will be observed, of course, that this submission depends entirely upon the interpretation to be given to sub-rule (7). It is not a submission which in any way deals with the merits of the case. The Appellant was, of course, in the practice of administering quantities of bicarbonate of soda directly to the feedlots of the horses in his charge, and the attribution of the elevated level of TCO₂ can clearly be given to that practice within his stables.

It seems to us that the approach taken by Mr Callaghan SC was the correct one. The "certification procedure" phrase as used in sub-rule (7) does not occur in a vacuum. It is a phrase which describes the totality of all of those steps which have to be undertaken from the time that the decision is made to take a bodily sample from a horse, to the time when the sample is in custody and delivered to the laboratory. It includes the time when the analysis is undertaken, and includes whatever steps are involved up until the very point of time when a certificate resulting from those procedural steps issues. In other words, to contemplate what constitutes materiality in a flaw one has to have in mind the ultimate purpose of the rule and the accompanying protocols.

The whole function and purpose of this exercise is to provide the analysing laboratory with a bodily sample the integrity of which cannot be challenged. True it is that not securing the outer bag is a flaw, but we do not think it was material because, as Mr Callaghan SC opined, nothing otherwise in the evidence suggests that the samples which were analysed were in any way reduced in their integrity. It is for that simple reason that we would reject the submissions put so earnestly on behalf of the Appellant.

As to the question of penalty, we have frequently said that a period of disqualification of twelve months is not untoward for this offence. We recognise that the effect of such a penalty upon a trainer such as this Appellant is severe.

However, this is indeed this Appellant's second offence, the last one being in 2002. It could not possibly be said, in the light of that background, that twelve months is extreme for him. We think the penalty was a proper one to be imposed, and it is confirmed.

The appeal is dismissed. The stewards' order is confirmed.

The Appellant's appeal deposit is forfeit.

29 November 2006

B. R. Thorley, Judge