

22 November 2019

NORTHERN TERRITORY OF AUSTRALIA
RACING APPEALS TRIBUNAL

PAUL GARDNER

AND

THE STEWARDS OF THOROUGHBRED RACING NT

CHAIRMAN: TOM PAULING AO QC

PANEL: TERESA HALL

JAMES DE-BELIN

Mr Gardner represented himself

Mr Hensler appeared on behalf of the stewards

This appeal arises in unique circumstances where there are four positive results from prohibited substances in swabs taken on 30 March, 4 May and 8 May, all at Alice Springs and on 18 May at Tennant Creek.

The first three cases involved Flunixin, a non-steroidal anti-inflammatory drug. The last involved Lignocaine, an anaesthetic medication usually given by injection. There is no notation on the treatment records of administration of Flunixin, although other treatments are recorded, as are withholding periods.

As to Lignocaine, Mr Gardner says there was no treatment and that Lignocaine could have entered the horse's system by licking a skin treatment called Paxil, which has Lignocaine as an ingredient.

In evidence before the stewards, Dr Medd discounted this method. The stewards gave Mr Gardner a very fair and sympathetic hearing, as Mr Gardner acknowledged at page 39 of the transcript. A fine for the first offence may have been appropriate, if it were the only offence.

Mr Hensler took into account the totality of the penalties, which is entirely in accord with correct legal principles. The decision to allow the first three penalties to be served concurrently, was a fair course to take and clearly took into account Mr Gardner's personal difficulties.

Mr Hensler, before us, called Mr Gardner a good man. We take into account the personal circumstances explained to us. Firstly, as a result of the disqualification he had to vacate his house and stables which were located at the Alice Springs race club grounds. He suffered depression, his marriage has ended in divorce and due to a severe shoulder injury he is unable to work. The consequences for him from his offending are very severe indeed. Against this is the vital importance of the integrity of the racing industry.

We have reached the conclusion that the penalties imposed were fair and appropriate and demanded in the unique circumstances of this case. In those circumstances correct principles require us to dismiss the appeal.