

Northern Territory

RACING APPEALS TRIBUNAL

Chairman: Tom Pauling AO Q.C.
Secretary: Edward Berry

Level 3, NAB House
71 Smith Street
GPO Box 1154
DARWIN NT 0810
Telephone: (08) 8999 1312

DATE: 15 June 2021

TRIBUNAL: Chairman: Tom Pauling AO QC
Deputy Chairman: Teresa Hall
Member: Amy Corcoran

APPELLANT: Mr Garry Lefoe

IN THE MATTER of an Appeal by Mr Garry Lefoe against a decision of Thoroughbred Racing Northern Territory Stewards.

BREACH OF RULE: AR 240

DETERMINATION

This is an appeal by trainer Garry Lefoe against the severity of a penalty of six months disqualification in respect of a breach of AR 240(2).

Mr Lefoe brought the mare Ima Puppet (the horse) to the Fannie Bay Racetrack on 19 February 2021 for the purpose of participating in a race being race three (3) on the card. It won the race.

A post-race urine sample was taken in the usual way with the requisite identification and precautions. A certificate from the Australian Racing Forensic Laboratory dated 13 April 2021 reported the presence of prohibited substances in the samples. This was confirmed by an independent analysis by the Racing Science Centre of QRIC in Queensland. None of this is in dispute.

Mr Lefoe was represented by Mr Damien Sheales of the Victorian Bar who has a deep knowledge of, and interest in, the racing industry including many visits to Darwin sometimes with horses during the Cup Carnival. His submissions both written and oral raised many issues of fact and law with an intensity not previously encountered by this Tribunal. It will not be necessary to deal with every point. Mr David De Silva also made extensive submissions both written and oral on behalf of the stewards which have assisted us.

A subsidiary issue arises by amendment to the appellant's grounds of appeal after Mr Sheales had received the transcript of the Inquiry. The horse won the race on 19 February 2021 and was subsequently disqualified. The presence of the prohibited substance in the post-race sample and the fact that the prohibited substances included trenbolone which is an anabolic androgynous steroid lead to that disqualification as Mr Sheales accepts. He argues however that this Tribunal can hear an appeal from the disqualification on the 13th March which the horse



also won. We don't accept that we have jurisdiction to determine that matter and our reasons appear later.

To establish the factual background we begin with the matters established by the inquiry;

1. In June 2018 TRNT distributed warnings to the NT racing industry issued by RVL and Racing NSW that certain altrenogest products had been found to contain low levels of trenbolone and/or trendione and specific precautions were recommended to trainers. Mr Lefoe was aware of these warnings. This was the first detection of this substance in a sample from a thoroughbred in the Northern Territory since the warnings were published.

2. During a stable inspection conducted on 15 April, 2021, Stewards took possession of 2 bottles of a compounded product labelled "altrenogest in soybean oil" which was prescribed by a veterinarian. Samples of these 2 oil products were analysed by the ARFL and found to contain differing levels of trenbolone and trendione.

3. During the stable inspection Mr Lefoe provided detailed treatment records for IMA PUPPET which confirmed that he had been administering the product orally but not in accordance with the recommendations provided in the June 2018 warnings.

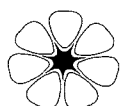
4. The Stewards were satisfied after considering the veterinary and scientific evidence that the administration of this altrenogest product was the likely cause of the prohibited substance detection.

It is apparent from the transcript of proceedings that the stewards were searching for a starting point which matters of aggravation may increase and matters of mitigation may decrease. They did so mindful of mandatory minimum disqualifications as set out in the ARS (see discussion from p 38 Transcript). They (at the risk of oversimplification) took the two year period in AR 248 (which is administration not presentation), reduced it to twelve months as a starting point and taking favourable matters into account arrived at six months disqualification. Whilst this has the appearance of mathematical rigour it does not produce a fair result that fits the facts and gravity of the case.

First it is not contested that Mr Lefoe was aware of the warning set out above. Secondly it is not disputed that Mr Lefoe used the product Altrenogest from the compounding pharmacist in Melbourne via Dr Church, a well-known vet with a wide practice. This was organised by his stable manager and only when that product was not available did he use Regumate or Ovumate which are better regulated but more expensive alternatives. He had followed this regime for over two years with no adverse findings. He had two bottles of Altrenogest which were analysed and one of which had 60; to 70% more prohibited substance than the other. Assuming that to have been the bottle from which the application was drawn up around 6PM on 18 February that likely would explain how the prohibited substances turned up after the following days racing. Mr Lefoe was careless in not observing the "one clear day" requirement especially when he understood it in respect of injections. His evidence in that respect is unsatisfactory.

Against that background the stewards took into account these factor

- The nature of the substance and the metabolites
- High detected level of the metabolite trendione
- Guilty plea
- Co-operation during the stable inspection and subsequent inquiry
- Detailed recording of treatments which assisted the proceedings
- No evidence of any dishonest motive
- An acceptance of wrongdoing and demonstrated genuine remorse



- Personal and professional circumstances
- Good record over 8 years of training
- Long overall involvement as a licensed participant in the racing industry and a contributing member of the Northern Territory racing community
- Penalty precedents in the NT and nationally

We have considered the submissions of Mr Sheales as to errors of a legal nature and the numerous cases to which we have been referred. It is to be remembered that the appeal is as to severity of sentence not as to a finding of guilty. This endeavour does not require a finely considered analysis of every point raised. We have frequently applauded the stewards in their great task of upholding the integrity of the racing industry. The trust of the race going public in a "Level playing-field" to borrow an old cliché is very important. In the present case were all the facts known to an inquisitive member of the race-going public he or she would firstly conclude that Mr Lefoe was not a cheat and was not knowingly doing something to the discredit of racing.

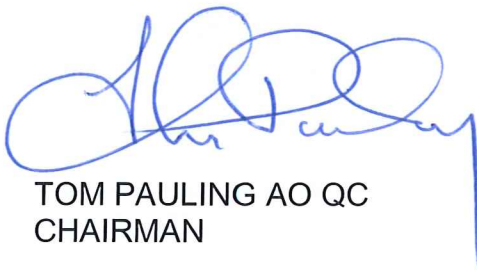
We have determined that in the circumstances of this case there was no need to look for a "starting point" and it was an error to do so. Looking at other dispositions and penalties we have concluded that a disqualification was excessive in all the circumstances. We uphold the appeal and set aside the order of disqualification and substitute a fine of \$10,000.

The previous reasons set out sufficient facts to determine the ground of appeal 6A concerning the race on 13 March 2021. The detection of the particular prohibited substance brought into play AR 248(4) (a).

The effect of this rule is that the horse was ineligible to run in that race or any race during the 12 months from the date of the collection of the sample which was 19 February 2021. The rule is retrospective and so captures the running of races by a horse even before the substance is detected, which is the case here. Be that as it may the stewards say that no appeal lies to this Tribunal by force of Section 145D (3) (c) of the *Racing and Betting Act* that provides that an appeal shall not lie from a decision;

(c) disqualifying or suspending an animal from racing (except where that disqualification or suspension is in conjunction with a penalty imposed on a person.

Mr Sheales submitted that the race disqualification was in conjunction with a penalty imposed on a person, namely Mr Lefoe. In both the Shorter Oxford English Dictionary and The Macquarie Dictionary conjunction and connection seem interchangeable. The horse was disqualified from the 13 March 2021 race because of the operation of AR 248 (4) (a). There is no connection to or conjunction with a penalty imposed on Mr Lefoe. This ground of appeal has no merit and is dismissed. The deposit may be returned.



TOM PAULING AO QC
CHAIRMAN

