Northern Territory

RACING APPEALS TRIBUNAL

Chairman: Tom Pauling AO Q.C.
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IN THE MATTER OF AN APPEAL BY JESS GLEESON

This appeal against both "the finding that I was culpable and guilty of bringing the gelding to the Alice Springs Turf Club with Xylazine in his system…" and against the severity of the fine imposed has been listed for hearing before this Tribunal on the 25th of August 2021.

We permitted the appellant to put forward evidence and submissions from experts. We then directed that the issues of controversy between Professor Whittem on behalf of Ms Gleeson and the evidence before the stewards of Dr Cawley from the Australian Racing Forensic Laboratory and the confirmation of the analysis by the Racing Science Centre in Queensland be reduced to a table of issues. This has been done and we thank the scientific witnesses for the clarity with which this has been done. There is agreement on vital issues for the purposes of this appeal.

First it is common ground that "The detector responses for Xylazine in the pre-race sample (B178286) were easily distinguished from baseline noise." Secondly "The finding of Xylazine in the pre-race sample was not an analytical error". Thirdly "Xylazine was definitely detected in the pre-race blood samples at the ARFL and the reference analytical laboratory."

These three agreed facts make it unnecessary to consider the other matters surrounding the post-race sample, haemolysis or the actions of the on-course vet. That is because the ground of appeal against a guilty finding and the speculation about possible contamination from Xylazine in the on-course vet's kit misconstrues the issue before us. That issue is dictated by the express terms of AR 240(2) which is in these terms;

if a horse is brought to a racecourse for the purpose of participating in a race and a prohibited substance on Prohibited List A and/or Prohibited List B is detected in a sample taken from the horse prior to or following its running in any race, the trainer and any other person who was in charge of the horse at any relevant time breaches these Australian Rules.

The lengthy statement by Professor Whittem with extensive analysis and supporting documentation addresses the question Ms Gleeson erroneously raises in her notice of appeal, that is whether Xylazine **was present in his system.**

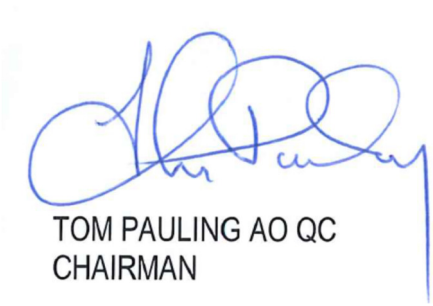
Were AR 240 (2) to set that test there is very considerable evidence to raise serious doubts as to whether the prohibited substance was in his system not the least being how it came to be in the pre-race sample but not in the post-race sample. The only known possible source of Xylazine was in the on-course vet's kit.

What is not in dispute are the crucial facts that Ms Gleeson as trainer brought Alvin Purple to the racetrack for the purpose of participating in a race (which he won) and that Xylazine was detected in the pre-race sample. These facts are beyond any doubt. The consequence is that

the breach of the Australian Rules is beyond question on this appeal. The further consequence is that the scientific evidence proposed to be lead before the Tribunal is irrelevant and inadmissible as not going to a question in issue.

Mr Nicholl on 9 August 2021 put forward the idea that the points of dispute between experts might be resolved or reduced by a debate between the experts before all parties and the Tribunal. In the Federal Court this is sometimes referred to as “hot tubbing” and is a technique aimed at eliminating differences over real issues. If the real issue was whether Xylazine was present in the horses system when “presented for racing” to use an old fashioned but well understood concept then there could be merit in it. But as we have said the issue is whether a prohibited substance was detected in the pre-race sample which is not in dispute.

This will not preclude submissions as to penalty based on scientific propositions as to the unlikelihood of the substance being in the horses system when presented for racing and the contested question of Xylazine in the on-course vet’s kit as a possible contaminant of the pre-race sample. However it is not necessary to resolve the remaining points of difference Mr Nicholl suggests are unresolved by hot tubbing expert witnesses or otherwise conducting a trial of issues. There is no possible issue with the breach of AR 240(2). We will hear the parties as to penalty only.



TOM PAULING AO QC
CHAIRMAN