

DATE: 18 February 2022

TRIBUNAL: Chairman: Tom Pauling AO QC
Deputy Chairman: Teresa Hall
Member: Alastair Shields

APPELLANT: Neil Dyer

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

BREACH OF RULE: AR 240(2)

DETERMINATION

This is an appeal by Mr Neil Dyer against a decision of Thoroughbred Racing Northern Territory (TRNT) Stewards made on 3 November 2021 to fine Mr Dyer the sum of \$6,000 for a breach of Australian Rule of Racing 240(2). The particulars of the charge being that Bolek, a horse trained by Mr Dyer competed in and won Race 4 at the Darwin Turf Club on 3 July 2021, and a post-race urine sample was found to contain dimethyl sulfoxide (DMSO) which is a prohibited substance under Schedule 1, List B of the Australian Rules of Racing.

The Racing Appeals Tribunal (the Tribunal) was provided with the full transcript of the hearing before the Stewards, the exhibits and associated technical documentation and the Stewards report imposing the penalty. Mr Dyer lodged written submissions with appendices. He submitted that a fine in the order of \$2000 to \$2500 was appropriate and raised arguments particularly as to the finding of DMSO being a first for the Australian Racing Forensic Laboratory (ARFL). The Stewards also provided a comprehensive submission in response. The appellant's arguments are fully addressed together with a schedule of TRNT penalties for positive swab cases since 2011.

This Tribunal hears appeals on the basis that it is the function of the Stewards to police the operation of the racing industry, to uphold and enforce standards that meet industry expectations and to protect the integrity and image of the sport. In the absence of error on the part of the Stewards, this Tribunal will not intervene to interfere with a penalty that the Stewards believe is consistent with the discharge of those functions. Error may be disclosed by a failure to take into account relevant matters, taking into account irrelevant matters or arriving at a penalty that is manifestly excessive in all the circumstances. It is the penalty before the Tribunal that matters and minute balancing of favourable and unfavourable factors in previous cases for comparison is not determinative of the outcome of an appeal. It is quite inappropriate that this Tribunal be called together to quibble over whether a fine of \$2500 is appropriate and a fine of \$6000 is manifestly excessive. Once the irrelevant submissions of the appellant are rejected, the only question is whether the fine of \$6000 was manifestly excessive.

On the hearing of the appeal, Mr Dyer had the assistance of clear advocacy by Mr Andrew Nicholl, the Chief Executive Officer of the Australian Trainers' Association, and Mr Dyer added to the oral submissions. At the risk of oversimplification, those submissions turned on the following matters:

- firstly, Mr Dyer has been a trainer for forty years in several jurisdictions and tubing DMSO is part of his regular practice to avoid bleeding and to transport treatments more efficiently to the metabolism of the horse;
- secondly, it was put to us that we should differentiate between substances in Part B of the prohibited substances list; and
- thirdly, we should regard this result as an anomaly.

This Tribunal in over 30 years has seen many first detections of many substances and many claims of anomalies. The stewards were clear that they regarded this treatment as therapeutic and not performance enhancing and so the differentiation suggested had already happened. The failure to record the treatment and also injections on the same day does not support the “highly skilled” submission in support of the “anomaly” idea. Despite these arguments urged upon the Tribunal, we are unable to conclude that the penalty was excessive. It follows we cannot find it was manifestly excessive. Therefore, the appeal is dismissed



TOM PAULING AO QC
CHAIRMAN