

**Northern Territory**

**RACING APPEALS TRIBUNAL**

Chairman: Teresa Hall  
Secretary: Edward Berry

Level 3, NAB House  
71 Smith Street  
GPO Box 1154  
DARWIN NT 0810

DATE: 8 December 2022

TRIBUNAL: Chairman: Teresa Hall  
Member: James Pratt  
Member: Amy Corcoran

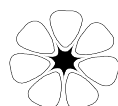
APPELLANT: Mr Garry Lefoe

In the matter of an appeal by Garry Lefoe against the decision of the Thoroughbred Racing NT (TRNT) Stewards (Stewards) made on 22 June 2022.

**DETERMINATION**

***Background***

1. The Appellant, Garry Lefoe (**Mr Lefoe**) is a licensed trainer with TRNT.
2. An inquiry was conducted by the Stewards after a number of Mr Lefoe's thoroughbreds pre and post-race swab samples returned a positive result for the prohibited List B substance firocoxib.
3. Subsequent to the inquiry by the Stewards Mr Lefoe was charged under the Australian Rules of Racing (**AR**) and plead guilty to the following charges:
  - **Charge 1 - AR245(1)** with the specifics being that as the licensed trainer of YOUNG DOURO Mr Lefoe he did administer or cause to be administered the prohibited list B substance "firocoxib" to that gelding which was detected in the blood sample taken prior to running in race 5, the Silks Darwin Lightning Wet Season Series Final (1200m) at the Darwin Turf Club meeting on 26 January 2022;
  - **Charge 2 - AR245(1)** with the specifics being that as the licensed trainer of DUNE FIELD he did administer or cause to be administered the prohibited list B substance "firocoxib" to that gelding which was detected in the blood sample

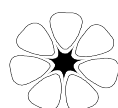


taken prior to running in race 2, the Sportsman's Lunch 18 February 0-64 Handicap (1000m) at the Darwin Turf Club meeting on 26 January 2022;

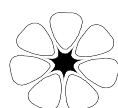
- **Charge 3 - AR245(1)** with the specifics being that as the licensed trainer of BUDGET KING he did administer or cause to be administered the prohibited list B substance "firocoxib" to that gelding which was detected in the blood sample taken prior to and urine sample taken after running in race 5, the St Patrick's Day Races 19 March 0-76 Handicap (1600m) at the Darwin Turf Club meeting on 18 February 2022;
- **Charge 4 - AR245(1)** with the specifics being that as the licensed trainer of BUDGET KING he did administer or cause to be administered the prohibited list B substance "firocoxib" to that gelding which was detected in the urine sample taken after running in race 4, the TAB Long May We Play Benchmark Handicap (1600m) at the Darwin Turf Club meeting on 25 March 2022;
- **Charge 5 - AR245(1)** with the specifics being that as the licensed trainer of BLUE JEAN BABY he did administer or cause to be administered the prohibited list B substance "firocoxib" to that mare which was detected in the blood sample taken prior to running in race 1, the Two-Up TROBIS Class 2 Handicap (1300m) at the Darwin Turf Club meeting on 25 April 2022;
- **Charge 6 - AR252(1)** with the specifics being that at inspections conducted by the Stewards at his Darwin stables on 8 and 12 April 2022, he did have on the premises multiple bottles of Prescription Animal Remedy products that were not labelled or dispensed in accordance with the *Medicines, Poisons and Therapeutic Goods Act 2012* (NT); and
- **Charge 7 - AR104(1)** with the specifics that he failed to record the administration of an S4 medication to YOUNG DOURO for 3 weeks leading up to the gelding competing at the Darwin Turf Club on 26 January 2022.

4. The Stewards imposed the following penalties:

- Charge 1 - AR245(1) a disqualification for a period of 6 months;
- Charge 2 - AR245(1) a disqualification for a period of 6 months;
- Charge 3 - AR245(1) a disqualification for a period of 6 months;
- Charge 4 - AR245(1) a disqualification for a period of 6 months;
- Charge 5 - AR245(1) a disqualification for a period of 9 months;
- Charge 6 - AR252(1) a fine of \$500; and



- Charge 7- AR104(1) a fine of \$500.
5. The Stewards were of the view that after considering the principles of totality that the penalties imposed for charges 1 - 4 should be served concurrently given it was the one course of action and further that given the circumstances outlined in the reasons for decision relating to charge 5, that this penalty should be served cumulatively.
  6. The total penalty for all charges is a 15 month disqualification and fines totalling \$1,000.
  7. The Stewards provided written reasons for the decision which included the following reasoning:
    - Mr Lefoe's consideration and research when commencing to use a new S4 medication appear adhoc at best and that instead of utilising more common therapeutics of a similar kind, which have well know withdrawal times, Mr Lefoe obtained a product to be used off-label with a complete lack of proper information.
    - The Stewards viewed Mr Lefoe's continued administration of firocoxib (under the brand name 'Previcox') to BLUE JEAN BABY after being alerted to the issues by Stewards as glaringly irresponsible; further that immediate preventative action by Mr Lefoe would have, in all likelihood, prevented the positive swab in BLUE JEAN BABY.
    - That the confidence of the betting public is paramount in a sport which in the main, derives its revenue from public wagering. The detection of a prohibited substance tarnishes the image of the industry and once again calls into question the fairness of the sport. One of the key purposes of imposing penalties for breaches of the Rules of Racing is to uphold integrity and demonstrate to the industry participants and the public at large that maintaining a level playing field is paramount in protecting the interest and reputation of the racing industry.
  8. The Stewards also gave consideration to Mr Lefoe's previous offending which mostly involve the presentation rule and predominately relate to the detection of therapeutic substances as well as Mr Lefoe's personal circumstances.



## ***Jurisdiction***

9. Pursuant to section 145(D) of the *Racing and Betting Act 1983* (NT) (**Act**):

*A person or the owner of an animal aggrieved by a decision of a steward or an official of a club made in respect of that person or that animal, as the case may be, may, subject to this Part, appeal from the decision:*

- (a) to the appropriate appeal committee; or*
  - (b) where the decision of the steward or official was:*
    - (i) to impose a fine greater than \$1,000 or such other amount as may be prescribed; or*
    - (ii) to impose on the person a suspension or disqualification for a period longer than 3 months; or*
    - (iii) subject to subsection (3)(c), to impose on an animal a disqualification or suspension; or*
    - (iv) to warn off the person for more than 12 meetings; or*
    - (v) to impose on the person a fine of more than \$500 or such other amount as may be prescribed together with a suspension or disqualification for longer than one month,*
- to the Tribunal.*

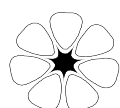
10. Further, section 145(D)(4) provides:

*An appeal shall be commenced by lodging a notice of appeal and the prescribed fee with, where the appeal is to:*

- (a) an appeal committee, the secretary of the committee; or*
- (b) the Tribunal, the Secretary,*

*not later than 7 days after notice of the decision by which a person is aggrieved has been delivered to that person.*

11. Mr Lefoe, a person aggrieved by a decision of the Stewards (being a disqualification for a period of longer than 3 months), bought his appeal on 23 June 2022, that is, within 7 days of being notified of the decision appealed against. Accordingly, the Tribunal has jurisdiction to hear the appeal and neither party has contended to the contrary.

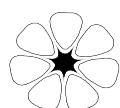


## ***Hearing***

12. Leave was granted by the Tribunal for both Mr Lefoe and the Stewards to be legally represented pursuant to section 145ZB of the Act.
13. Both parties provided written submission prior to the hearing and further oral submission at the hearing.
14. Neither party sought leave to introduce new evidence at the hearing, which was conducted on 27 October 2022.

## ***Mr Lefoe's submissions***

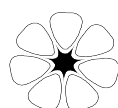
15. The written submissions on behalf of Mr Lefoe included argument that:
  - The penalty was manifestly excessive.
  - The Stewards misdirected themselves for numerous reasons detailed in the written submissions.
  - The Stewards erred in failing to give sufficient weight to the personal circumstances of the appellant.
  - The appellant after pleading guilty, upon being invited to make submissions by the Stewards on penalty, made submissions that a fine was appropriate.
  - The Stewards denied the appellant natural justice by remaining silent after by the appellant's submission and failing to invite not him to address them as to the appropriateness of a suspension or disqualification.
  - The Stewards erred in all the circumstances of the case in imposing a disqualification as to any of the charges. Disqualification is to be reserved, it is submitted, for cases that, upon taking into account, call for banishment from the industry. This was not such a case.
16. The argument put forward, that it is the circumstances as to what may have caused the positive result, that is determinative as to penalty range, not the nature of the prohibited substance detected, does not advance Mr Lefoe's appeal. The circumstances which caused the positive result were, at all times, entirely in Mr Lefoe's control and the drug administered at his direction or lack of the withdrawal of his direction.
17. Further, the Tribunal does not accept the submission that the administrations were inadvertent.



18. Mr Lefoe's legal representative made written and oral submission that a suspension should be preferred over a disqualification, however there were not sufficient particulars put to the Tribunal to give the submission serious consideration nor were any significant details provided regarding the personal circumstances of the appellant.

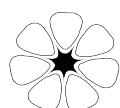
### ***Steward's submissions***

19. The Stewards submissions contended that the penalties for the infringement of the AR should be directed at the broad aspect of deterrence and further that:
- The Rules are in place to protect the integrity of thoroughbred racing. The notion of racing integrity connotes fairness as between participants, the maintenance of public confidence as well as protecting the welfare of the horses.
  - That betting with bookmakers and the tote is an intrinsic feature of racing in Australia, accentuates the emphasis on deterring participants from breaching the rules and potentially affecting the interests of those involved in wagering.
  - Integral to the integrity of thoroughbred racing is the strict regulation of the use of drugs and the prohibition of the use of certain substances. In some instances the prohibition is total, in other cases it is directed at horses being presented to race free of prohibited substances. These rules are directed at achieving a level playing field between those who race horses, as well as protecting the welfare of the horse as an equine athlete.
  - The rules require that trainers be licensed. With the licence comes privileges. But, a trainers licence also brings with it strict obligations in relation to the rules related to prohibited substances and the possession and management of drugs in racing stables.
20. Continuing on the matter of deterrence, the Stewards put forward that the strong penalty was needed to deter other trainers from the same or similar disregard for their responsibilities as trainers and their obligations under the AR as had been demonstrated by Mr Lefoe in this matter.



## ***Determination***

21. The Tribunal is of the view that the Stewards gave proper consideration to the mitigating and aggravating circumstance of the offences; previous penalties imposed by the Stewards and this Tribunal as well as Mr Lefoe's personal circumstances.
22. The Stewards afforded Mr Lefoe an opportunity to address the inquiry as to any matters the Stewards should consider in respect of the penalty to be imposed. Mr Lefoe, as an experienced trainer has knowledge of the AR and the penalties available to the Stewards, including disqualification. The Tribunal does not accept Mr Lefoe was denied natural justice.
23. The submission that the disqualification penalty should be replaced with a suspension is not supported by the Tribunal; A disqualification prevents the person from not only being a licensed trainer and participating in the industry under the AR, it also prevents them from attending sanctioned Industry race meetings and associated premises i.e. racetracks and on course stables. A suspension allows the person to attend race meetings and associated premises. In circumstances where there are significant ties to the training and racing community and where the stabling of racehorses is at the same premises as the racecourse, it becomes an unnecessary burden on the Stewards to police the actions of a suspended trainer. There would need to be compelling reasons to substitute a suspension of licence in place of a disqualification and such circumstances have not been presented in this matter.
24. In respect of the issue of deterrence, it was of particular concern to the Tribunal that this was the second appearance of Mr Lefoe for a matter in which he has used prescription medication for an off-label use (being that the brand 'previcox' is a firocoxib preparation for canines and not for equines); particularly, in this matter, without any veterinary advice as to the correct dosage or withholding periods.
25. As had been stated in previous determinations this Tribunal does not have the 'on the ground' contact with the racing industry that the Stewards have. It is the Stewards' duty and function to weigh competing factors and arrive at appropriate penalties in the interests of the racing industry. Unless the Tribunal sees error in the treatment of the offence or the severity of the penalty, the Tribunal will not interfere.



26. In accordance with the Tribunal's powers under section 145ZE of the Act the Tribunal upholds the decision appealed against.
27. There is no order as to costs.
28. Section 145ZF of the Act provides the determination of the Tribunal is final and conclusive.



TERESA HALL  
CHAIRMAN

