Northern Territory	
RACING APPEALS TRIBUNAL	
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DATE:

10 March 2017

TRIBUNAL:

Chairman: Tom Pauling AO QC

Member: Ms Teresa Hall Member: Mr James De-Belin

APPELLANT:

Mr Gary Clarke

<u>IN THE MATTER</u> of an Appeal by Mr Gary Clarke against a decision of Thoroughbred Racing Northern Territory Stewards.

BREACH OF RULE:

AR 178

This is an appeal by Mr Gary Clarke, a leading trainer, following a guilty plea to a breach of Australian Rule 178 where the stewards imposed a fine of \$8000.

The circumstances giving rise to the breach are common ground. Mr Clarke has many horses in work and regularly uses the services of Dr Farebrother, a veterinary surgeon in treating horses in his care. One of those horses was Neat Feat which was hanging in track work and Mr Clarke correctly suspected that he was having trouble with his hocks.

Dr Farebrother attended the stables and injected the hocks with a cortical-steroid Kenacort 10. The treatment was given on 8 December 2016 and the horse was presented for racing on 17 December 2016 where he competed in, and won, race 5 at the Darwin Turf Club meeting. A swab taken after the race was found to contain the prohibited substance triamcinolone acetonide, the active ingredient in Kenacort 10. None of this is disputed.

The inquiry was conducted with scrupulous fairness. The presence of a residual trace of the prohibited substance can be attributed to an error in administration whereby some of the substance went into soft tissue rather than the intra-articulated joint and so remained in the horses system longer than the eight days recommended as a period to withhold a horse from racing after such treatment.

Mr Clarke has a sense of grievance and in his grounds of appeal (10) he expressed it in this way; "To impose a penalty of \$8000 for an offence which the Appellant is unable to contest because of the Rules (sic) absolute liability provisions and for which the Appellant was not at fault, is a denial of Natural Justice."

We pointed out that his argument is not with the Stewards whose decision is appealed but with the Rule itself and that could not amount to a denial of Natural Justice. The



stewards were bound to apply the rule according to its terms. According we gave our attention to penalty.

The stewards carefully set all favourable and unfavourable matters before deciding on penalty. One such factor was that 12 years previously a horse trained by Mr Clarke had a positive swab to the same cortico-steroid administered by Dr Farebrother, though four times stronger, as Kenacort 40 when the recommended withholding period was 5 days.

Quite rightly as Mr Hensler submitted this should not make the penalty greater in the second offence but he was not entitled to the same lenience as may be shown to a first offender.

Mr Clarke has trained a great many horses in the intervening period many of whom have had similar treatment as Neat Feat without breach of the rules. We would give that more significance than the stewards did. At the inquiry Mr Clarke submitted: "Twelve years clean slate is not a bad effort I thought." We agree. For that reason we reduce the fine to \$5000 and ordered the return of the deposit

Tom Pauling AO QC