Northern Territory

RACING APPEALS TRIBUNAL

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DATE: 24 November 2014

TRIBUNAL: Chairman: Tom Pauling AO QC
Deputy Chairman: David Brooker
Member: Mr Philip Timney

APPELLANT: Mr Stuart Gower

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

BREACH OF RULE: AR 178

DETERMINATION

This appeal is from a decision of the stewards of Thoroughbred Racing NT where Mr Stuart Gower was disqualified for two offences against Australian Rule 178, which provides: *Subject to Australian Rule 178G, when any horse that has been brought to a racecourse for the purpose of engaging in a race and a prohibited substance is detected in any sample taken from it prior to or following its running in any race, the trainer and any other person who was in charge of such horse at any relevant time may be penalised.*

The circumstances that led to these charges were that blood tests taken after Saturday Sorcerer, trained and partly owned by Mr Gower, won the Sky Racing Metric Mile on the 26th July 2014 and the Carlton Mid Darwin Cup on the 4th August 2014, were found to contain a prohibited substance, Andarine S-4. This substance is one of the Selective Androgen Receptor Modulators or SARMS, which are included in the list of the prohibited substance in Australian Rule 177B (2).

It appears to be the first time it has been detected in a race horse. It has been put to us that this is a test case for that reason. There have been no studies on the effect of the substance in horses. It was developed as an experimental alternative for anabolic steroids and appears to be available on the internet possibly for body builders. It is not a substance authorised for human or equine use. It is not to be present in any race horse at any time, let alone when the horse is presented for racing. It is a serious threat to the integrity of racing.

The Stewards hearing was held on the 18 September 2014. No complaint is made about the procedure before the Stewards. Mr Gower cooperated fully, pleaded guilty as soon as the charges were put to him and was supported by Mr Reynolds, a part owner of Saturday Sorcerer. Stewards disqualified Mr Gower for 12 months in respect of each of the offences against Australian Rule 178 and ordered that the disqualification be cumulative, banning him in total for two years. At page 48 of the transcript, the Chairman of Stewards said,".. *there are no*

precedents in Australia to refer to when considering the matter of penalty. We have taken into account your personal circumstance and the imposition that the different range of penalties will have on you. We have also considered your cooperation through the proceedings and your early guilty pleas. We have also considered your reference that part-owner Mr Reynolds has placed on the record regarding your professionalism. We are of the opinion that a fine or suspension of your licence are not appropriate in the circumstances. The stewards then proceeded to impose the disqualifications.

It is from the disqualification of two years that Mr Gower appeals. We rejected the appeal and delivered brief *ex tempore* reasons for doing so. These reasons expand slightly on those delivered at the time in the interests of clarity.
We have been referred to a number of prior decisions of this Tribunal and a New South Wales Tribunal decision. We did not gain much assistance from them. There has been a deliberate and determined effort by amendment to the Australian Rules of Racing as recently as November 2013 to deal with prohibited substances and practices which are a blight on the racing industry and past decisions about injudicious or corrupt use of therapeutic drugs do not assist. They do not reflect a "range" of disqualification periods that should determine the outcome of this appeal.

We agree with the Stewards that there are no determining precedents to refer to. The submission on behalf of the Stewards was that for a starting point guidance maybe found in other parts of the Australian Rules of Racing and attention was focused or drawn to AR 177 B (2) and AR 196 (5). 177B (2) is the section that lists the substances which are specified as prohibited substances and in sub paragraph (f) it refers to Selective Androgen Receptor Modulators or SARMS. In 177 B (6) it provides: *Any person who, in the opinion of the Stewards, administers, attempts to administer, causes to be administered or is a party to the administration of, any prohibited substance specified in subrule (2) to a horse being trained by a licensed trainer must be penalised in accordance with Australian Rule 196(5).* AR 196 (5) provides: *Where a person is found guilty of a breach of any of the Rules listed below, a penalty of disqualification for a period of not less than the period specified for that Rule must be imposed unless there is a finding that a special circumstance exists whereupon the penalty may be reduced.*

There are a range of offences with penalties going from 6 months to five years. The administration of an anabolic steroid prohibited by AR178H has a mandatory penalty of 2 years disqualification in the absence of special circumstances. The submission flowing from this is that an appropriate starting point for the length of disqualification in each case was two years and that the 12 months in each case reflected a 50 per cent discount for the positive and personal factors such as the financial impact, his proven good character, his cooperation, and his immediate pleas of guilt and the fact that this was an offence under AR178 not AR175. . Mr Pasterfield was at pains to set Australian Rule 178 apart from the surrounding rules and in particular rules relating to administration. We clearly are not dealing with an offence of administration but the question is where were the stewards and this Tribunal to look for guidance as to the level of seriousness and penalty.

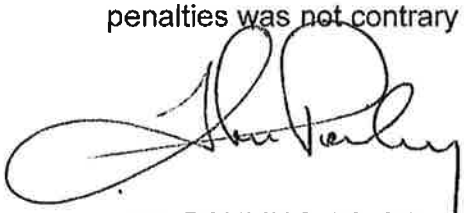
The Tribunal is of the view that in the absence of precedent, Stewards were entitled to look at the provisions around Australian Rule 178, including 177B (2) and (6) and 196 (5), to determine a level of seriousness and an appropriate starting point.

We emphasise that it is not alleged against Mr Gower that he administered the drug and we reject the speculative submissions on behalf of the Stewards (pars 44 to 50) inviting us to draw adverse inferences against Mr Gower based on his own speculation as to how the drug became present in the samples. We have ignored the presence of the drug in the horse at a later non-racing sample taken at his stables in Morphetville. We have taken into account the positive good character of the appellant who has a 23 year record without blemish and regard

the 50% discount on the starting point of two years as giving full weight to these factors. The additional testimonials, impressive as they are only confirm what was before the stewards and that is that the appellant is a person of proven good character We are fully conscious of the disastrous consequences to him financially.

The nature of the appeal to this Tribunal is explained in the 1992 decision of Pike. We do not need to find some error in order to intervene. We are entitled to apply what has often been called the 'oh my-gosh' test. We have applied that test, mindful of what the Tribunal has said so often about the importance of the integrity of the racing industry. We need not repeat what has been said in this respect before. We did not respond to the penalty with a feeling that the penalty was too much such that in the well known test in House v The King there must be some error. This Tribunal is not required to find error but to determine the matter anew on the evidence before the stewards with the capacity to admit new evidence, which we did.

We find the penalty to be at the high end of possible penalties but we are not persuaded that it was not appropriate and proportionate to the seriousness of the offences. We are mindful as previously mentioned that the Australian Rules of Racing have undergone significant changes in recent years in an attempt to keep up with recent trends. Australian Rule 196 (5) (the mandatory penalty provision) is just over a year old and cannot be ignored. Protection of the integrity of the racing industry is of such great importance that it amply justifies the harsh penalties provided for. If this is a test case it sends a clear message that offences of this type will be severely dealt with. Mr Gower is perhaps unfortunate to be the test case for the new regime of attempts by those responsible for racing in this country to protect its integrity. Whilst we are of the view that the penalty in his case is harsh we do not consider it so severe as to require the Tribunal to intervene. Looking at all the circumstances we consider the penalty appropriate. This includes the issue of cumulative effect. Whilst is open to this Tribunal to set its own penalties as it is a rehearing we are persuaded the penalties set by the stewards was correct. There were two distinct offences nine days apart. The cumulative effect of the penalties was not contrary to principle. For these reasons the appeal is dismissed.



TOM PAULING AO QC
Chairman