APPEAL - 133

DETERMINATION AND REASONS FOR DETERMINATION OF

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT :	FRANK MAYNARD
APPLICATION NO. :	A30/08/133
PANEL :	MR D MOSSENSON (CHAIRPERSON) MR F ROBINS (MEMBER) MR T MULLIGAN (MEMBER)
DATE OF HEARING :	25 MAY 1994

IN THE MATTER OF an appeal by Mr Frank Maynard following the issuing of a Writ of Certiorari by the Supreme Court quashing the decision of the Tribunal on the 6 July 1993 whereby the Tribunal dismissed the appeal.

Mr M J McCusker QC and Mr T Percy instructed by Kavenagh & Co appeared for the appellant.

Mr R J Davies QC appeared for the WATC Stewards

On the 18th March 1994 the Supreme Court quashed the decision of the Tribunal, which was made on the 6th July 1993, whereby the Tribunal dismissed an appeal by Mr Maynard against a conviction for breach of Australian Racing Rule 175(h)(ii). On the same day an order was made suspending the operation of the three year disqualification which had been imposed by the Stewards.

The matter was remitted to the Tribunal to be dealt with in accordance with the reasons for judgement and conclusions of Ipp J. delivered on the 18th March 1994. Ipp J. concluded that there can be no finding that an infringement has been committed unless there has been a negation of an honest and reasonable but mistaken belief that any prohibited substance administered or caused to be administered to a horse, had been excreted by the race day and therefore would not be present in the blood or urine.

Senior counsel for the appellant has submitted that the onus was on the Stewards to negate the honest and reasonable but mistaken belief. It was further submitted that the evidence clearly established the relevant belief on the appellant's part and that the onus therefore shifted to the Stewards to negate that belief. Nothing was

presented to discharge that onus and that in the circumstances the appropriate course of action was for the Tribunal to determine the matter and to allow the appeal. In view of the fact that the evidence was alleged to be all one way and that a matter of principle was involved it was argued that it would be oppressive to send the matter back to the Stewards.

On the other hand, senior counsel for the stewards argued that the very thing that had not crossed the Stewards' minds was the new defence which the Full Court found did apply. It was submitted further that the Stewards will be denied the opportunity to consider the matter if the Tribunal does not remit it and in the circumstances of the suspension of operation of the penalty having been granted no oppression to Mr Maynard had occurred.

Whilst the Tribunal agrees with Mr McCusker QC that technically speaking there has been no change in the law, Ipp J. has identified at page 20 of his reasons a variety of factors that are relevant as to whether there was an honest and reasonable but mistaken reason on the part of the appellant. These factors have not been fully ventilated or considered by the Stewards, who at the relevant time proceeded on the basis that the rule in question imposed a strict liability.

In all of these circumstances the Tribunal is satisfied that according to equity, good conscience and the substantial merits of the case the matter should be referred to the Stewards for rehearing.

Accordingly, the appeal is upheld. The conviction is quashed and the Stewards are required to rehear the matter in accordance with the reasons of Ipp. J.

The fee that was paid on the lodgement of the appeal is refunded.

DAN MOSSENSON, CHAIRPERSON

Seal of the Racing Penalties Appeal Tribunal of W.A.

APPEAL - 133

DETERMINATION AND REASONS FOR DETERMINATION OF

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT : FRANK HENRY MAYNARD

APPLICATION NO. : A30/08/133

PANEL : D MOSSENSON (CHAIRMAN)
T MULLIGAN (MEMBER)
F ROBINS (MEMBER)

DATE OF HEARING : 6TH JULY 1993

IN THE MATTER OF an appeal by Mr Frank Maynard against the determination of the Western Australian Turf Club Stewards on 7th May 1993 against the three year disqualification under Rule 175(h)(ii).

Mr T Percy appeared for the appellant

Mr R J Davies, QC appeared for the respondent

Rule 175 states:

"The Committee of any Club or the Stewards may punish:

..... (h) Any person who at any time administers, or causes to be administered, any prohibited substance as defined in A.R.1;

..... (ii) which is detected in any pre or post-race sample taken on the day of any race."

At a hearing before the Stewards the Appellant was charged as follows:

> "...you Mr F H Maynard trainer of PALATIOUS, caused methylprednisolone, a prohibited substance as defined in A.R.1 to be administered to PALATIOUS, which was detected in a post-race sample taken on Saturday 27th of March, 1993, following its win in the Singapore Tourist Promotion Board Handicap, 1400 metres, a racing event at Ascot".

There is no dispute in this appeal in relation to the facts. It is admitted that the substance detected was a prohibited substance as defined in the rules, that the substance was detected in a post race sample and that the substance was caused to be administered to the horse by the Appellant. The relevant part of rule 175 creates an offence in circumstances where any person at any time causes to be administered any prohibited substance which is detected in a post race sample taken on the day of the race.

For the Appellant it was strongly argued that an honest and reasonable but mistaken belief in a state of facts is a defence to any statutory regulatory offence in Western Australia by virtue of section 24 of the Criminal Code and that at common law a similar defence applies. It was submitted that the Rules of Racing have a statutory or at least quasi-statutory effect.

The Tribunal is not persuaded that the defence under the Criminal Code or at common law can apply to the Rules of Racing in relation to this offence. The Rules of Racing impose a code to regulate the domestic affairs of the racing industry and do not constitute statutory provisions or regulations.

It was also argued for the Appellant that there was no evidence before the Stewards upon which they could have concluded that the Appellant held no relevant belief at the time or that his belief was not honestly held or that his belief was not reasonably held. Even if it could be said that these factors do apply to the Rules of Racing and that potentially on the facts they constitute a defence, it would have been open to the Stewards to conclude that such a defence could not have succeeded due to the statements made by the Appellant to the Stewards which appear on page 53 of the Transcript relating to the Appellant's state of mind at the time the drug was administered.

The appeal therefore fails.

The Tribunal is satisfied that, in view of the nature of this offence as outlined by Mr Percy, the penalty that was imposed was excessive. Though we are not minded to substitute a fine, the Tribunal is influenced amongst other things, by the fact that the administration of the prohibited substance was done on the advice of the Appellant's veterinarian as well as the adverse impact on the Appellant's financial position as a result of a three year disqualification. The Tribunal considers that an appropriate penalty in the circumstances is a disqualification for a period of two years.

Accordingly the penalty is varied by substituting a term of two years for the term of three years.

The suspension of the operation of the penalty which was granted shall immediately cease to operate and the lodgement fee will not be refunded.

DAN MOSSENSON, CHAIRMAN

Seal of the Racing Penalties Appeal Tribunal of W.A.