DETERMINATION AND REASONS FOR DETERMINATION OF

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: GUISEPPI SEBASTIAN PUGLIA

APPLICATION NO: A30/08/472

PANEL: MR D MOSSENSON (CHAIRPERSON)

MR J PRIOR (MEMBER)

DATE OF HEARING 4 NOVEMBER 1999

DATE OF DETERMINATION: 4 NOVEMBER 1999

IN THE MATTER OF an appeal by Mr G S Puglia against the determination made by the Western Australian Trotting Association Stewards on the 11 June 1999 imposing 12 months disqualification for breach of Rule 497(1) of the Rules of Harness Racing.

The appellant represented himself.

Mr M Skipper appeared for the Western Australian Trotting Association Stewards.

This is a unanimous decision of the two of us.

This is an appeal by Mr Puglia against a determination made by the Stewards of the Western Australian Trotting Association on the 23 August 1999 to convict for a breach of Rule 497 of the Rules of Harness Racing and as a consequence Mr Puglia was disqualified for a period of 12 months. The conviction resulted from the analyst's finding that a level in excess of 35.0 mmol/litre of total carbon dioxide was detected in the pre-race blood samples taken from GRAND CANYON prior to competing in Race 7 at Gloucester Park on the 11 June 1999.

The appeal is against both the conviction and the penalty.

In the course of arguing the matter, Mr Puglia has taken us over some of the issues that were ventilated before the Stewards. He has explained that in the course of defending himself before the Stewards he was quite honest and open in the things that he put forward. He is to be commended in that regard. He has made some comment about the appropriateness or the fairness of the hearing in the course of tonight's submissions. From what we have been able to determine from studying the transcript of the proceedings we have concluded that Mr Puglia was given every reasonable opportunity in which to present his own argument, to call his evidence and to try to raise the defence available to him under the Rules in respect of the charge. We are satisfied that the Stewards properly handled the matter.

In the course of submissions this evening the most forceful point made in relation to conviction is the subject of the virus. It is not entirely clear what Mr Puglia's position is on this issue. In the course of his submissions he has not necessarily indicated whether it was only his belief that the virus had impact or whether there was other material presented to the Stewards to suggest that the virus was relevant. Be that as it may, we note that at page 138 of the transcript the Stewards in announcing the determination have stated that they heard evidence from Mr O'Neill relating to the effect that a virus or stress may have on a horse's system. Mr O'Neill acknowledged he had little experience with horses and particularly the total carbon dioxide level in horses. Dr Rieusset, Dr Hilbert and Professor Rose also gave evidence. There was no evidence before the Stewards that the horse was suffering from a virus on the 11 June 1999, the day of the race. The Stewards then went on to say in their reasons for decision that they found that the possibility that the horse was affected by a virus as being a contributing factor to the total carbon dioxide level found in the sample was most unlikely.

In all the circumstances we are not persuaded that there is any merit in the virus argument in the light of those findings of the Stewards. Those findings were reasonably open to the Stewards on the evidence.

We are satisfied that the Stewards were entitled to come to the conclusion which they did on the evidence which was before them. The onus was on Mr Puglia to prove the defence under Rule 497(2). The appellant failed to convince the Stewards of that defence and tonight has failed to persuade the Tribunal that that defence was open to him on the evidence before the Stewards and on the material that has been presented to us.

For those reasons the appeal against conviction fails.

As to the penalty Mr Puglia made reference to the decision in Anderson. That is a decision of the Full Court of the Supreme Court of Western Australia. The matter of extenuating circumstances in the context of the penalty has to be decided on the basis of that authority. Nothing has been put forward in the course of argument tonight to persuade the Tribunal that there were any extenuating circumstances under which the offence was committed which justify anything other than the statutory penalty, which is the period of disqualification of 12 months. It was open to the Stewards to come to the same conclusion.

Accordingly the appeal also fails as to penalty.

DAN MOSSENSON, CHAIRPERSON