

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF
MR AE MONISSE (MEMBER)

APPELLANT: SHAUN LEONARD O'DONNELL

APPLICATION NO: A30/08/582

PANEL: MR P HOGAN (PRESIDING MEMBER)
MS K FARLEY (MEMBER)
MR AE MONISSE (MEMBER)

DATE OF HEARING: 4 MARCH 2003

DATE OF DETERMINATION: 4 MARCH 2003

IN THE MATTER OF an appeal by Mr S L O'Donnell against the determination made by the Stewards of the Western Australian Turf Club on 20 September 2002 imposing 9 months suspension for breach of Rule 81A(1)(a) of the Australian Rules of Racing.

Mr T F Percy QC with Ms A Lenton appeared for Mr O'Donnell.

Mr J A Zucal appeared for the Stewards of the Western Australian Turf Club.

On 4 March 2003 the Tribunal unanimously upheld the Appellant's appeal against the severity of the penalty imposed by the Stewards of the Western Australian Turf Club for his breach of Rule 81A(1)(a) of the Australian Rules of Racing. The Tribunal reduced the penalty from nine months suspension to six months suspension. My reasons for allowing the appeal now follow.

On 20 September 2002 the Stewards inquired into a report received from Western Diagnostic Pathology that a urine sample taken from Shaun O'Donnell, a licensed jockey, was found to contain the presence of methylamphetamine.

Rule 81A of the Australian Rules of Racing states:

"81A. (1) Any rider commits an offence and may be penalised if-

- (a) a sample taken from him is found by an analyst to contain the presence of a substance banned by AR81B..."*

Rule 81B states:

"81B. For the purposes of AR 81A the following substances and/or their metabolites, artifacts and isomers are banned:

- (e) all other substances listed in the Australian and New Zealand standard 4308, at the relevant concentrations set out herein."*

The level of concentration reported by the analyst, of 418 nanograms per millilitre, was in excess of the 300 nanograms per millilitre allowed under the Australian and New Zealand standard 4308.

A report from the Racecourse Investigator was read into the inquiry. That report stated:

"On Saturday, September the 14th 2002 at the Kalgoorlie Race Club, I requested licensed jockey Shaun O'Donnell to participate in a urine drug test. On Wednesday, September 18th 2002 I was advised by Western Diagnostic Pathology that the sample collected had tested positive to methylamphetamine, commonly known as "speed". I then interviewed Shaun O'Donnell at the Belmont Racecourse. Mr O'Donnell made full admissions of his use of speed over the past two years with his most reason use being last Wednesday, September 11. Mr O'Donnell produced an appointment card from his wallet that revealed he was undergoing drug counselling at the Holyoake Drug and Alcohol Centre in Perth. Mr O'Donnell stated that he had been attending Holyoake for the past three weeks, however had used speed last Wednesday because he was in a depressed mood. Mr O'Donnell stated he and his wife had faced a number of stressful situations in their private life over the past two years and had both resorted to using drugs to feel better. Mr O'Donnell added he was not an addict yet admitted he had a problem with drugs. When asked whether he was aware of the WA Turf Club policy regarding the use of prohibited substances, Mr O'Donnell stated he was aware and knew he had done the wrong thing. Mr O'Donnell was very cooperative during the interview and understood the serious nature of the matter. Mr O'Donnell was escorted to the Stewards' Office following our interview where Mr Lewis stood him down from riding in races and track work until this matter had been formally dealt with at a Stewards' inquiry. And it's signed by Phil O'Reilly, Racecourse Investigator and dated 18th September 2002."

The Appellant at the end of the inquiry pleaded "Guilty" to the charge.

The seriousness of the Appellant's offending behaviour is evident from a letter to the Chairman of Stewards from the Manager of the Alcohol and Drug Services, Western Diagnostic Pathology dated 19 September 2002. This letter was read in at the inquiry. After referring to the sample taken from the Appellant the letter stated:

"Methylamphetamine is an illicit drug commonly referred to as 'Speed' and which is metabolised to produce amphetamine." and

"The psychological and physiological effects of methylamphetamine use will vary from person to person depending on a variety of physical/medical factors and the type/quantity of the drug used together with how experienced the user is.

The acute effects of methylamphetamine use include but are not limited to reduced appetite, increased respiration and pulse, increased blood pressure, extreme feelings of well-being, greater self confidence and energy, inability to sleep, hyperactivity, talkativeness, anxiety, irritability, panic attacks, dizziness, headaches, excessive sweating and aggressiveness. The acute effects of amphetamine use are usually followed by a period of extreme fatigue, poor coordination, slower reflexes and decision making abilities, irritability and depression."

It is in that context that the following remarks of the Chairman of the Stewards can be fully appreciated:

"This whole Rule is fashioned around the fact that it is a safety factor where you have other riders, your self and horses in races and that weighs very heavily on our minds and we can see that can be no place or cannot be tolerated in the racing industry. Also, a matter of this nature does bring the integrity of racing into some question and certainly from the betting public the public image is tarnished."

Substantial mitigation existed for the Appellant. This primarily related to:

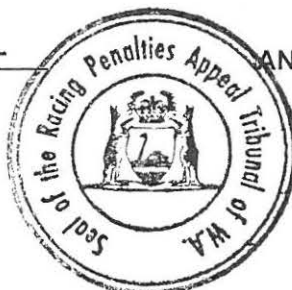
- the adverse family, professional, and financial pressures the Appellant was under at the relevant time;
- his co-operation with the racecourse investigator and the inquiry;
- his acknowledgment of his offending behaviour;
- his efforts to rehabilitate himself from his drug usage, which he had commenced on his initiative some three weeks before he was required to give the sample in question;
- he had no prior convictions of a similar nature to the one in question in 15 years of riding; and
- his poor financial position with a spouse and four children to support.

This Tribunal in Hawkins (Appeal No. 522) reduced a nine month period of suspension to six months for a breach of Rule 81A(1)(a). The mitigating factors in this case are at least on par with, if not more significant than, those in Hawkins. Here the parity principle is apposite, being that penalties imposed should as far as possible be consistent between persons who are convicted of similar offences (*Lowe v R* (1984) 154 CLR 606).

Given the mitigating circumstances of this case, Hawkins and the parity principle, I am of the view that the penalty of 9 months suspension imposed by the Stewards is manifestly excessive.

For these reasons I would allow the appeal against penalty. I would impose a penalty of 6 months suspension in lieu of the 9 months suspension imposed by the Stewards.

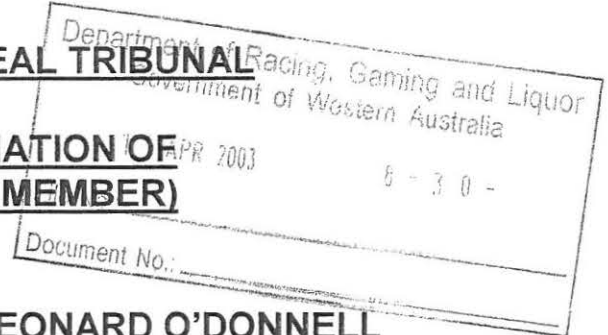
A E Monisse



ANDREW MONISSE, MEMBER

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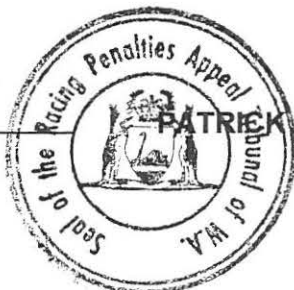
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Mr J A Zucal appeared for the Stewards of the Western Australian Turf Club.

I have read the draft reasons of Mr A Monisse, Member.

I agree with those reasons and have nothing to add.

P. J. Hogan



PATRICK HOGAN, PRESIDING MEMBER

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MS K FARLEY (MEMBER)

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Kare Farley



KAREN FARLEY, MEMBER