

**DETERMINATION AND REASONS FOR DETERMINATION OF THE
RACING PENALTIES APPEAL TRIBUNAL**

APPELLANT: **TERRENCE JOHN FERGUSON**

APPLICATION NO'S: **A30/08/589, A30/08/606 & A30/08/607**

PANEL: **MR D MOSSENSON (CHAIRPERSON)**

DATE OF HEARING: **7 JULY 2004**

IN THE MATTER OF three appeals by Mr T J Ferguson against the determinations made by the Harness Racing Stewards of Racing and Wagering Western Australia to disqualify BACKINA FALCON pursuant to Rule 195 of the Rules of Harness Racing as follows:

- 1 Appeal 589 – disqualification on 25 March 2003 of BACKINA FALCON from Race 6 run at Gloucester Park on 3 January 2003.
 - 2 Appeal 606 – disqualification on 17 December 2003 of BACKINA FALCON from Race 2 run at Gloucester Park on 31 December 2002.
 - 3 Appeal 607 – disqualification on 17 December 2003 of BACKINA FALCON from Race 5 run at Gloucester Park on 17 January 2003.
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The appellant represented himself.

Mr M J Skipper appeared for the Racing and Wagering Western Australia Harness Racing Stewards.

Background

Mr Ferguson is the owner and trainer of BACKINA FALCON which won consecutive races on 31 December 2002, 3 and 17 January 2003. Ranitidine, was detected in the post-race urine samples taken from the horse after each race. Following inquiries conducted by Racing & Wagering Western Australia Harness Racing Stewards Mr Ferguson was found guilty on each occasion of presenting the horse to race when not free of prohibited substances. Although the Stewards did not impose any penalty on Mr Ferguson they did disqualify BACKINA FALCON pursuant to Rule 195 of the Rules of Harness Racing from each race. The disqualifications meant a loss of over \$76,000 in stake money to the horse's owners.

Rule 195 of the Rules of Harness Racing states:

'195. Disqualification

A horse which has been presented for a race shall be disqualified from it if blood, urine, saliva, or other matter or sample or specimen taken from the horse is found to contain a prohibited substance.'

Ranitidine is a therapeutic substance which is contained in the product Ulcer Guard. At the Stewards' inquiry held on 18 March 2003 Mr Ferguson handed up a signed statement dated 15 March 2003 in these terms:

'BACKINA FALCON was started on a course of Ulcer Guard because of the following symptoms:

- 1 Dropped off his feed*
- 2 Hair started to change colour*
- 3 Showed colic type symptoms not long after drenching with electrolytes (Humidimix)*

I had Dr. Trevor Lindsay inspect the horse after his colic type attack and he recommended the horse be treated with Ulcer Guard 15ml twice daily up to 48 hours pre race. He was treated the night after racing up till 2 days before racing again.

I found that it had a positive effect on the horse as he started to regain his appetite and although he didn't regain his colour until recently since spelled he didn't suffer any colicky symptoms.

This product is non-performance enhancing but it enhances the welfare of the animal enabling it to train and race ulcer pain free.'

The somewhat unusual circumstances which resulted in the three positive swabs are summarised as follows.

- The testing laboratory did not report the presence of Ranitidine when initially screening the sample from the race run by BACKINA FALCON on 31 December 2002.

- The presence of Ranitidine was detected and confirmed in the sample from the race run on 3 January 2003.
- The Chairman of Stewards advised Mr Ferguson of that finding by letter dated 14 February 2003.
- In the meanwhile BACKINA FALCON had raced on 17 January 2003 which was prior to the positive swab result of the race run on 3 January 2003 being known to Mr Ferguson.
- The Committee of the Western Australian Trotting Association, the then controlling authority, had imposed a moratorium on testing for Ranitidine on 23 January 2003.
- The Committee lifted the moratorium on 4 March 2003 and determined that Ranitidine would remain on the list of prohibited substances.
- The Stewards commenced an inquiry on 18 March 2003 into the presence of the prohibited substance when BACKINA FALCON won on 3 January 2003.
- When Mr Ferguson advised the Stewards of his treatment regime, the Stewards arranged for the testing laboratory to re-examine the sample which had been taken from BACKINA FALCON after it won on 31 December 2002.
- The sample taken after the race on 31 December 2002 was subsequently found to be positive to Ranitidine.
- The sample taken after the race on 17 January 2003 was also found to be positive to the same substance.

Mr Ferguson appealed against each disqualification of BACKINA FALCON from the three races in question.

The substituted grounds of appeal are as follows:

'1 WATA stewards set a precedent in relation to the forfeiture of prize money in the only other metro case of positive to ranitidine inquiry and appellant has been prejudiced against.

In relation to appeal 607 Disqualification 17/01/2003

1 The initial testing of race sample of Backina Falcon from 31/12/02 as negative was faulty allowing the horse to race on 17/01/03 with ranitidine present, and appellant has been prejudiced against.'

Rule 256(6) states:

'Although an offence is found proven a conviction need not necessarily be entered or a penalty imposed.'

In accordance with the provisions of section 16(3)(d)(iii) of the *Racing Penalties (Appeals) Act* the Registrar served notice of these appeals on the trainers of the twelve affected runners. None of the connections of those runners participated in the appeal.

The appeal was heard on 7 July 2004. At the conclusion of the proceedings I dismissed the appeal and announced I would publish reasons which I now do.

Reasons

Mr Ferguson did not challenge the fact that Ranitidine is a prohibited substance under the Rules. Mr Ferguson relied on the fact that it is a non-performance enhancing therapeutic which was given to the horse on veterinary advice to address a severe gastric ulcer problem. He admitted using the substance Ulcer Guard. The appellant argued that there was complete confusion over this drug as is highlighted by the moratorium. He claimed that there are double standards applied in the industry. He was obliged to return all of the prize money whereas on a previous occasion when TRICKY VIC's stake money of \$3,300 running second at Gloucester Park on 6 December 2002 was not returned subsequent to that horse being disqualified. Mr Ferguson was not given the prize money for his horse having run second in that race.

By way of reply Mr Skipper advised that Ranitidine is a prohibitive substance in all Australian harness racing jurisdictions. Mr Skipper relied on the Stewards' reasons for determination. The most relevant part of those reasons stated:

'Mr. Ferguson submitted that Ranitidine should be treated the same as Trimethoprim as there was no published information in any official publication or notification by the Controlling Body. However, Controlling Body does not accept the responsibility for publishing withholding times.

The Stewards acknowledge that there was some confusion within the industry over the different circumstances regarding Ranitidine between the Harness Racing and Thoroughbred codes. Furthermore, the available information regarding withholding times was confusing.

The Stewards relied upon the conclusive evidence of the two certificates issued by the respective Racing Laboratories, Racing Chemistry Centre and Racing Analytical Services, that the prohibited substance Ranitidine was present in the samples taken from BACKINA FALCON after it won race 2 at Gloucester Park on the 31 December 2002 and race 5 at Gloucester Park on Friday 17 January 2003.

There was no evidence asserting the certification procedure or any act or omission forming part of or relevant to the process resulting in the issue of the certificates was materially flawed.

Therefore, we found the charges sustained.

The Rules place the obligation squarely on the trainer to present his horse free of prohibited substances.

Mr. Ferguson submitted that disqualifying the horse was sufficient penalty in itself as he lost the stake money. However, the stake money was won in contravention of the rules.

After carefully considering all the circumstances of this matter, it was the Stewards decision not to impose a penalty on Mr. Ferguson under the provisions of rule 256.

The Stewards do not consider that Rule 195 provides any discretion regarding disqualifying the horse from the respective races. Therefore, under the provisions of Rule 195, BACKINA FALCON was disqualified from race 2 at Gloucester Park on the 31 December 2002 and race 5 at Gloucester Park on Friday 17 January 2003.'

Essentially Mr Skipper relied on the fact that there was conclusive evidence the drug was present in the horse on each of the three occasions in question that it raced. He acknowledged that it was a difficult situation in that there had been confusion caused to veterinarians as the substance is prohibited in harness racing but not thoroughbred racing. Western Australia was the first laboratory to report this substance in a sample. It remains a prohibitive substance in every State. Rule 195 is a national harness racing rule.

So far as the Stewards were aware TRICKY VIC's stake money had been returned but Mr Skipper undertook to investigate the matter and take such steps as may be necessary to address the situation if that were not the fact. BACKINA FALCON had been the only horse with a drug in its system. As a step towards acknowledging the complications associated with this case no direct action was taken against Mr Ferguson personally.

I was not persuaded that there was merit in the appeals. There was no substance in the double standard's argument. The Stewards were obliged under the rules to disqualify BACKINA FALCON. The actions which they took were appropriate as the disqualifications were the only decisions open to them.



DAN MOSSENSON, CHAIRPERSON

