

**THE RACING PENALTIES APPEAL TRIBUNAL**  
**REASONS FOR DETERMINATION OF MR J PRIOR**  
**(PRESIDING MEMBER)**

**APPELLANT:** ROY BRADLEY ROGERS  
**APPLICATION NO:** A30/08/646  
**PANEL:** MR J PRIOR (PRESIDING MEMBER)  
MS K FARLEY (MEMBER)  
MR A E MONISSE (MEMBER)  
**DATE OF HEARING:** 17 JANUARY 2006  
**DATE OF DETERMINATION:** 17 FEBRUARY 2006

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IN THE MATTER OF an appeal by Roy Bradley Rogers against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 28 November 2005 imposing a fine of \$6,000 for breach of Rule 178 of the Australian Rules of Racing.

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The Appellant represented himself.

Mr D Hensler appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

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

I agree with those reasons and conclusions and have nothing to add.



**JOHN PRIOR, PRESIDING MEMBER**

**THE RACING PENALTIES APPEAL TRIBUNAL**

**REASONS FOR DETERMINATION OF MS K FARLEY (MEMBER)**

**APPELLANT:** ROY BRADLEY ROGERS

**APPLICATION NO:** A30/08/646

**PANEL:** MR J PRIOR (PRESIDING MEMBER)  
MS K FARLEY (MEMBER)  
MR A E MONISSE (MEMBER)

**DATE OF HEARING:** 17 JANUARY 2006

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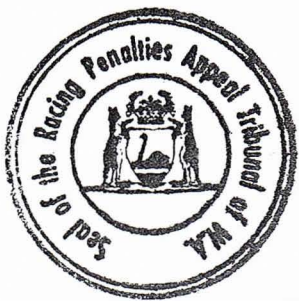
The Appellant represented himself.

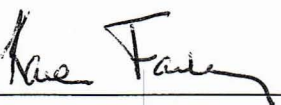
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KAREN FARLEY, MEMBER

**THE RACING PENALTIES APPEAL TRIBUNAL**  
**REASONS FOR DETERMINATION OF MR A E MONISSE**  
**(MEMBER)**

<b><u>APPELLANT:</u></b>	<b>ROY BRADLEY ROGERS</b>
<b><u>APPLICATION NO:</u></b>	<b>A30/08/646</b>
<b><u>PANEL:</u></b>	<b>MR J PRIOR (PRESIDING MEMBER) MS K FARLEY (MEMBER) MR A E MONISSE (MEMBER)</b>
<b><u>DATE OF HEARING:</u></b>	<b>17 JANUARY 2006</b>
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**IN THE MATTER OF** an appeal by Roy Bradley Rogers against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 28 November 2005 imposing a fine of \$6,000 for breach of Rule 178 of the Australian Rules of Racing.

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The Appellant represented himself.

Mr D Hensler appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

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This is an appeal against penalty only.

The Appellant is a licensed trainer. He was the trainer of SIKMREX, which won over 1600m at Northam on 13 October 2005. A post race urine sample showed the presence of the prohibited drug indomethacin. On 28 November 2005 the Stewards opened an inquiry. The reports received into evidence at the inquiry confirmed the presence of the drug.

After hearing evidence the Chairman of the Stewards' inquiry charged the Appellant with breaching Rule 178 of the *Australian Rules of Racing*. That rule is in the following terms:

*"When any horse that has been brought to a race-course 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 punished."*

The Appellant pleaded *Not guilty*. After receiving evidence the Stewards found the charge proved.



After hearing submissions from the Appellant, the Chairman announced the decision on penalty and gave reasons as follows:

*"Now, in regard to a penalty, we've had a look at a number of things. Your good record, you've got no previous drug related offences, the nature of the substance, it's an anti-inflammatory. Generally the performance enhancing penalties could be more severe. Previous offences related to this substance in the majority of cases around Australia have seen fines imposed. This is the first time in WA that we've detected Indomethacin in a thoroughbred at least. Alright, all drug offences are treated extremely seriously by the Stewards for obvious reasons, the integrity and image of racing is adversely affected. Your personal circumstances, we've had a look at those. You've got a considerable investment in racing, you've got a long career in front of you and we've also taken into account your stable management practices, they, they're lax at best and we spent a fair bit of time on those this morning and this afternoon. You don't keep any records. Had you, you would have been able to confirm your version of events as to how this whole incident arose. Alright, but at the end of the day, we don't believe we should disqualify or suspend you. It's a fine and the sum is \$6,000 Mr Rogers."*

For the following reasons I am of the view that the Stewards erred in setting the amount of the fine at \$6,000.

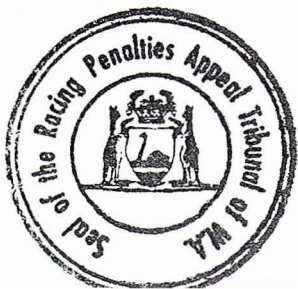
First, it is apparent from their decision that the Stewards were critical of the Appellant's record keeping generally so far as the administration of prescribed drugs is concerned. However at the hearing of this appeal the Appellant tendered recent tax invoices provided by veterinarians listing these drugs. In any event, the Appellant as a licensed trainer is not required under the *Rules of Thoroughbred Racing* to keep any sort of record of administration.

Second, the Appellant's main veterinarian gave evidence that the therapeutic drug in question was not one that he prescribed, which is consistent with the Appellant's assertion that he did not know how the drug came to be administered in the horse.

Third, the Stewards at the appeal handed up a list containing non-Western Australian decisions from 1990 to 2005 involving the drug in question where fines averaging \$3,250 were imposed, with only one of the nine matters attracting a disqualification (3 months). This list is of assistance although details as to the pleas entered and whether there were any prior breaches of the *Rules* in each case would enhance its utility.

Fourth, in a Western Australian decision concerning trainer Harold Parnham, on 23 September 2005 the Stewards levied a fine of \$3,000 for the presentation of a horse that tested positive for the therapeutic drugs phenylbutazone and oxyphenbutazone (drugs of a similar nature to the one in question). Mr Parnham pleaded *Guilty* and given his previously unblemished record in the racing industry spanning some 60 years was fined \$3,000. The Appellant's involvement in the industry is some 23 years full-time with, 16 as a licensed trainer. While his involvement does not stretch out as long as Mr Parnham, he has at least up until this transgression conducted his training activities in an entirely professional manner over an extensive period of time.

The Appellant at the hearing of his appeal contended that at most he should have been fined the same amount as Mr Parnham. He was relying on the principle of parity, namely that the penalty imposed on him should have been within the range of penalties commonly imposed for offences of this type. Having considered the range demonstrated by the list tendered by the Stewards, and the penalty imposed in the Parnham case, I am of the opinion that they erred in the exercise of their discretion in this case. Accordingly I would allow the appeal and impose a penalty of \$3,000.



*A E Monisse*

ANDREW MONISSE, MEMBER