

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF
MR D MOSSENSON (CHAIRPERSON)

APPELLANT: PETER BENJAMIN FARRELL
APPLICATION NO: A30/08/651
PANEL: MR D MOSSENSON (CHAIRPERSON)
DATE OF HEARING: 2 MAY 2006
DATE OF DETERMINATION: 2 MAY 2006

IN THE MATTER OF an appeal by Peter Benjamin Farrell against the determination made by Racing & Wagering Western Australian Stewards of Thoroughbred Racing on 24 April 2006 imposing a period of six weeks suspension for breach of Rule 81A of the Australian Rules of Racing.

Mr Craig Goulding represented Mr P B Farrell.

Mr R J Davies QC appeared for the Racing & Wagering Stewards of Thoroughbred Racing.

Background

The Stewards conducted an inquiry into the results of a breathalyser test of Mr P B Farrell undertaken by the Racing & Wagering Western Australia Stewards of Thoroughbred Racing at the Albany Race Course on 16 April 2006. Mr Farrell is a licensed jockey of some 14 years standing. The first breathalyser reading recorded the presence of alcohol at a level of 0.030% and the second 0.027%. As a consequence Mr Farrell was stood down from his riding engagements.

At the inquiry when he was asked for an explanation for the high readings Mr Farrell admitted that he had been drinking at a party from approximately 8.30pm on the evening prior to the test. Mr Farrell's last drink was approximately 1.00am. Mr Farrell further admitted having drunk some six full strength beers and three or four vodka mixers during the course of the evening.

Consequently Mr Farrell was charged under Australian Rule of Racing 81A which states:

- '(l) Any rider commits an offence and may be penalised if -*
- (a) a sample taken from him is found upon analysis to contain the presence of a substance banned by AR. 81B.'*

Australian Rule of Racing 81B reads:

'For the purposes of Australian Racing Rule 81A the following substances and/or their metabolites, artifacts and isomers are banned:-

...

- (c) Alcohol at a concentration in excess of 0.02% on a breath analyser'*

Mr Farrell was charged with a breach of Rule 81A. The particulars of the charge were *'that upon the request from the Stewards you supplied a breath sample, prior to the first race at Albany Race Course on Sunday 16th April 2006, which upon analysis was found to contain alcohol at a concentration level of 0.027'.*

Mr Farrell pleaded not guilty. After stating that his reason for so pleading was *'... just for my right of appeal ...'* Mr Farrell declined to give any further evidence. The Stewards then proceeded to record a conviction and stated their reasons in the following terms:

'... you have offered no specific defence to the charge, the facts are not in dispute as to the confirmed reading and it is in excess of what is prescribed in the Rules of Racing. Therefore, Mr Farrell we find you guilty of the charge, it's only left now for the Stewards to arrive at an appropriate penalty, if any, so we will be looking now for you to give us some submissions on a penalty, such as your record...'

Mr Farrell responded that he had never been in trouble for anything like this previously. Further, that he had recently moved into a new house and was financially stretched, and was paying that off together with some other properties. He had two dependents. Mr Farrell had not transgressed this Rule previously despite having been breathalysed at a race meeting or track work some 20 times previously.

The Stewards stated the outcome on penalty in the following terms:

'Mr Farrell, in considering an appropriate penalty Stewards have taken into account, firstly your record which shows no previous convictions under this particular rule. Also, we have

taken into account your personal circumstances. Whilst you have been, have pleaded not guilty to the charge, you appear to be honest and forthright with your evidence. However, Stewards see this as a very serious matter in all the circumstances and believe that any rider fronting up to undertake their riding engagements, whilst still having alcohol in their system is a very serious one. The danger of the sport of racing of which mistakes and judgement on the part of jockeys not only pose a risk to themselves but also to other jockeys and horses. This was the Albany Cup meeting the finale to the Albany Racing season which was one of high profile and Australian wide coverage. You were engaged to ride in race, (sic) seven races and you placed Trainers and Owners at a considerable inconvenience having to find replacement riders at very short notice. We considered at (sic) reprimand and a fine, but bearing in mind the seriousness of the charge, we don't believe either are appropriate it (sic) in this case. Previous penalties under this rule have been suspensions of licenses and range from six weeks... to four months. After considering all before us Mr Farrell the Stewards believe that your licence to ride in races should be suspended for a period of six weeks and that's to commence immediately and to expire at midnight the 5th June ...'

The Appeal

Mr Farrell appealed the conviction on the grounds of an error by the Stewards in deciding to charge him with the offence and against the severity of the penalty.

The accuracy of the readings was challenged during the course of the appeal proceedings. The submission on this aspect was supported by a range of different propositions regarding the climatic conditions at the time of the readings, the calibration of the machine, the qualifications of the operator and the mouth piece of the machine not having been covered.

In response, senior counsel produced:

- a statement from Police Sergeant Nigel Fiander, the Great Southern District Traffic Coordinator (ex 1);
- a statement from Sergeant Gregory John Hay, Officer in Charge - Traffic Enforcement Technologies Perth (ex 2);
- a copy of the Stewards' Procedure for Alcohol Testing of Riders (ex 3), and
- a copy the Operator's Guide for Lion Alcometer SD-400P prepared by the Police Breath Analysis Section Perth.

Further, Steward Paul Criddle was called to give evidence as to the manner in which the breath tests were conducted.

Outcome

In the light of the evidence before me I was satisfied that it had not been demonstrated there was any error on the part of the Stewards in the manner in which they had conducted the testing. There was no reason to doubt the accuracy of the testing. In the circumstances Mr Farrell was clearly in breach of the Rule in question.

As to the argument on penalty, I agree with the propositions from senior counsel in reply that the examples which were presented on behalf of Mr Farrell as to penalties imposed on other riders were irrelevant. I was given a list, prepared by the Stewards headed 'Alcohol', of convictions for the same type of offence going back to 1991. The list contained information regarding seven offenders. All of the penalties listed involved periods of suspension ranging from five weeks to three months. Five jockeys received six week suspensions. Only one appealed (P Hutchinson) and his six week suspension was ratified.

There can be no doubting the correctness of the argument presented for the Stewards, that having the level of alcohol which was recorded was likely to impair judgement of a person in charge of a racing animal which was being ridden at high speed in close proximity to other participants in the race. This situation is very serious indeed. It exposes the jockey in question, other riders and the animals to serious risks.

In all of the circumstances, including taking into account matters personal to Mr Farrell, I was satisfied that the penalty was within the range that is appropriate for this type of offence. In their reasons the Stewards addressed a range of relevant facts which justified the penalty which they imposed. I was not persuaded that the Stewards had fallen into any error. Accordingly, the appeal as to the penalty was also dismissed.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

