

DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: DANIEL WILLIAM VOAK

APPLICATION NO: A30/08/659

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR A E MONISSE (MEMBER)
MR W CHESNUTT (MEMBER)

DATE OF HEARING: 22 NOVEMBER 2006

DATE OF DETERMINATION: 21 FEBRUARY 2007

IN THE MATTER OF an appeal by Daniel William Voak against the determination made by the Racing and Wagering Western Australia Stewards of Harness Racing on 26 July 2006 imposing a fine of \$4,000 for breach of Rule 190 of the Rules of Harness Racing.

Mr D W Voak appeared in person.

Mr C J Coady appeared for the Racing and Wagering Western Australia Stewards of Harness Racing.

This is a unanimous decision of the Tribunal.

The appeal is dismissed.



Mr D MOSSENSON, CHAIRMAN

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF
MR D MOSSENSON (CHAIRPERSON)

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BACKGROUND

This is an appeal against the severity of the penalty imposed by the Racing & Wagering Western Australia (RWWA) Stewards of Harness Racing on Mr DW Voak, the trainer of GIFTED OPERATOR. Mr Voak enjoyed considerable experience in the industry having been a trainer for five years and a reinsman for approximately 24 years. Mr Voak presented GIFTED OPERATOR

to race at Gloucester Park on 26 May 2006. The horse won. Mr Voak pleaded guilty to the charge of presenting the horse to race with a prohibited substance in it. As a consequence Mr Voak was fined \$4,000, GIFTED OPERATOR was disqualified and the winnings were forfeited.

THE STEWARDS' INQUIRY

Evidence was presented at the Steward's inquiry that the urine sample taken from GIFTED OPERATOR post race was found by the Racing Chemistry Laboratory to contain the substance Heptaminol. The presence of the substance in the sample was confirmed by the Australian Racing Forensic Laboratory.

Dr Symons, a registered veterinarian with RWWA, gave evidence to the inquiry regarding Heptaminol in these terms:

'It is a prohibited substance under the rule, a substance that can have an action on the cardiovascular system and also the muscular system. There has been some research done in New Zealand and can be performance enhancing but needs to be massive doses. The usual way that it is found in a horse is through Kynoselen or Adenosine and it is part of a tying up medication. So in low doses as part of its medication as a therapeutic agent but there is also the potential as I said in high and in very high doses to have a beneficial action on the cardiovascular system.'

Dr Symons went on to state that Heptaminol:

'... is used to prevent tying up so it is there to stabilise muscle cells, so the idea I think it is to use it well before hard work and get the drug into the system and stabilise the various muscle cells and then the horse can cope with a hard run or with hard training.'

As to when the substance is best used he stated:

'it's not best used close to a race or close hard work I always recommend people to use it probably a week before, give it a chance to get in, have its action and stabilise the muscle cells and then it works at its best. The point of using it close to racing is a bit moot I think, it doesn't work at its best.'

The Stewards were told that the substance had a beneficial action when used therapeutically in a racing animal during a race '*...in low doses if given as KYNOSELEN*'. For it to have the potential to be performance enhancing Dr Symons stated it needed to be administered "*... in huge amounts.*" Later in the inquiry Dr Symons agreed that at the level the drug had been administered to GIFTED OPERATOR it was not performance enhancing but a therapeutic agent.

In response to the request to tell the Stewards about withdrawal times Dr Symons said:

'Well three days I wouldn't recommend three days but it appears with Mr Voak that most of the time that works but it only works ninety nine percent of the time it appears ninety five (sic). And you get variations with horses and sometimes one horse will drink a lot of water, one will drink very little, one will have quite a concentrated amount in its urine because it is a small drinker and the other will have more. So it varies every day between horse to horse and for various reasons so the fact that some don't give positive and some do that is fairly explainable by variation in horses.'

He was then asked as the Industry Veterinarian what his recommended withdrawal time was, to which he answered:

'... we know it can last for about three days, so I always recommend five. One shot five days but I'm sure some do get through four days and three days but we want to be a hundred percent sure and not ninety nine percent.'

On the question whether the administration of the substance intravenously or inter-muscularly made any difference in terms of its beneficial effect Dr Symons asserted that:

'The difference would be that you could give it both ways but the IM would have lower levels for longer and IV would have higher levels for shorter period of time. Probably to me with this drug IM would be better. The slow release of the drug enables it to be absorbed into the muscle membrane that sort of thing ...'

Mr Voak told the Stewards:

'... this horse... does tie up and I've given him like the 20ml dose which has been over three days or something what ever it was I can't remember quite clearly. Sort of helped the horse a little bit but I just noticed that three days before a race I noticed on the Friday morning, Friday evening his muscles are a lot more, his body has a lot more elasticity and I thought that it was beneficial to the horse and the punters that the horse was performing at his optimum and that his body was full of fluid and he felt good.'

Mr Voak told the inquiry he brought Kynoselen over the counter and did not need a prescription. He said he gave 10mls even though the label on the bottle specified 20mls. He explained the reason why as follows:

'... it is on the bottle to give it that particular way and some vets do recommend when it is a severe tying up, as you know they can't move some horses after they have been worked, fillies in particular. Some vets have said or most of the vets have said 20mls like saying today, tomorrow and then weening away from it and it should pick the horse up. And also check your feed, make sure your oat content is a bit lower; your lucerne is lower and things like that with that particular animal. So just for knowing that this purpose, I always use 10mls I was always told the lower dosage of anything because a horse's brain is much smaller than bigger than a human but they only use it smaller. The smaller the dose the more beneficial it would be for what you are treating it for that is why I have always gone that way with everything I do you know.'

Mr Austin, the Acting Chief Steward Harness, responded *'So by administering the 10mls as you say inter muscularly you would have expected to last longer and activate longer, is that what you are saying?'* to which Mr Voak replied:

'... no the 10ml is in the muscle because this horse does suffer from tying up a bit, you know I want to make sure that I always made sure that their muscles are nice and elastic because it work heavy sands. Mr Symons has seen my property and it is very deep and you know like you can gallop one today and race him on Friday and if you haven't galloped him like prior to say a new horse we won't go too good Friday because he's muscle bound and he can't extend. So you know three days before I would always

do that but I wouldn't gallop anyhow knowing being educated with horses all my life I wouldn't do extreme work like that but with that particular horse and there are some other ones, well yeh you have to make sure for your own benefit and for the public and for anyone that is involved the owner, you make sure you present the horse at its optimum.'

As to his past practices regarding administering Kynoselen Mr Voak stated:

'... I have done this regularly 10mls every three days before a race. If he raced you know and never had a drama with any horse every (sic) with it, now all of a sudden there is one. For me it is hard to understand that when I have done it regularly, how come it was never before, like a horse has been swabbed before on it with that in its system at that particular time, why wouldn't have it come up before. Might you have not been looking for it?'

Mr Russo, the manager of the Racing Chemistry Laboratory, responded:

'We do look for it as part of our normal screen but the thing with it because it is urine, if you were looking at it you would find that urine is only an indicator that has been used, its not going to tell you whether it was blood set and it would tell you if you gave it yesterday or day before or the day before that. It's not going to be able to tell you that. Its only an indicator, urine is only an indicator if the drug has been used. It has a little bit of an indicator when it was given, but it's a lot more variability that it's a more concentrated urine because the horse hasn't had much water or a number of other reasons. If say it is given by injection, it could have been encapsulated so not really released it could be encapsulated in a bit of muscle.'

When asked by Mr Austin whether he had ever considered having his horses pre-tested by the racing authority Mr Voak replied:

'Yes definitely, but not on that particular substance no because I've like every trainer would do, you read the bottle then you buy the stuff and you know it is not a prescription medicine, well it is a medicine to me and I think it is but to some people

who say. Always if you follow that guideline you are right and for that five years I know for a fact I have been using it, because it is beneficial to the horse and I have had no problems what so ever. I had an old horse NORTHERN DIRECTION and he won four or five in a row here and he had it the same way. The other day when yourself Mr Symons came and I had a horse start in the next week, well I said that's it, I ain't using this no more, that's me bugger that it finished. But I think why should I have to be like that when I have done everything I know is right and what is perceived to be right, you know I just think it is unfair that.'

OUTCOME OF INQUIRY

The Stewards issued a charge against Mr Voak under the provisions of Rule 190 which deals with 'Presentation free of prohibited substances'. That Rule states:

- '(1) A horse shall be presented for a race free of prohibited substances.
- (2) If a horse is presented for a race otherwise than in accordance with sub rule (1) the trainer of the horse is guilty of an offence...'

Mr Voak was charged:

'... as the trainer of the pacer GIFTED OPERATOR you presented the horse to race in Race 3 at Gloucester Park on 26th May 2006 containing the prohibited substance Heptaminol.'

After Mr Voak pleaded guilty and following some further exchanges the Stewards announced the penalty in these terms:

'The Stewards have given careful consideration to the matter of penalty. This offence is a very serious breach of the rules and if allowed to go unchecked will undermine the confidence of racing public and have serious consequences for the industry. You are sufficiently experienced to be aware of your obligations as a trainer, if due care is exercised and there is really no excuse for a trainer to fall in jeopardy of the drug rules. The Stewards do not believe there are extenuating circumstances in this particular

case. We have taken into account your guilty plea, also your very forthright evidence, which has gone to your credit, and also we took into account when administering this substance it wasn't done so to enhance the horse's performance. For these reasons in accordance with Rule 190 Stewards feel that the appropriate penalty is a fine of \$4,000 and in accordance with Rule 195 GIFTED OPERATOR will be disqualified from the race in question.'

Mr Voak appealed the Steward's decision on the ground of *'severity of fine and penalty against Horse and Trainers and Owners'*.

THE APPEAL

The fact the winning horse raced with the prohibited substance in its system is clearly damaging to the image of the industry and impacts adversely on the confidence of the betting public and their willingness to participate in the sport. Racing is a heavily regulated industry which relies on the confidence and support of the betting public for the sport to survive and grow. In order for the betting public to maintain confidence in racing, punters must be able to expect that when money is placed on the outcome of a race that all participating horses are unaffected by any banned substances or other illegal practices. The onus clearly has to be on the trainer and the person presenting the horse to race to ensure strict compliance with this rule.

There were really two main points to Mr Voak's argument. One was that for years he had followed the same regime of administration and despite the testing which had occurred during that period it had not previously resulted in any positive swabs. By implication he argued the ~~conduct therefore should be exonerated or warrant only a nominal penalty~~

Mr Voak also argued that he *"followed every direction"* and *"followed protocol"*. He claimed he complied with the instructions on the label on the bottle.

I am not persuaded by the arguments which were presented by Mr Voak. The mere fact that there had been previous testing of horses which were said to have had the same dosage administered to them which did not result in any positive swabs, whilst a relevant factor in penalty fixing, does not demonstrate any error on the part of the Stewards in having fined Mr

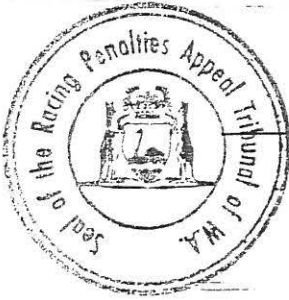
Voak \$4,000. The argument raised that compliance with the label on the bottle of a drug purchased without a prescription is simply not good enough. Clearly, the onus must be on the trainer to find out the appropriate compliance period and to ensure strict adherence to it. There did not appear to be anything significantly new or different presented by Mr Voak in support of the appeal from that which was presented by him to the Stewards at the inquiry. In all of the circumstances I am not persuaded that it could be said that the Stewards were in error in imposing the penalty which they did.

In all prohibited substance cases it is important that the penalty reflects the fact that every such matter is a serious breach of the Rules of Racing which should not only carry a punishment for the offender but also be an important message to the industry that the Stewards have not changed and softened their usual firm approach to dealing with breaches of the drug laws.

Even if I were persuaded by the argument that Mr Voak followed the advice contained on the bottle, and I am not sure that such an argument would succeed on the facts before me, that would not of itself raise sufficient justification to interfere with the penalty which was imposed. Mr Voak could have been and indeed should have been more circumspect. For example, he could have had his horse drug tested. Again, he could have specifically sought and obtained veterinary advice as to the appropriate withdrawal times. Indeed he also could have called veterinary evidence and attempted to present an argument to demonstrate that the professional advice which he had obtained conflicted with the evidence of Dr. Symons' as to the appropriate withdrawal period.

The Stewards have a wide discretion in determining the amount of a fine to be imposed as s44(1)(f) of the Racing and Wagering Western Australian Act 2003 specifies a maximum monetary penalty of \$100,000 may be imposed. I believe the penalty which was imposed clearly amounts to an acknowledgment by the Stewards that they were imposing a penalty which befitted the case of a prohibited substance which was not performance enhancing but which was deliberately administered. The fines which have been imposed in other similar cases do not support Mr Voak's appeal.

For these reasons I would dismiss the appeal.



A handwritten signature in cursive script, appearing to read "Dan Mossenson", written over a horizontal line.

DAN MOSSENSON, CHAIRPERSON

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR A E MONISSE (MEMBER)

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Mr D W Voak appeared in person.

Mr C J Coady appeared for Racing & Wagering Western Australia Stewards of Harness Racing.

I have read the draft reasons of Mr D Mossenson, Chairman.

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



A E Monisse

ANDREW MONISSE, MEMBER

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR W CHESNUTT (MEMBER)

APPELLANT: DANIEL VOAK

APPLICATION NO: A30/08/659

PANEL: MR D MOSSENSON (CHAIRMAN)
MR A E MONISSE (MEMBER)
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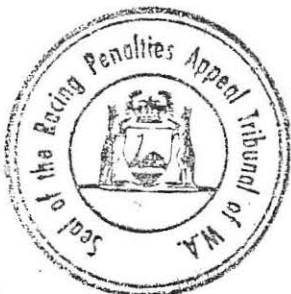
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I agree with those reasons and conclusions and have nothing to add.



WILLIAM CHESNUTT, MEMBER