

REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

<u>APPELLANT:</u>	PETER MICHAEL LODDING
<u>APPLICATION NO:</u>	A30/08/666
<u>PANEL:</u>	MR D MOSSENSON (CHAIRPERSON) JOHN PRIOR (MEMBER) and BILL CHESNUTT (MEMBER)
<u>DATE OF HEARING:</u>	9 February 2007
<u>DATE OF DETERMINATION:</u>	9 February 2007

IN THE MATTER OF an appeal by Peter Michael Lodding against the determination made by the Racing and Wagering Western Australia Stewards of Harness Racing on 14 December 2006 imposing a 9 months disqualification for breach of Rule 190(a) of the Australian Rules of Racing.

Mr P M Lodding appeared in person.

Mr J A Zucal appeared on behalf of the Stewards of Racing and Wagering of Western Australia.

This appeal was heard and determined on 9 February 2007. The appeal was dismissed by unanimous decision. The Tribunal now sets out its reasons for dismissal.

BACKGROUND

On 24 November 2006 Mr P M Lodding, as owner/trainer, presented CHINTAMANI LASS to race at Kalgoorlie. The horse was pre-race blood tested. Subsequently, the tests conducted by both the Racing Chemistry Laboratory in Perth and the Racing and Analytical Services

Limited in Melbourne revealed the presence of TC02 exceeded 39 millimoles per litre, subject to an uncertainty measurement of plus or minus 1.2 millimoles per litre. As a consequence, the Stewards conducted an inquiry into the matter on 14 December 2006.

In the course of the Stewards' proceedings, Dr Symons, the RWWA Industry Veterinarian, gave evidence that this *"would have been the highest that we've had and that's been about fifteen years of involvement"*. Dr Symons also told the Stewards that the elevated levels are deemed to be performance enhancing as the substance neutralises lactic acid in a horse. As the animal feels less fatigued and less affected by the acid it has the capacity to run faster.

Mr Lodding was unable to offer any explanation for the high level TC02. He told the Stewards he gave a little bit of bicarb in the feed but that he certainly did not and does not drench his horses. Mr Lodding also gave evidence that his horse *"was in a mess"* by the time he presented it to race and that it was agitated as a consequence. In response to this Dr Symons told the Stewards:

'In 1991 we started testing horses. I've done thousands of horses since then. I've done very quiet horses, I've done very fractious horses, I've done sweating horses ... and I recognise it might have a small effect but it's not possible for agitated horses to take a normal horse's level above 36 and it's absolutely impossible for an agitated horse to take it over 39, and that's based on thousands of tests considering this question over that 15 year period.'

Dr Symonds later asserted *'... it would have to be a stomach tube administration to get the amount there to raise it that high.'*

Mr Lodding was charged under the Harness Rule of Racing 190 with presenting CHINTAMANI LASS to race when it was not free of prohibited substances as the level of TC02 exceeded 36 millimoles per litre in plasma. The Rules state that if such a horse is presented to race otherwise than in accordance with the Rule the trainer of the horse is guilty of an offence. The Stewards proceeded with the matter on the basis of a plea of not guilty. After considering the charge, the Stewards came to the following conclusion:

'The Stewards have heard evidence from Racing Chemistry Laboratory Senior Racing Chemist, Mr Theodore Horston and RWWA Veterinarian Dr Peter Symons. The Racing Chemistry Laboratory has provided a Certificate of Analysis and the confirming laboratory Racing Analytical Services Ltd in Victoria have also provided a

Certificate of Analysis. You were given the opportunity to question Mr Horston which you declined. Dr Symons has given evidence and advised the hearing that the normal level of TC02 in a horse is 29 to 33 millimoles per litre. He also explained that the level of TC02 in an agitated horse may rise up to 1 millimole per litre, but that could not account for the high level of TC02 detected in CHINATAMANI LASS. After consideration, the Stewards accept the evidence of both Dr Symons and Mr Horston and after consideration find you guilty as charged. Mr Lodding, it's left with the Stewards to determine a penalty. Do you wish to speak to the Stewards on penalty?

The Stewards discussed with Mr Lodding the possibility of a fine versus a disqualification being imposed. Mr Lodding indicated that a disqualification would probably be the finish of his involvement with horses and would cause a lot of embarrassment to his family. When asked to justify why a fine rather than the usual penalty of disqualification should be imposed Mr Lodding responded by saying that Dr Symons had given evidence that the horse had to be stomach tubed in order to have a high bicarbonate reading. Mr Lodding claimed that he had never used excessive amounts of bicarbonate on race day and it therefore meant someone had knobbed his horse.

Mr Lodding had prior breaches of prohibited substance rules with a positive swab for dexamethazone on two previous occasions. In each case he was disqualified nine months.

The Stewards determined the penalty and announced their decision in the following terms:

'..... the Stewards have considered the penalty with all that you've placed before the panel. Firstly, the Stewards maintain that any breach of the drug rules is a serious matter. Horses competing with prohibited substances in their systems jeopardises the integrity of the industry and tarnishes the image of Harness racing. This undermines the vital support of the betting public which is so important to the prosperity of this industry. The prohibited substance in this case was an elevated level of TC02. Both laboratories have indicated a level greater than 39 millimoles per litre. This is significantly higher than the 36 millimoles per litre threshold permitted under the rules. Elevated levels of TC02 are performance enhancing. In racehorses excessive levels of TC02 affects the horse's system by inhibiting the fatigue, inhibiting fatigue during a race. The Stewards place a case of this nature in the serious category bracket. Any penalty must encompass a deterrent factor both personal and general. Once again, the industry must be reminded that presenting horses to race with prohibited substances in their systems is totally unacceptable. Your record shows that you have two prior convictions for breaches of the drug

rules. In 2003 you were disqualified on two counts for a period of nine months. The sentence was served concurrently. The prohibited substance detected on both those occasions was of a therapeutic nature. The Stewards have considered your personal circumstances. The Stewards believe that positive swabs should incur a disqualification unless there are extenuating circumstances. We do not believe that there are any extenuating circumstances in your case. The range of penalty matters before this panel for TC02 offences is from six months to two years. Mr Lodding, after considering the matter of penalty, the Stewards do believe that you should be disqualified for a period of nine months effective immediately. Further to that, Mr Lodding, acting under the provisions of Harness Rule of Racing 195, the Stewards are disqualifying CHINTAMANI LASS as second-placegetter and amending the placings accordingly'.

Mr Lodding appealed on the basis that he is 'not guilty of stomach tubing the horse CHINTAMANI LASS, and I asked for and was denied a fine instead of disqualification. Fines have been levied against others for similar offences'.

REASONS

Mr Lodding was correctly convicted of this presenting offence. Whilst Mr Lodding argued his appeal on the basis that he was not guilty of stomach tubing CHINTAMANI LASS this clearly was not the basis of the charge and the conviction. Under the rules a trainer is strictly liable for any prohibited substance which is found to be present in any horse presented by that trainer to race irrespective of how that situation eventuated.

As Mr Zucal explained Mr Lodding's horse had been previously measured within the normal range. Further, the agitation argument which had been advanced provided no proper explanation or defence in the light of the evidence from Dr Symons. There were no extenuating or other circumstances which justified a fine being imposed in the light of the relevant facts of the matter including Mr Lodding's two previous convictions for drug offences. Those earlier infractions had each resulted in a nine months disqualification.

In the two TC02 cases since the Committee of the Trotting Association had ceased to allow trainers the option to elect whether a fine should be imposed, there had only been two convictions (Nolan (Appeal 632) and Suvaljako (Appeal 638)) in respect of elevated levels of TC02. In both such cases 12 months disqualification had been imposed for second offences. The appeals in each of those cases were dismissed by the Tribunal.

It is acknowledged Mr Lodding has been in the industry for some 38 years. Over that time he and other members of his family have given back much to the industry including much voluntary work. Whilst the Tribunal has some sympathy for the appellant's position regarding his argument that he did not administer the offending dose to the horse, and at the same time recognises his valued contribution to the industry over many years, it has not been demonstrated that the penalty imposed by the Stewards was so manifestly excessive as to demonstrate any error on their part, which justified interference with the penalty by the Tribunal.

A handwritten signature in dark ink, appearing to read 'Dan Mossenson', written over a horizontal line.

DAN MOSSENSON, CHAIRPERSON

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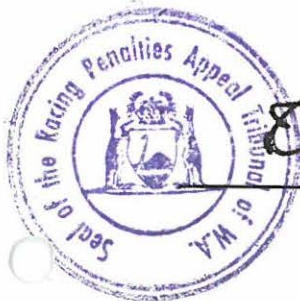
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