

DETERMINATION OF THE
RACING PENALTIES APPEAL TRIBUNAL

APPELLANTS:

MR SHANE LOONE
MS MARIA PETRICEVICH

APPLICATION NO:

A30/08/765 & A30/08/766

PANEL:

MR R NASH (ACTING CHAIRPERSON)
MR A MONISSE (MEMBER)
MR W CHESNUTT (MEMBER)

DATE OF HEARING:

10 FEBRUARY 2014

DATE OF DETERMINATION: 24 FEBRUARY 2014

IN THE MATTER OF an appeal by Mr Shane Loone against the determination made by the Racing and Wagering Western Australia Stewards of Harness Racing imposing a twelve month disqualification and a penalty of \$1500 for breach of Rule 194 of the Racing & Wagering Western Australia Rules of Harness Racing; and

IN THE MATTER OF an appeal by Ms Maria Petricevich against the determinations made by the Racing and Wagering Western Australia Stewards of Harness Racing imposing a twelve month disqualification and a penalty of \$1500 for breach of Rule 194 of the Racing & Wagering Western Australia Rules of Harness Racing and a 6 month disqualification for breach of Rule 289(3) of the Racing & Wagering Western Australia Rules of Harness Racing to be served concurrently.

Mr T Percy QC and Mr G Yin appeared for Mr S Loone and Ms M Petricevich.

Mr R J Davies QC, appeared for the Racing and Wagering Western Australia Stewards of Harness Racing.

As announced on 24 February 2014

By a unanimous decision of this Tribunal, the appeals by the appellants against their penalties under Rule 194 are upheld.

The 12 month disqualification penalty imposed by the Stewards on Mr Loone is varied and a penalty of 5 months disqualification commencing on 24 October 2013 is imposed.

The 12 month disqualification penalty imposed by the Stewards on Ms Petricevich is varied and a penalty of 5 months disqualification commencing on 24 October 2013 is imposed.

By a unanimous decision of this Tribunal, the appeal by Ms Petricevich against penalty under Rule 289(3) is upheld.

The 6 month disqualification penalty imposed by the Stewards on Ms Petricevich is varied and a penalty of 3 months disqualification commencing on 24 October 2013 is imposed to be served concurrently with her 5 month disqualification in respect of Rule 194.



ROBERT NASH, ACTING CHAIRPERSON

1 May 2014

THE RACING PENALTIES APPEAL TRIBUNAL
JOINT REASONS FOR DETERMINATION
OF MR R NASH (ACTING CHAIRPERSON),
MR A E MONISSE (MEMBER) and
MR W CHESNUTT (MEMBER)

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MS MARIA PETRICEVICH

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DETERMINATION:

2 MAY 2014

IN THE MATTER OF an appeal by Mr Shane Loone against the determination made by Racing and Wagering Western Australia Stewards of Harness Racing imposing a twelve month disqualification and a penalty of \$1,500 for breach of Rule 194 of the Racing & Wagering Western Australia Rules of Harness Racing;

and

IN THE MATTER OF an appeal by Ms Maria Petricevich against the determinations made by Racing and Wagering Western Australia Stewards of Harness Racing imposing a twelve month disqualification and a penalty of \$1500 for breach of Rule 194 of the Racing & Wagering Western Australia Rules of Harness Racing and a 6 month disqualification for breach of Rule 289(3) of the Racing & Wagering Western Australia Rules of Harness Racing to be served concurrently.

Mr T Percy QC and Mr G Yin appeared for Mr S Loone and Ms M Petricevich.

Mr R J Davies QC, appeared for the Racing and Wagering Western Australia Stewards of Harness Racing.

INTRODUCTORY MATTERS

These are appeals against penalty only. In the case of Mr. Shane Loone, he appeals against a penalty of 12 month's disqualification imposed for a breach of Harness Racing Rule 194. This breach concerned being in possession of substances or preparations that had not been registered, labelled, prescribed, dispensed or obtained in compliance with relevant State and Commonwealth legislation. Mr Loone pleaded *not guilty* to this charge but, following a hearing, the stewards found the charge proven.

Ms Petricevich pleaded *guilty* to the same charge involving the same substances or preparations as for Mr Loone's charge, and also received a penalty of 12 month's disqualification. She too appeals against that penalty. Additionally, Ms Petricevich was charged with a breach of Harness Racing Rule 289(3) for performing artificial insemination when she was not registered with RWWA to undertake this. She pleaded *guilty* to that charge and received 6 month's disqualification concurrent with her disqualification for the breach of Rule 194. She also appeals against that penalty on the ground that it is manifestly excessive.

Both appellants pleaded *guilty* to two other charges contrary to Rule 194 which resulted in fines. Those matters were not the subject of any appeal.

The original notices of appeal were lodged by both appellants on 3 December 2013. Amended grounds of appeal relating to their possession charges were filed by both appellants shortly before the hearing of their appeals on 10 February 2014. Additionally, Ms Petricevich was permitted at that hearing to amend her grounds of appeal as they relate to the artificial insemination count.

BACKGROUND

The various charges all arose from an inspection on 24 October 2013 by the RWWA inspector, Mr Geoff Johnson and the RWWA veterinarian, Dr. Judith Medd, of Mr Loone's stables at 35 Tunney Road, Oldbury. Mr Loone is a registered harness trainer and trained a number of horses for racing at his stables. Ms Petricevich is a registered stable hand. She was also responsible for a number of brood mares that were kept at Mr Loone's stables for breeding. Ms Preticevich's brood mare activities were separate to Mr Loone's training operations.

The inspection on 24 October 2013 located a cupboard in the stables which contained some 130 veterinarian medicines, preparations and the like. Many of these were Schedule 4 items under the *Poisons Act 1964* (WA), as it stood at the time, which meant that they could only

schedule in the form of a spreadsheet which was made available to us. We were also provided with a photograph of them. We do not intend to refer to them in detail, suffice to say that there were a very large number of different substances and in some cases large quantities of a particular substance. We agree with counsel for the stewards' apt descriptions that the cupboard in question was an "Aladdin's cave" and a "treasure trove" to reflect the large array of substances found at the stables. None of the substances were labelled to suggest that any of them had been properly prescribed, and it was not in dispute that most of them had not been. It was accepted by all parties that these substances were therapeutic in nature as distinct from performance enhancing.

Ms Petricevich, who was a trained and experienced veterinary nurse, worked at the Baldivis Veterinary Clinic for the veterinarian, Dr. Davies. There was evidence before the Stewards that she had been taking medications from her employer without Dr Davies' knowledge. From there they were kept in the medicine cupboard at Mr Loone's stables. This medicine cupboard was jointly accessed by Mr Loone and Ms Petricevich to store and retrieve the substances in question for use on their various horses.

With the discovery of the contents of the medicine cupboard, a charge resulted against both Mr Loone and Ms Petricevich for breaching Rule 194. As stated above Mr Loone pleaded *not guilty* to that charge and Ms. Petricevich pleaded *guilty* to it.

The stewards commenced a hearing on 14 November 2013 which resumed on 21 November 2013 when the appellants were charged. The stewards' hearing resumed again on 28 November 2013 when they found Mr Loone *guilty*. In similar but separate letters to each of the appellants dated 2 December 2013 the stewards informed them of their penalties and their reasons for them.

Mr Loone's defence to the charge was essentially that he was not aware of the extent or nature of the substances Ms Petricevich had brought to the stables and stored in the medicine cupboard. He claimed he was only concerned with, and therefore only knew about, a small number of substances that he accessed for his own horses. All the rest were, he claimed, were either hidden from view in various drawers within the cupboard, or stored in cardboard boxes, and he simply had no knowledge of them.

The stewards did not accept Mr Loone's claim of lack of knowledge and proceeded to find him *guilty* of the charge. Mr Loone does not challenge that finding. In our view, the evidence justified the stewards' decision to find the charge proven. In support is Mr Loone's lack of surprise during the search of the cupboard when the various substances were found, as shown on the video recording of it. Further Dr. Medd was able to easily view and readily remove the

various substances found in the cupboard.

THE GROUNDS OF APPEAL

The appellants relied on five grounds of appeal against their 12 months' disqualification.

The first ground was that the stewards failed to take into account Mr Loone's explanation in mitigation of his penalty that the substances in question were not used for his racehorses, as distinct from Ms Petricevich's brood mares. It was submitted that the claims by Mr Loone and Ms Petricevich that the various substances were for use on her horses and not his was a significant mitigating factor in relation to Mr Loone. However the stewards did not accept their evidence on the question of Mr Loone's knowledge of the substances, holding that they both deliberately tried to shift the blame for the presence of the substances almost entirely onto Ms Petricevich in an attempt to safeguard Mr Loone's trainer's licence.

While there were drugs found in the cupboard of a generic nature where their use could have been for both racehorses and brood mares, there was also Dr Medd's evidence that many of the substances or items found such as the joint injection box were far more appropriate for the treatment of race horses than for brood mares as had been claimed. Accordingly there is no mitigation to be found in Loone's claims that he did not use, or intend to use, all or any of the substances on the horses that he was responsible for.

The gravamen of Rule 194 is the possession of unauthorized substances as distinct from the administration or intended administration of those substances. It is directed at preventing trainers from having unauthorised stores of equine drugs and medications at their premises. We are of the view that the integrity of the racing industry faces a real risk of being compromised by there simply not being appropriate oversight and control of these substances at licensed training establishments. Also the welfare concerns expressed by the stewards for the horses in the appellants' control, at the time of their possession of the substances in question, are entirely justified given the associated negative impact that that possession would have on the reputation of the racing industry.

Consequently, there is no need for the stewards to then endeavour to make findings about what substances on balance were or were not being used for the horses under training. The seriousness of Mr Loone's offending is evident from him being was a licensed trainer who with another had in his possession at his registered training establishment a large quantity of non-prescribed medications and substances which had an equine application. Ultimately it was his primary responsibility to ensure that this breach of Rule 194 did not occur regardless of Ms Petricevich's involvement in it.

The second ground of appeal was that the stewards erred in that they gave no reasons, or no adequate reasons, for concluding that disqualification was the only appropriate penalty. The stewards stated during the inquiry that the range of penalties open to them varied from a fine through to disqualification. They also informed the appellants that the large and unprecedented quantity of substances in their case put them into a different category from any of the precedents known to them. At paragraphs 14, 15, 16 and 21 of their letter to Mr Loone dated 02 December 2013 the stewards made it clear that they were concerned about the very large range and quantities of the non-prescribed substances that were found. It is this factor that the stewards considered took this breach of the Rule 194 out of the realms of a fine or suspension and made disqualification appropriate.

The third ground of appeal is that the imposition of a penalty of disqualification was not warranted. We see no error in the stewards coming to the conclusion that the circumstances of this matter warranted disqualification. The unprecedented range and quantities of substances possessed by the appellants combined with their deliberate attempt to shift the blame for that possession on to Ms Petricevich during the investigation and the stewards' inquiry, justified a penalty of disqualification in the context of the personal and general deterrence that is required.

In this case an unprecedented large range and quantity of non-prescribed substances were in the possession of the appellants with no convincing reasons given for doing so. The appellants' offending also cannot be described as an inadvertent or minor breach. Rather it was one which had been systemic over a sustained period of time during which large quantity of substances had gradually been accumulated. Accordingly the circumstances of this case were too serious to be dealt with by way of a lesser penalty.

The fourth ground of appeal was that 12 months' disqualification was manifestly excessive. We agree that 12 months was manifestly excessive for the reasons given below, but will briefly dispose of the fifth ground before returning to this ground of appeal. The fifth ground of appeal was that the stewards erred in not having regard, or sufficient regard, to other similar cases throughout Australia. We do not accept that the stewards erred in this respect. It is clear from the transcript that the stewards were aware of such other cases and had considered them. However, none of the other cases identified involved the very large range and quantities of substances that were involved in this case.

We now return to the fourth ground of appeal. The penalties imposed of 12 months' disqualification would not be an uncommon penalty for presenting a horse to race with a prohibited substance in it, especially where such cases involve performance enhancing substances. However to impose the same period of disqualification for a breach of Rule 194

has the effect of erroneously equating the wrongdoing of the appellants with those more serious cases in which a trainer presents a horse for racing that is not free of prohibited substances.

In support of this error counsel for the stewards submitted that these two classes of breach were like "chalk and cheese" and that any comparison between them is meaningless. However, counsel for the stewards went on to explain that one of the reasons for having Rule 194 is to prevent a situation arising where a horse might inadvertently be presented to race with a prohibited substance in it. The stewards also said this in their reasons for finding Mr Loone guilty at page 179 of the transcript.

Rule 194 permits licensed trainers to be in possession of the substances of the kind found on Mr Loone's property provided they have for example been lawfully prescribed. However possession of any prescription medication or substance, lawfully or otherwise, can lead to inadvertent administration if a trainer does not take proper precautions and put in place proper stable management procedures. Should there be an inadvertent administration of a prohibited substance then it is the rule against presenting a horse to race with a prohibited substance which would apply in that regard and not Rule 194. This view is also consistent with the fines that the stewards imposed for the two charges that each of the appellants pleaded guilty to for the small quantities of performance enhancing substances that they also possessed contrary to Rule 194.

Given the facts concerning their offending behavior, we consider that 6 months is an appropriate starting point for both appellants. While Mr Loone does not have an unblemished record in the racing industry, training horses is his livelihood. While Ms Petricevich's guilty pleas are to be seen in the context of the assistance she provided to her partner Mr Loone with the *not guilty* plea that he entered, she is nonetheless entitled to credit for them. Given the factors personal to them as identified in the stewards' inquiry, we consider it appropriate to reduce their penalty to 5 months disqualification.

We turn now to the appeal by Ms. Petricevich against the 6 months' disqualification imposed on her for breaching Rule 289(3) by performing procedures for artificial breeding on brood mares when not licensed to do so. The stewards found from their inquiry that some of the brood mares had been inseminated before Ms Petricevich did the qualifying artificial insemination course that she completed. After completing that course she sent her certificate for it to RWWA; and she claimed that she did not know that she had to do anything more. Her employer, the veterinarian Dr. Davies, appeared to share that view.

Counsel for the stewards submitted that in dealing with Ms Petricevich's breach of Rule 289(3) it is necessary to "show the flag" in order to prevent a backyard industry of unqualified people engaging in artificial insemination. Ms Petricevich however was not an entirely unqualified

person given that she had undertaken the appropriate course and had considerable veterinary experience. Her error once she completed the course was simply that of failing to make proper application to become registered. Far from hiding her activity from RWWA, as mentioned above she had at least sent them a copy of her course certificate.

However, as Ms Petricevich was inseminating horses prior to doing the requisite course, a fine would have been an inadequate penalty. Prior to the hearing of this appeal, Ms Petricevich has already served more than 3 months concurrent disqualification for a breach of Rule 194. As this determination endorses a penalty of 5 months' disqualification for that breach, we consider that 3 months concurrent disqualification is the appropriate penalty in all the circumstances for her breach of Rule 289(3).

For these reasons we:

1. allow the appeal of the appellant Mr Shane Loone against penalty in respect of charge 3, set it aside, and in lieu thereof impose 5 months' disqualification commencing on 24 October 2013 ;
2. allow the appeal of the appellant Ms Maria Petricevich against penalty in respect of charge 3, set it aside, and in lieu thereof impose 5 months' disqualification commencing on 24 October 2013; and
3. allow the appeal of the appellant Ms Maria Petricevich against penalty in respect of charge 4, set it aside, and in lieu thereof impose 3 months' disqualification commencing on 24 October 2013 to be served concurrently with the disqualification imposed in respect of charge 3.



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ANDREW MONISSE, MEMBER

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