

Appeal decision

Date: 7 July 2014

Code of racing: Harness

Appeal panel: Judge W Carter (chair), Mr B Miller and Mr G Casey.

Appearances: Trainer Fran Bahr appeared on her own behalf.
Ms K Wolsey, stipendiary steward, appeared on behalf of the stewards.

Decision being appealed: Six months suspension – AR190(1).

Appeal result: Appeal upheld. Penalty to be served concurrently with earlier penalty.

Extract of proceedings – in the matter of the Follow The Trottips Blackbooker Trotters Mobile at Redcliffe on 10 April 2014: Trainer: Fran Bahr

THE CHAIRMAN: The appellant Mrs Bahr presented Love Affair for racing on 24 March and a swab was taken from the horse after that race, and on 8 May she was charged with the relevant offence. She was visited with a penalty of six months' disqualification. She appealed to this board in respect of that penalty. I should add that she had pleaded guilty.

As the record will disclose, this board on that occasion was concerned at the level of culpability involved in the horse receiving the substance Firocoxib, which had been prescribed by a veterinary surgeon for a sick domestic dog. The transcript discloses that it is not unlikely – and we weren't prepared to make a positive finding one way or the other – that there was scope for error which it was alleged on behalf of the appellant had occurred and for that reason we decided to amend the period of six months disqualification to three months disqualification and three months suspension.

The swab taken from Love Affair had in fact been returned on 11 April 2014. Coincidentally, Last Sunrise raced on 10 April and after that race a swab was taken from Last Sunrise, which again returned a positive swab to Firocoxib. That latter swab was taken at Redcliffe after Last Sunrise had won the race at Redcliffe. An inquiry was opened by the stewards into the second positive swab and on 6 June 2014 she was charged with the same offence and she again pleaded guilty and on this occasion she was visited with a penalty of six months suspension, to operate cumulatively upon the original sentence which remained unexpired.

This appeal then is brought by Mrs Bahr in respect of the second penalty. Written submissions have been made on her behalf, no doubt prepared by Mr Neaves, who appeared for her on the first occasion.

We are of the view that this is a case where the second imposition ought to be served concurrently with the original sentence, and we would make the appropriate order to ensure that the second sentence terminates at the expiration of the first sentence.

In coming to that conclusion we reiterate our original concern which was based on the somewhat unusual features of the case and the nature of the substance and the circumstances which led to its administration. We think the level of culpability in this case is less than might otherwise be seen to be the case given the circumstances in which the administration took place.

As a result therefore we would allow the appeal and amend this penalty to a suspension of six months, to be served concurrently with the original sentence, and the order we would make would be to backdate the commencement of that six months suspension to operate on and from the date of the commencement of the first period of disqualification, being 8 May 2014.

The order of the board will be that the appeal be allowed, and that the penalty imposed on this occasion be set aside, and that there be imposed a penalty of six months suspension, to be served concurrently with the original sentence and to operate from the date of the original sentence.

Further right of appeal information: The appellant and the stewards may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **14 days of the date of this decision**. Information in relation to appeals to QCAT may be obtained by telephone on (07) 3247 3302 or via the Internet at www.qcat.qld.gov.au