Appeal decision

Date: 26 August 2014

Code of racing: Harness

Appeal panel: Judge W Carter (chair) and Mr P James.

Appearances: Trainer Douglas Manger appeared on his own behalf.
Mr D Farquharson, chairman of stewards, appeared on behalf of the stewards.

Decision being appealed: Disqualification for a period of six months – AR190(1).

Appeal result: Appeal dismissed.

Extract of proceedings – in the matter of the Seymour Group R3/R4 Heat 2 over 1600 metres at Albion Park on 23 June 2014. Trainer: Douglas Manger

THE CHAIRMAN: In this matter the appellant, Mr Manger, appeals against a licence disqualification of six months on account of a finding of an elevated total carbon dioxide level in a blood sample taken from his horse Mac's Choice at Albion Park on 23 June. The relevant reading as disclosed by the evidence was 37.7 millimoles per litre. It is well known of course that an acceptable level is the relatively generous level of 36.

Be that as it may, Mr Manger readily accepted the fact that the TCO2 level of Mac's Choice was elevated to an unacceptable level, and he pleaded guilty on that account. It seemed to us, as it seemed to the Queensland Civil and Administrative Tribunal in the case of Abbott, that the plea of guilty in those circumstances does not warrant any reduction in penalty because the person concerned, having regard to the terms of the rule, has little choice.

Be that as it may, Mr Manger in his submissions to us emphasises the fact that he is a businessman – indeed a successful businessman – with a keen interest in harness racing both in the breeding of stock and in the training and driving of them.

It was emphasised by the stewards in their findings that Mr Manger had an excellent record. He has been involved in the industry for many years, and he is not one of the industry participants who has caused any real concern or indeed any concern at all to the stewards, either in respect of this matter or of any other matters which may call for the operation of the Rules of Harness Racing.

In effect, Mr Manger submits that because of that record and if in fact the stewards, as it was asserted, did take into account his record, the penalty of disqualification imposed should

have been less than six months because other persons with a more chequered record have similarly been penalised. That submission raises serious questions which arise not only here but in other jurisdictions when adjudicating authorities are made to impose penalties which present a picture of consistency. In short, it is Mr Manger's submission that his appeal should succeed because it is inconsistent with other penalties.

That submission fails to give due weight to the fact that the imposition of a penalty, either in this jurisdiction or in another, is the exercise of a discretionary judgement. That is so because the relevant facts and circumstances which are to be taken into account in imposing a just penalty are many and varied, and a nominal penalty of, say, six months disqualification in every case is undoubtedly going to cause injustice. It is clear from what we know of penalties imposed by the stewards – and indeed either imposed or upheld by this board – that there is a variation, but it is a variation based on relevant circumstances. In the case of Abbott, QCAT in that case were dealing with a penalty of 10 months disqualification, and that was reduced to eight months.

So far as the appellant in this case is concerned, Mr Manger is a businessman. His interest in harness racing is well known, as is his involvement. However, for instance, it can be contrasted with the case of Wilson. In that case, Mr Wilson was penalised with six months which was reduced to four months. In that case there was a very significant point which was emphasised by this board – apart from others which were argued before this Board – and one of the factors that persuaded the board in that case was the fact that there had been or there would be a very, very significant immediate financial impact on that appellant on the basis that was his sole source of income and it was regarded as being a very relevant circumstance, one which in that case justified a reduction to four months. This is not such a case.

So we see in the cases I have mentioned penalties imposed of eight months, six months, four months, depending upon the circumstances of the individual case, and indeed in the case of others who have been regular offenders, a penalty of up to two years' disqualification was upheld.

I mention those matters simply to emphasise the fact that a properly imposed penalty is one in which the discretionary judgement of the governing body has been properly exercised.

We have examined this case, and we have had helpful submissions from both sides. We are aware of the fact that, what I might call, the total carbon dioxide issue has been one of considerable concern for a lengthy period in harness racing specifically. That is not to say the issue only relates to harness racing, but historically that has been the case.

Taking all these matters into account, we are not able to determine that the stewards in this case in exercising their discretion by imposing six months disqualification, acted wrongly.

Accordingly, we are not prepared to disturb that penalty, and accordingly we would dismiss the appeal and confirm the penalty.

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