

## Appeal decision

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**Date:** 26 May 2015

**Code of racing:** Harness

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**Appeal panel:** Mr B Miller (chair) Mr D Kays and Mr G Casey

**Appearances:** Mr S Neaves, barrister, appeared on behalf of Brendan Barnes.

Mr D Farquharson, chairman of stewards, appeared on behalf of the stewards.

**Decision being appealed:** Six months disqualification – AR252E(1).

**Appeal result:** Appeal upheld. Penalty varied.

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### **Extract of proceedings – in the matter of the finding of cocaine in a urine sample provided at Albion Park on 4 April 2015. Driver: Brendan Barnes**

THE CHAIRMAN: Grade A driver Brendan Barnes was charged and convicted under Rule 252E(1) identifying that a person shall not have any alcohol or drug of abuse in his/her body when carrying on or purporting to carry on a licensed activity or official duties at a meeting. The driver was acting as a strapper on the night in question, not having any drives. He pleaded guilty to the charge and his licence was disqualified for a period of six months effective on and from 4 April 2015. The circumstances revealed that Barnes had been residing with the family of Mark Butler, a licensed trainer, and his wife at their premises at Hotz Road, Logan Village. At the time Barnes was a 17-year-old, born on 8 April 1997. The offence occurred on 4 April 2015 some four days shy of his 18<sup>th</sup> birthday. He was a minor at the time.

Throughout the evidence it was apparent that he was very likely to be a significant and successful driver and was earning very reasonable money from driving and also from his endeavours as a stablehand on the premises of the Butlers. He appears to be earning \$400 per week for work in the stables and he lived with the Butlers rent free and board free. The imposition of a disqualification will have the effect and has to the date of this appeal that he can no longer reside at the premises because they are licensed training facilities and he cannot have anything to do with horses or attend race meetings etc.

Mr Scott Neaves, who was counsel for the appellant, was strident in his pleas that the board should take note of the youth of the appellant, and the fact that the Butlers had written very strong and supportive letters to the board and to the stewards seeking some form of dispensation to allow Barnes to work in the stables and in their property (their pleas in fact were for work on the property only and to have nothing at all to do with their horses). They were prepared to pay him a wage to keep the lawns mowed and the premises, which were of some significant area, clean and tidy. Mr Neaves was of the view that the period that had already lapsed (something slightly in excess of one month) would have been a fair deterrent for the purposes of any penalty and he requested that this board give consideration in accepting time

spent in the disqualification already served as sufficient and that Barnes be allowed to resume his normal activity under the stringent control that were he to reoffend then a very much more substantial penalty be imposed. The stewards of course opposed such proposition but accepted that Barnes was a person of good character and the stewards were certainly mindful of the significant benefit that would be gained by Barnes were he to remain in contact with and subject to the controls of Mr and Mrs Butler. It was these elements of both the appellant, counsel and the senior steward that has persuaded this board to accept that there should be some form of leeway given. The decision of the board is that because of the youth of the appellant and his good references and the fact that he will undoubtedly be far better off under the auspices and control of Mr and Mrs Butler that the penalty imposed upon him should be changed to the following:

The board orders that the penalty be a period of disqualification of six months and in accordance with the provisions of Rule 259(6) orders that the restrictions of a disqualification shall not apply to the appellant's association with people, residency and duties as a stable hand on the premises of Butler Racing Stables only.

The board also has determined that during such six-month period the appellant shall provide to the stewards on a monthly basis clear evidence by way of the results of tests that he is free of any drug in his system. The board further directs that the stewards may, if they so wish, be at liberty to attend upon the premises and to call upon Mr Barnes to be tested at and when those stewards see fit.

Further right of appeal information: The Appellant and the Steward 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](http://www.qcat.qld.gov.au)