

Appeal decision

Date: 28 October 2014

Code of racing: Thoroughbred

Appeal panel: Mr B Miller (chair), Mr P James and Mr G Casey.

Appearances: Mr G Wagner appeared on behalf of trainer Jason Gregory.
Mr M Knibbs, stipendiary steward, appeared on behalf of the stewards.

Decision being appealed: \$750 fine – LR38.

Appeal result: Appeal upheld.

Extract of proceedings – in the matter of the CDS Recycling QTIS 4YO Class 3 SW Plate over 900 metres at the Gold Coast on 8 October 2014. Trainer: Jason Gregory

THE CHAIRMAN: The appellant Jason Gregory is a trainer and employee of Mr Greg Wagner, the operator of a stud, and was charged by stewards with a breach of Local Rule 38. That rule stipulates:

"A person shall not nominate or declare a horse an acceptor or cause a horse to be nominated and declared an acceptor for a race for the sole purpose of affecting the number of horses available for the race."

The terms of the rule impose a strict liability such that it is incumbent that a trainer must adhere thereto, but for the trainer to be declared guilty of an offence, it is a necessity for the stewards to be able to show that the steps taken by him to so nominate and declare a horse or horses had to be for the sole purpose of affecting the number of horses in the particular race. That is the issue that causes this board some concern.

We have heard in detail from Mr Wagner as to the reasons why the horses in question were first nominated and then secondly scratched, and at the same time then nominated for a race in Warwick. There is limited conjecture that at the same time on the day prior to acceptances ordinarily being declared for Warwick, there was on the computer of Mr Wagner notification from RISA that there were at the time some 10 nominations. That is not to say that the nominations were final, and the following day there were 15 nominations for the race in Warwick.

At the same time it can be said that there were 10 nominations once the nomination date was extended for the Gold Coast race, which resulted in five nominated horses being joined by a further five, two of which were the two in question trained by Mr Gregory.

The stewards have an obligation to ensure that the rules are adhered to. At the same time the onus of proof is upon the steward and it is not, in our opinion, purely and simply on the balance of probabilities. The onus is of a higher nature and the Briggins rule will obviously apply. It is a requirement for strict liability to be imposed and as such it is up to the stewards to prove categorically that the work or the job undertaken by the trainer in nominating and subsequently scratching the horses was for the pure reason to ensure that another horse or horses may have benefited.

This board is not satisfied that that is the position, and in the circumstances this appeal is allowed.

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