

Appeal decision

Date: 4 November 2015

Code of racing: Thoroughbred

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

Appearances: Mr P Boyce appeared on behalf of trainer Andrew Cameron.
Mr M Tutt appeared on behalf of the stewards.

Decision being appealed: \$2000 fine – AR178.

Appeal result: Appeal against conviction dismissed. Appeal against penalty upheld.

Extract of proceedings – in the matter of the presence of Desvenlafaxine in a post-race urine sample taken from Bobcat after winning the Benchmark 75 Handicap over 1500 metres at the Mareeba Turf Club on Saturday 25 April 2015. Trainer: Andrew Cameron

THE CHAIRMAN: Andrew Cameron is a licensed thoroughbred trainer with Racing Queensland Limited who appeals to the Racing Disciplinary Board against the decision of stewards made on 19 August 2015 to convict and penalise him for an infringement of Australian Rule of Racing 178 at the conclusion of their Inquiry on that date.

AR 178 provides “...when any horse that has been brought to a racecourse for the purpose of engaging in a race and a prohibited substance is detected in any sample taken from it prior to or following its running in any race, the trainer and any other person who was in charge of such horse at any relevant time may be penalised”.

The formal charge was: “Licensed trainer Andrew Cameron being the trainer of Bobcat at all relevant times leading up to and including 25 April 2015, did bring Bobcat to the Mareeba racecourse where it completed in Race 5, the Benchmark 75 Handicap over 1500 metres, and subsequent to that the gelding provided a sample of its urine which upon analysis was found to contain the prohibited substance Desvenlafaxine”.

The circumstances leading to the stewards’ findings can be summarised as follows:

On 25 April 2015 at the stewards’ direction a post-race swab was taken from a horse Bobcat trained by the appellant that had competed in a race at Mareeba Turf Club on that day. The urine sample collected was subsequently analysed by an Accredited Analyst at the Racing Science Centre, Albion, and found to contain Desvenlafaxine. In pursuance of Section 149 of the *Racing Act Queensland 2002* an accredited veterinary surgeon, Dr Karen Caldwell, issued the relevant certificate on 26 May 2015. Sequentially, in compliance with statutory

requirement and normal protocol, the sample of urine and control solution were forwarded for confirmatory analysis to Racing Analytical Service Limited, Flemington. The presence of the substance Desvenlafaxine was confirmed to be contained in the sample and a Certificate of Analysis issued by the appropriate authority.

The stewards on receipt of notification of the irregular swab sample opened an Inquiry on 15 July 2015. It appears that the appellant had been notified of the irregularity at a date well prior to then, denying any personal involvement or knowledge of the cause for the irregularity, but raised the possibility of its origin from the environment at stables in Rockhampton where the horse had been temporarily accommodated 10 days prior to the Mareeba race. The stewards at the urgings of the appellant organised the collection of five samples and subsequent analysis of the sand-based floor of the stable where the horse had been kept in Rockhampton, on 29 May 2015 and 26 June 2015 respectively. The ensuing Report On Analysis issued by the Racing Science Centre under the hand of Dr Karen Caldwell confirmed the presence of Desvenlafaxine in all samples, albeit "at a very low concentration" for four of the five analysed. Evidence at the Inquiry indicated that at an earlier time another trainer had been convicted and penalised for a positive finding of Desvenlafaxine taken from a horse which had been stabled in the same stable as the appellant's horse.

At the Inquiry the appellant forcefully argued that the pharmacological effects of Desvenlafaxine as it pertained to horses had not been established, arguing that the evidence provided by Dr Young, manager, Veterinary Services, Racing Science Centre, was unreliable in that it was based on experiments with canines and couldn't be used to explain the presence of the subject drug or extrapolate excretion rates to explain the presence of the substance in a horse. Dr Young informed the Inquiry that it was possible to ingest the substance via stable bedding but at a very low level, and did not accept that it would be detectable after 10 days.

Although no direct evidence of it was received at the Inquiry it seems to have been accepted that the owner of the stable was a user of the parent drug Pristiq of which Desvenlafaxine is a derivative. No straw wood shavings or similar bedding if used within the stable was collected and/or analysed. Similarly no testing of the internal wood lined walls of the stable was performed. Evidence was given by the appellant of observing the horse licking the timber within the stable "all the time" [P12L27].

At the appeal no issue was taken as to the presence of the substance in the system of the horse or to the accuracy of the protocols for the collection sampling and ultimate certification of its presence in the swab sample.

Mr Boyce, for the appellant, submitted that the relevant rules did not identify Desvenlafaxine as a prohibited substance as it was not included in AR177B and that AR178 could not be relied upon as there was no evidence which could be reasonably relied upon to identify the class or category it is said to fit within. Similarly there was no evidence to indicate the effect or impact of the substance on the horse.

Mr Tutt for the respondent (Racing Queensland Limited) submitted that the broad terms of AR178B identified Desvenlafaxine as a prohibited substance which was capable of having an effect on the mammalian body system, that is, on a horse. Contrary to any weight Mr Boyce attributed to the fact that as the substance was not contained in any registered veterinary products in Australia he contended that it bore no relevance to the question of whether the substance was prohibited.

It was accepted that Desvenlafaxine is a substance used for the treatment of depression in humans. Dr Caldwell certified to its effect on naturally occurring substances in the brain and other matters pertaining to the product. She confirmed that no veterinary product contained that substance and the only preparation registered for use in humans was Pristiq.

The question for the board is to determine whether on the whole of the evidence: "Does Desvenlafaxine qualify as a prohibited substance in accordance with the Australian Rules of Racing?" Some help can be gleaned from the appeal of Gai Waterhouse (2 September 2005) Racing NSW Appeals. In that matter the appeal panel accepted evidence from Dr Suann (Senior Official Veterinarian of Racing NSW) that the drug cocaine "would be defined as a prohibited substance" because of its effect on the central nervous and other systems. It followed in his opinion that as Benzoylcegonine was a metabolite of cocaine then it too would be defined as a prohibited substance in its own right.

In the matter of Waterhouse (supra) the level of substance detected was described as 'miniscule' and similar to this matter where no clear quantitative level was given (Dr Young having used nanograms and micrograms in his evidence before the stewards' Inquiry) it is incontrovertible that the substance was present in the system of the horse and to have been of a sufficient level to be detected in any event.

The board is satisfied that Desvenlafaxine at the relevant time was a prohibited substance and capable of categorisation under the provisions of AR178B (1) (2) and (3) and dismisses the appeal against conviction.

This board and other interstate disciplinary authorities have persistently emphasised the importance of drug-free racing to ensure the confidence of the public and other participants in the racing industry and to achieve that object by maintaining a high standard of integrity. There is therefore an onus of responsibility on those who present a horse to race at any official race meeting to comply with the Rules of Racing and maintain that integrity.

In finding the appellant guilty, the stewards had the burden of responsibility to ensure that no other reasonable or plausible possibility for the positive finding was available to them. The appellant was adamant that he was not responsible for the presence of the substance in his horse, and gave stewards the names of others who were users of Pristiq associated then or previously with the stable where his horse was kept in Rockhampton. The stewards conducted an inspection of his Bowen stables and were satisfied that they complied with a reasonable level of security. The principal fact relied upon by the appellant to discredit the stewards' finding that contamination of the stable at Rockhampton was not a factor was the

imprecise expert evidence relating to the drug Pristiq. It is noted in the opinion of Professor Paul Mills, Professor of Veterinary Pharmacology [Ex T– Stewards Inquiry] “There is no pharmacokinetic data for this or most other antidepressants in the horse”. He also said “extrapolating between species is inexact...although it would appear extremely unlikely that this drug would persist for nine days (depending on the concentration measured)”. He concluded with the opinion “it would most likely have been administered closer to sample collection time to have shown concentrations above detection limit”.

The board is satisfied that the evidence pertinent to the ingestion and elimination of the substance as it relates to equines and in particular to the horse the subject of this appeal is too imprecise to eliminate other plausible possibilities raised by the appellant. Some support for this conclusion can be drawn from the statement by Dr D Viero (Veterinarian) [Ex W – Stewards Inquiry] “The question remains: What relevance does this have to absorption rates and clearance times of medications? The answer is: a phenomenal amount! In my opinion, there is no way that data collected from a dog can be interpreted and be relevant to horse physiology and vice versa”.

The provisions of AR178 are clearly discretionary in respect to what penalty if any may be imposed by stewards. The appellant has had an unblemished history of 30 years as a licensed trainer and is most unlikely to re-offend against the Rules of Racing. Given that the substance was detected but not accurately quantified by analytical report it is unclear what the level of the substance was in the system of the horse when last exposed to it.

The appeal with respect to penalty is allowed. No penalty is imposed.

Further right of appeal information: The Appellant and the Steward may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **28 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