TASMANIAN RACING APPEAL BOARD

Appeal No 18 of 2014/15

Panel:	**Mr Tom Cox (Chair)** **Ms Kate Cuthbertson** **Dr Sue Martin**	**Appellant:**	**Mr John Luttrell**
Appearances:	**Mr Greg Richardson on behalf of the appellant** **Mr Paul Turner on behalf of the stewards**	**Rules:**	**Thoroughbred Rule 178**
Heard at:	**Launceston**	**Penalty:**	**A six month disqualification**
Date:	**29 June 2015**	**Result:**	**Dismissed**

REASONS FOR DECISION

1. The appellant is a thoroughbred trainer. He presented a horse, *Testa Gee Gee*, to race in the PFD Food Services Class 1 Handicap Division 1 at the Tasmanian Turf Club meeting held at the TOTE Racing Centre on 18 February 2015. *Testa Gee Gee* won the race. A pre-race blood sample had been taken from the horse. Following the race, a post-race urine sample was also obtained. Analysis of both the pre-race blood sample and the post-race urine sample were found to contain caffeine, and, in the case of the urine sample, its metabolites.

2. Following a stewards' inquiry held on 30 April 2015, the appellant was charged pursuant to AR178 which provides as follows:

   "*Subject to AR178G, 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 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.*"

3. The particulars of the charge were:

   "*… you as the trainer of Testa Gee Gee brought that gelding to the race course on the 18th of February 2015 for the purpose of engaging in a race when it was found, upon analysis, to have a prohibited substance detected in it, namely caffeine and furthermore its metabolites.*"

4. The appellant pleaded not guilty to the charge. The stewards found him guilty and disqualified the appellant for a period of six months. Pursuant to AR177, *Testa Gee Gee* was also disqualified from the race and the results were amended accordingly.

5. The appellant is appealing against the severity of that penalty.

Background

6. Caffeine is a prohibited substance. Dr Cust, a veterinary consultant with Racing Victoria, gave evidence during the inquiry that caffeine is a prohibited substance in that it primarily affects the central nervous system, the cardiovascular system, the respiratory system and the renal system of mammals. He gave evidence that caffeine is known as a stimulant as it has marked effect on mental function and behaviour and produces excitement, a feeling of well-being, euphoria, and increases the motor activity of an athlete and reduces the

sensation of fatigue. He opined that an athlete could potentially perform longer before fatigue takes over through use of such a stimulant.

7. During the inquiry, the appellant could not explain how caffeine came to be in *Testa Gee Gee's* system. He denied use of any products known to contain caffeine. When the appellant was initially spoken to on 18 March 2015 by stewards prior to the inquiry, he advised that he had been using a product called GoPain to treat joint pain in horses. A sample was taken of that product. When analysed, it was not found to contain caffeine.

8. Evidence given at the inquiry indicated that the levels of caffeine in the horse were high. Mr Zahra, the Scientific Manager at Racing Analytical Services, estimated the amount of caffeine in the urine sample at around 1,000 nanograms per millilitre. The level of caffeine in the blood sample was estimated at between 800-1,000 nanograms per millilitre. He described these levels as high. The levels of the metabolites present in the urine were lower than the levels of caffeine. On this basis, his opinion was that the caffeine had been ingested within a 24 hour period prior to the samples being taken.

9. Dr Cawley, the Science Manager at the Australian Racing Forensic Laboratory where the confirmatory testing was conducted, estimated that caffeine was present at 638 nanograms per millilitre in the blood sample and 1,081 nanograms per millilitre in the urine sample. He also gave evidence that those amounts represented a high reading. In his opinion, the ratio of caffeine to metabolites in the urine sample suggested a recent exposure to caffeine within one or two hours of the sample being taken.

10. During the inquiry, the appellant advised stewards that a new person had been employed as a stablehand at his stables in the period prior to the relevant race and that he suspected that person may have been involved in administering caffeine to the horse. The stablehand was not registered. The evidence to the inquiry was to the effect that the person had made an application to Racing Services to be registered as a stablehand and that the appellant believed that everything was in order. It later transpired that the stablehand had not provided sufficient information for his application to be processed. The appellant was charged with failing to register a stablehand in respect of that matter.

11. The appellant advised the Board that the stablehand had previously worked with greyhounds. He had been introduced to the appellant by his brother.

12. The appellant and two other witnesses at the inquiry gave evidence to the effect that there was something strange about the behaviour of the stablehand. They referred to him drinking large amounts of water, exercising to excess and generally appearing to be under the influence of some sort of stimulant. According to the appellant, the day after *Testa Gee Gee* won the race, the stablehand disappeared and failed to return to work. Apparently he was owed wages but never returned to collect them.

13. At the hearing of this appeal the appellant advised he had been unable to locate the stablehand to bring him before the Board or before the stewards at the inquiry so that he may be questioned to ascertain whether he had been responsible for the caffeine being in the horse's system. The evidence in the inquiry was that the stablehand had been on duty the day of the race, leaving at approximately noon that day. The race was a night race. The samples were taken from the horse at 8.57pm and 10.18pm on race night.

14. By way of further background, during the appeal evidence was provided that the *Testa Gee Gee* was not expected to win the race. It had previously run a third and a fifth place and was on 30 to 40:1 odds.

15. During the inquiry, the appellant pleaded not guilty to the charge. He agreed with stewards that the not guilty plea was on the basis that he did not know how caffeine came to be in the horse's system. He also indicated that he has always been fussy, keeping records of treatments provided to his horses.

16. When addressing stewards in relation to penalty, the appellant raised the following matters:

- He was 56 years old and had a bad shoulder. The appellant expressed the view that it was unlikely he would be able to obtain any sort of alternative work given his age, lack of recent work history outside of the racing industry and his shoulder injury;
- That he had 25 horses currently in work;
- He employed four full-time staff and up to 10 casual staff as needed in his operation;
- His financial circumstances included that he had a mortgage of about $206,000 which was serviced by way of repayments of approximately $400 per week. His partner was employed. The appellant's evidence was that there was not a lot of money left over after paying the expenses of his training operation;
- Disqualification would ruin him completely. He is one of the top five trainers in the State and, in particular, half of his stable is made up of horses owned by the Geards. In his view it would be unlikely that the Geards and other owners would return their horses to him once any disqualification was served.

17. Having found the appellant guilty of the charge, stewards took into account the following matters when determining penalty:

- The appellant's 40 year involvement in the industry, including 30 years as a trainer;
- His cooperation and forthright evidence both before and during the inquiry;
- The number of times his horses have been swabbed during his period as a trainer. It was noted during the inquiry that the appellant would expect one of his horses to be swabbed at nearly every race meeting. The appellant referred to one Hobart Cup carnival during which 48 of his horses were swabbed with negative results;
- The number of people who were reliant on an income through employment in his stable business;
- The opportunities for alternative employment in Tasmania outside of the racing industry in the event that he was disqualified. It was accepted that it would be very difficult for him to find alternative work;
- His prior offences against the prohibited substance rule. The appellant had two prior matters, though not under the same rule. About six or seven years ago, the appellant was fined $3,000 for administering medication on a race day. This related to treating a horse with bute paste. In 2011 he was also prosecuted under the same rule for administering electrolytes to a horse on race day. A swab was obtained but did not amount to a positive swab as the second test did not disclose reportable levels of TCO2. The appellant admitted to treating the horse with electrolytes on the race day and was fined $2,000 under Rule AR178E;
- His not guilty plea;
- The nature of caffeine as a performance-enhancing prohibited substance;
- The evidence suggesting that the caffeine had been ingested by *Testa Gee Gee* close to the race;

- The evidence that suggested an indifference on the part of the appellant to educating himself about the character of new employees;

- All his relevant personal subjective circumstances;

- The need to hand down a penalty that is consistent with the regulation of all codes of racing in the State;

- The need for any penalty to deter participants from breaching similar rules and to reflect the proposition that all participants can compete on a level playing field.

18. Following consideration of these matters, stewards imposed the period of six months disqualification.

The appeal

19. During the hearing of this appeal, counsel for the appellant argued that the period of six months disqualification imposed was excessive in the circumstances. Reference was made to the matters raised in mitigation of penalty during the inquiry. In particular, it was submitted there would be significant collateral damage as a result of the disqualification, principally in its impact on the four full-time staff and other casuals employed by the appellant in his operation. It was noted that the appellant's income from training was his primary source of income. The income from his training work was approximately $2,000 per week above the cost of running a stable. His partner, whilst employed, earned $880 per week clear which left little after the mortgage repayment.

20. Although it was accepted that the appellant had two prior matters under the prohibited substance rules, it was noted that they did not amount to breaches of AR178. It was also submitted that these priors had to be considered in the context of his particular circumstances, namely that a substantial number of his horses were swabbed each year (an estimate of 100 horses was provided).

21. In terms of the impact of disqualification, it was emphasised that the horses he was training on behalf of the Geards had been transferred to another trainer and were unlikely to be moved back to his stables. The appellant had also been unable to take up offers of training from owners in Victoria.

22. Counsel for the appellant also submitted that the evidence relating to the unregistered stablehand and his behaviour after the race gave credence to the appellant's assertion that he had no involvement in or knowledge of how the caffeine came to be in the horse's system. It was not argued that this provided a defence, however, it was submitted that this lent weight to the assertion that he was not directly responsible for the administration of the substance to the horse. It was also noted that stewards were satisfied the appellant had good security arrangements in place and kept records of treatments provided to the horses in his care.

23. The Board was referred to the decisions in *Glover*, Appeal No. 12 of 2000, *Blacker*, Appeal No 25 of 2005/06, *Johnson*, Appeal No. 17 of 2014/15 and *Sherriff*, Appeal No. 7 of 2011/12 where periods of either four or three months disqualification were imposed. On the basis of those precedents, it was argued that the six month period of disqualification was excessive in the circumstances.

24. The respondent submitted that the matters taken into account by stewards in arriving at penalty were appropriate. Counsel for the respondent submitted that there were several material differences in the circumstances of the *Johnson* case referred to by the appellant. In this case, the two samples revealed high levels of caffeine suggesting that the prohibited substance had been ingested shortly before the race. Significantly the appellant had received two penalties for offences contrary to the prohibited substance rule. It was

submitted that for the reasons outlined by the stewards during the inquiry the six month period of disqualification imposed was a reasonable penalty in the circumstances.

Decision

25. The Board was not persuaded that the penalty imposed in these circumstances was manifestly excessive. Stewards fairly took into account all relevant factors that were put to them regarding the appellant's personal circumstances and the impact of disqualification. There was no specific error detected in their reasons for imposing the penalty that they did.

26. As noted in previous decisions of the Board, for example *Glover*, the Board is concerned to balance the seriousness of the offence and the importance of the underlying policy of drug free racing with justice to the appellant. Principally, the Board is of the view that the circumstances of this case can be distinguished from those where lesser penalties have been imposed or upheld for the following reasons:

- The levels of caffeine in the samples taken from *Testa Gee Gee* were high suggesting that ingestion had occurred within 24 hours of the samples being taken.
- The need for careful supervision of horses and those caring for them in the period leading up to a race is particularly acute;
- Caffeine is a performance-enhancing substance. The unexpectedly good performance of *Testa Gee Gee* suggests that the caffeine in his system had contributed to the outcome of the race;
- The appellant has two previous breaches of the prohibited substance rules. Although the previous breaches relate to administering treatments to horses either prior to a race or a trial, he cannot be afforded the benefit of having a blemish-free record in this regard.

27. The evidence before the stewards and the Board does not permit us to make any finding about how *Testa Gee Gee* came to be presented with a prohibited substance. The evidence regarding the unregistered stablehand suggests circumstances where insufficient regard was being paid by the appellant to the suitability of this employee to be involved in the care of the horses in the appellant's charge. The importance of being able to vouch for staff employed at stables cannot be over-emphasised.

28. The consequences of disqualification are always significant and the Board has given full consideration to those consequences. That the appellant is a leading trainer and will experience the consequences more acutely is a matter to which the Board has regard. A trainer in the appellant's position cannot, however, expect more lenient treatment than the circumstances warrant. The appellant, like all industry participants, is required to uphold the rules designed to protect the integrity of the racing industry.

29. The appeal against penalty is dismissed. In accordance with s.34(1A) of the *Racing Regulation Act 2004*, 50% of the appellant's prescribed deposit is to be forfeited to the Secretary of the Department. The appellant is also ordered to pay 50% of the cost incurred in the preparation of the transcript in accordance with s.34(4A).