

RACING APPEALS TRIBUNAL

RAT 2/2020

DATE OF HEARING: MONDAY 16 MARCH 2020

TRIBUNAL: PRESIDENT: MR T ANDERSON, QC

IN ATTENDANCE: MR J PETZER, CHAIRMAN OF STEWARDS,
THOROUGHBRED RACING SA LTD

APPELLANT: MR L JARVIS

IN THE MATTER of an Appeal by **MR LEN JARVIS** against a decision of Thoroughbred Racing SA Ltd Stewards.

BREACH OF RULE: AR 240 (2)

if a horse is brought to a racecourse for the purpose of participating in a race and a prohibited substance on Prohibited List A and/or Prohibited List B is detected in a sample taken from the horse prior to or following its running in any race, the trainer and any other person who was in charge of the horse at any relevant time breaches these Australian Rules.

PENALTY: 12 months suspension

DETERMINATION

Mr Jarvis is a licensed trainer with TRSA.

He is 50 years of age and has held a trainer's licence for about 18 years. At the time of this appeal he had four horses in work and had seven or eight in the stable altogether.

On 22 June 2019, at Morphettville, the Stewards took a urine sample from the horse Beautiful Flyer, trained by Mr Jarvis.

On examination the sample and reserve sample both showed the presence of the prohibited substance cobalt at a greater level than the prescribed amount of 100 micrograms per litre.

At a subsequent Inquiry he was suspended for 12 months by the Stewards.

Mr Jarvis was charged under AR 240(2), which is known as a presentation charge. He pleaded not guilty to the charge.

At the outset of the appeal, Mr Jarvis appeared confused about the issue of strict liability.

I attempted to explain this to him, and he told me that he had also sought some legal advice which indicated that he should have pleaded guilty to the charge at the hearing before the Stewards.

At the Tribunal, after considering the matter, Mr Jarvis decided to change his plea to guilty.

The evidence presented by the Stewards as to the readings and as to the process of analysis was not disputed by Mr Jarvis.

The particulars of the charge are as follows:- *“You, Mr Len Jarvis, being a licensed trainer with TRSA for the 2018/19 season and the trainer of the racehorse Beautiful Flyer, at all relevant times leading up to and including Saturday, 22 June 2019 did bring the said racehorse to the Morphettville Racecourse to compete in race 8, the TAB BENCHMARK 75 Handicap over 1200 metres, for the purpose of it to start in the said race. Following the mare winning the event, a post-race urine sample taken from Beautiful Flyer upon analysis detected in it the prohibited substance cobalt at a concentration of 173 micrograms per litre, which is above the threshold of 100 micrograms per litre as declared under Division 3 – Prohibited List B thresholds and part 11 of that section.”*

The Stewards gave their reason for the finding of guilty even though that is now admitted. They said, *“Our brief reasons for finding you guilty are that there’s no evidence to dispute the laboratory’s findings.”*

They went on to say, “You did bring the racehorse Beautiful Flyer to the races to participate in, and upon analysis of the sample detection of a prohibited substance was found. You had no issue in relation to the sampling procedure on the day.”

As to penalty, the Stewards imposed a suspension of 12 months.

Mr Jarvis complained to the Tribunal that this was very severe having regard to other penalties handed out in the jurisdiction.

Unfortunately for Mr Jarvis, he has had previous convictions for prohibited substances, which the Stewards took into account.

On 21 December 2005 a horse trained by him tested positive to morphine and he was fined \$2500.

On 28 January 2013 he was the trainer of the horse Jimmy’s Eye which tested positive for a banned substance, TCO2. On that occasion he was suspended for about four and a half months and in addition fined \$3000.

Furthermore, on 22 April 2017, he was convicted in relation to the prohibited substance arsenic in relation to the horse the subject of this appeal, Beautiful Flyer.

The Stewards indicated, however, that they did not take the 22 April 2017 conviction into account in imposing penalty in this matter because of the circumstances surrounding that finding.

His record therefore is not good in relation to prohibited substances.

Mr Jarvis’ sole income is from the racing industry.

He works as a barrier attendant as well as training horses and also educates horses. He earns about \$22,000 per annum for the work on the barriers and about \$15,000 for his work in educating horses.

A suspension means that he can continue to work on the barriers, but he cannot continue to work as an educator of horses unless he has the Stewards’ permission.

The Stewards indicated, quite properly, that they would not consent to this as it would send the wrong message to the industry. I agree with that decision.

Mr Jarvis is a 50 per cent owner of Beautiful Flyer, which is a successful horse and has won over \$100,000 in prize money of which he received half.

I believe that if Mr Jarvis had sought advice before appearing before the Stewards, he would have pleaded guilty, and in doing so most likely would have received a discount on penalty, and that will be reflected in a reduction which I am about to make relative to the penalty imposed by the Stewards.

Apart from that, I consider that the starting point of 12 months was in all the circumstances a little excessive. I say this particularly because of the deprivation of income which the suspension results in.

It is my view that the starting point should have been nine months, and I am prepared to reduce that by three months for the plea of guilty which Mr Jarvis made to the Tribunal.

I have already indicated that I agree with the Stewards in that Mr Jarvis should have no exemption from the order of suspension for educating horses. It would clearly send the wrong message to the industry.

The formal order of the Tribunal is that the appeal is allowed and that the suspension is reduced to six months.

Therefore, the period of suspension will be from midnight Monday, 23 March 2020 to midnight Wednesday, 23 September 2020.

The applicable portion of the bond paid on the lodging of the appeal will be refunded.