

RACING APPEALS TRIBUNAL

RAT 9/2020

DATE OF HEARING: TUESDAY 15 DECEMBER 2020

TRIBUNAL: **PRESIDENT:** MR TIM ANDERSON, QC

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

APPELLANT: MR M MCCLEAN

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

BREACH OF RULE AR 240(2), which reads as follows:

(2) Subject to subrule (3), 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: \$4,000.00 FINE

DETERMINATION

Mr Michael McClean, who is a licensed trainer, appealed against the severity of a penalty imposed on him by the Thoroughbred Racing SA Stewards on 14 August 2020.

Mr McClean was convicted under AR 240(2), relating to the presentation of a horse, Sarah's Jule for Race 7 at Port Lincoln on 6 October 2019, with a prohibited substance (metformin) in its system.

The Appellant pleaded not guilty to the charge, but he was found guilty by the Stewards and fined \$4,000. The horse was disqualified from the race.

In written submissions, Mr Petzer on behalf of the Stewards set out in detail the matters taken into account in fixing the penalty. I have considered each of those matters and it can be said that they seem to cover the field, and it is not apparent to me that any

important matter has been omitted. Likewise, no matter has been included which should not have been included.

The Stewards determined that the monetary penalty, which was requested by the Appellant in lieu of a suspension, would start at \$6,000, but having regard for the mitigating factors referred to, the fine was reduced from \$6,000 to \$4,000.

In particular, the matters that influenced the Stewards in reducing the monetary penalty included the very good record of the trainer and his personal circumstances and cooperation with the Stewards.

In response to Mr Petzer's written submissions, Mr McClean submitted to me two matters.

Firstly, that the substance metformin is not a performance-enhancing substance. He informed the Tribunal, and it is not in dispute, that it is used predominantly for treatment in human medicine for type-2 diabetes. Performance enhancing or not, it is nevertheless a prohibited substance.

There is no explanation as to how the substance got into the horse's system. As I pointed out to Mr McClean during the hearing, because the offence is a strict liability offence, it is not relevant to the considerations that I have to take into account. It is not relevant how the substance did find its way into the horse's system.

Mr McClean's second point was that he was the part-owner of the horse to the extent of a 30 per cent share and that as a result he had to repay prizemoney of \$4,000, which when combined with the fine of \$4,000 made this an expensive exercise.

He is a relatively small trainer, having only three to five horses in training. He earns approximately half of his income from training and the other half as a farrier, both working in private practice and also working on-course for TRSA.

Mr Petzer submitted that the relevance of the repayment of the prizemoney was questionable. It may be a relevant factor in this matter when looking at the overall circumstances of Mr McClean's total fine.

The question for the Tribunal, as I stated previously in the matter of Bruggemann, is, *"effectively whether the Stewards, in imposing the fine of \$8,000, acted within a reasonable range, or whether the fine imposed was so far outside of an ordinary reasonable range that it should be interfered with"*.

As in the matter of Bruggemann, I have taken the view that the starting point in this matter, of \$6,000, was at the high end of the range of reasonable penalties. Like Bruggemann, however, it was not so far outside an ordinary reasonable range as to require interference by the Tribunal.

Similarly, the discount applied by the Stewards, given that they could not discount for a plea of guilty, was in my view reasonable.

I also took into account fines in other jurisdictions including New South Wales which were referred to me by Mr Petzer.

Having regard to all of these matters, it is my view that the penalty which was imposed by the Stewards is within a reasonable range, albeit at the high end of the range, and the amount allowed for discount was also reasonable.

I repeat again that the deterrent effect, both personal and general, in relation to all trainers is an important consideration when fixing the penalty for a prohibited substance. The detection of drugs and the subsequent penalties are vital in preserving the integrity of the whole racing industry. The penalties should reflect that.

In all those circumstances, the appeal is dismissed.

I order the refund of the applicable portion of the bond.