NEW SOUTH WALES

HARNESS RACING

APPEAL PANEL

APPEAL PANEL MEMBERS
B Skinner
J Moore
G Kelly

RESERVED DECISION

25 SEPTEMBER 2024

APPELLANT DEAN CHAPPLE

RESPONDENT HRNSW

AUSTRALIAN HARNESS RACING RULES

190(1)

DECISION

1. The decision of the Appeal Panel is that the appeal is allowed. The Appellant is disqualified for a period of 18 months.
2. The appeal deposit is forfeited.

1. On 21 September 2023, driver and trainer Dean Chapple, the appellant presented Caymangone to race in the second event at Tamworth. Prior to racing a pre-race blood sample was taken. The sample detected meloxicam, a prohibited substance in the horse's system. The initial findings were later confirmed by two testing laboratories. The drug is a prescription only anti-inflammatory. The drug is a Class 3 prohibited substance.

2. On 1 November 2023 a stable inspection was conducted by stewards of HRNSW. The appellant was then notified of the detection of meloxicam. The appellant relied upon an explanation of some type of contamination occurring from younger horses who were treated with yoghurt containing meloxicam in a paste, being given yogurt with the same syringe used to give yogurt to racing horses. The explanation is not convincing.

3. On 17 April 2024, an inquiry took place. The appellant was a licensed A grade driver and trainer at that time. Harness Racing Stewards imposed a penalty of two years disqualification on the appellant with a breach of Australian Harness Racing Rule 190(1), namely, "A horse shall be presented for a race free of prohibited substances." The appellant also pleaded guilty to a charge under Australian Harness Racing 194 (a) (b) and (c), namely, administration of a substance not obtained in compliance with relevant State and commonwealth legislation. The stewards imposed a penalty of 6 months suspension for contravening AHRR 194 to be served concurrently. The breach is not subject to the appeal.

4. The stewards took into account that it was a second prohibited substance offence, that meloxicam is a class 3 prohibited substance, evidence of Dr Wainscott as to how contamination may have occurred, the appellant's subjective circumstances including voluntary work, rehoming of horses and finally that two children of the appellant are involved in the industry.

5. The appellant pleaded guilty to both charges during the inquiry. A single ground of appeal was relied upon, namely "Given my 38-year involvement and 3,474 starters as a trainer I feel the penalty is too harsh for a Grade 3 substance."

6. At the hearing of the appeal conducted on 5 September 2024 by zoom, the Inquiry Transcript, Inquiry Exhibits and the Offence Report of the appellant were admitted into evidence.

7. The panel was favoured with written submissions provided by the legal representatives for both the appellant and the respondent. There was no significant divergence in the factual matters referred to by both parties. The issues raised by the appellant focused on the weight to be given to the conduct of the appellant.

8. Both legal representatives referred to earlier decisions particularly in relation to the criminal law. The relevant principles were not the subject of serious debate and did not impact on the approach of the Panel to the appeal.

9. The appellant submitted that the evidence of the appellant remained consistent throughout the stable inspection and the inquiry. The Panel does not, with respect agree.

10. There are some matters which the Panel records which ought to be the subject of comment. Firstly, the evidence of the appellant was to where he sourced the drug was unsatisfactory. Initially at the stable inspection the appellant asserted that a friend had given him the meloxicam (Stable transcript at p.10). Later the appellant opined that he purchased an applicator from a bloke called Glen Powell". (Stable transcript at p.15). At the inquiry, the appellant nominated a third person from whom from whom he may have obtained meloxicam, namely Danny Evans.

11. No attempt was made by the appellant to consult a veterinarian about the use of the prescription drug. Details about the use of meloxicam were not recorded in the logbooks maintained by the appellant. As a result, Dr Wainscott observed "its entirely guesswork as to what happened because there was no evidence of dosage administered and the time at which it was administered."

12. The Panel determined that the approach of the appellant to the use of meloxicam was cavalier and was demonstrative of poor animal husbandry. No attempt was made to adduce evidence of any change in attitude of stable procedures implemented by the appellant post the offences.

13. The appellant submitted that the offence record of the appellant is not a fact that can be used to increase the objective seriousness of an offence and secondly that the stewards placed too much weight on the offence record of the appellant. The Panel does not agree and rejects the submission.

14. The stewards noted that it was the appellant's second prohibited substance offence, the first being a charge for the use of cobalt in 2014 for which a 2.5-year disqualification was imposed. The Panel notes that the first offence was very serious offence and a matter to be taken into consideration.

15. As a consequence of the earlier offence, the stewards determined that a starting point of a four-year disqualification was appropriate. The Penalty Guidelines issued on 15 February 2024 record in respect of a second offence for a class 3 matter state that a penalty of no less than two years disqualification is to be imposed. In the case of a second offence for a class 1 offence which includes cobalt there shall be not less than five years disqualification.

16. The stewards did not disclose the basis upon which they came to a starting point of determining a four-year disqualification for the second offence. It is open to the Panel, of course, to determine a suitable starting point.

17. Given the time lapse of some ten years between drug offences and the record of the appellant in the intervening period, the Panel concluded that an appropriate starting point was a three-year period of disqualification. The Panel accepted however the decision of the stewards to apply a 25% discount for the plea of guilty and a further 25% discount for subjective factors including the appellant's involvement in the harness racing industry as a licensed person for 39 years and as a mentor for the past three years.

18. The application of the discounts results in a decision of a period of 18 months disqualification which the Panel determines is the appropriate penalty. The appeal is allowed to the extent of a reduction in the period of disqualification of six months.

19. There should be no refund of the appeal deposit to the appellant in circumstances of limited success.

Brian Skinner - Convenor
Jo Moore - Member
Graham Kelly - Member

25 September 2024