

RACING APPEAL PANEL OF NEW SOUTH WALES

APPEAL OF LICENSED TRAINER DAVID ATKINS

Appeal Panel: **Mr R. Beasley SC (Principal Member); Mr J. T. Murphy; Mr C Tuck**

Appearances: **Mr M Van Gestel for Racing NSW
Mr P Beazley, Solicitor, for the Appellant**

Dates of Hearing **18 March 2021**

Date of Decision **30 March 2021**

REASONS FOR DECISION

Introduction

1. On 4 February 2021, licenced trainer Mr David Atkins (the appellant) pleaded guilty to three charges brought under the Australian Rules of Racing.
2. Charge 2 – brought under AR 252(1) – related to the appellant having in his possession the product “Pig Regumate”, that had not been prescribed and dispensed in accordance with the *Poisons and Therapeutic Goods Regulation 2008*. He was fined \$750 for this breach of the rules. Charge 3 – brought under AR104 – related to the appellant failing to keep treatment records for the administration of the Pig Regumate to his horse Xiaoli’s Ying. He also received a \$750 fine for this breach of the rules. Neither charge 2 or charge 3 are the subject of this appeal.
3. Charge 1 was brought under AR240(2), which is in the following terms:

AR 240 Prohibited substance in sample taken from horse at race meeting

.....

(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.

4. The particulars of Charge 1 were that the appellant presented Xiaoli's Ying to race at Quirindi racecourse on 24 November 2019 and a post-race urine sample was found to contain the prohibited substance trendione (a List A prohibited anabolic steroid).
5. After hearing submissions on penalty, the Stewards imposed a penalty of a 4-month disqualification of the appellant's licence to train. That penalty is currently subject to a stay.
6. The appellant has appealed against the severity of the penalty imposed on him. He was represented on appeal by Mr P Beazley, solicitor. Mr M Van Gestel, the Chairman of Stewards, appeared for the Stewards. Admitted into evidence was an appeal book containing the transcript from the Stewards Inquiry, and the exhibits from that Inquiry. A statutory declaration of the appellant sworn on 16 March 2021 was also admitted without objection.

Facts

7. The following facts are not in dispute, or are found by the Panel:
 - (a) The trendione detected in Xiaoli's Ying's urine sample is a steroid in Prohibited List A under the rules.
 - (b) Pig Regumate contains the substance altrenogest. Warnings have been given by racing authorities that this substance can contain the anabolic steroid trenbolone (trendione). Those warnings were to not use altrenogest products by means of IV administration, and to give them at least one clear day from racing.
 - (c) The appellant was unaware of the warnings mentioned above.

- (d) The product given to Xiaoli's Ying was not a product for horses. As is obvious from the description, it is for use in pigs.
- (e) The appellant's vet told him that Pig Regumate was not registered for use in horses. He nevertheless administered a 7ml dose of the substance to the horse 2 days before it raced, having been advised by his vet to use 5ml.
- (f) The appellant did not keep any relevant treatment records for this administration.
- (g) The appellant has been a trainer for 38 years, with a clean record.
- (h) He used the Pig Regumate as a therapeutic product only. It was to enhance the safe handling of Xiaoli's Ying (regumate has a calming effect on fillies and mares).
- (i) The appellant had no dishonest motive. Regumate for horses, in his view, was not "strong" enough for this horse, and he had previously used Pig Regumate to better effect.
- (j) Any disqualification will have an obvious, and severe, financial effect on the appellant, and an obvious detrimental impact on his 6 staff and 4 trackwork riders.

Submissions

- 8. Mr Van Gestel submitted that the main aggravating factor in this appeal was the use by the appellant of a product for use on pigs, not horses. Further, the product was not used in accordance with the amount advised by the appellant's veterinarian. This carried with it the risk of something happening along the lines that did – an objectively serious breach of the rules involving detection of an anabolic steroid.
- 9. In response, Mr Beazley pointed out that using a product for pigs was not part of Charge 1 as particularised against the appellant. This is true, and is a perfectly reasonable submission to make, but is also a slightly "cute" one. That the product used by the appellant was for pigs not horses is something that the Panel considers is relevant to reaching a determination as to appropriate penalty. Mr Beazley otherwise

submitted that this appeal had a lot more in common with Panel decisions that have resulted in far lesser penalties than imposed here, such as *The Appeal of Chris Waller* ((RAP, 10/2/17) and *The Appeal of Gary Portelli* (RAP, 4/9/20). Mr Beazley emphasised that the appellant had no way of knowing that the Pig Regumate he used might be contaminated with a steroid, and that he used regumate in a manner consistently with warnings given by Stewards – that is, orally, not intravenously. He contrasted this case to *The Appeals of Pepper and Pratten* in this regard (RAP, 11/9/20).

Resolution

10. As is said in many appeals, the primary purpose of imposing penalties for breaches of the Rules is not punishment. It is to uphold and maintain the integrity of the sport. It is to deter those who might breach the rules, and to show the racing public and the public at large that the racing industry will take action to protect the interests and integrity of the sport and broader racing industry.
11. The purpose of imposing penalties for breaches of the rules however is undermined if sentences are imposed that are excessively harsh. Excessively harsh penalties undermine the integrity of racing, rather than helping to maintain it.
12. The penalty imposed by the Stewards on the appellant is not excessively harsh. We consider it is in the range of rationally based penalties that reflect the conduct involved, and the objective seriousness of an offence that involves the detection of an anabolic steroid in a post-race urine sample. However unintended, that is never a trivial breach of the rules.
13. Despite this, we nevertheless are of the view that an appropriate penalty in all the circumstances is a lesser penalty than that imposed by the Stewards. In our view, it is an aggravating factor that a product for pigs was used on the appellant's horse. That aside however (noting that this is a significant aggravating factor) there are other mitigating factors. There was clearly no intention to cheat here. The use of the Pig Regumate was for a safety purpose. We are also of the view that the starting point arrived at by the Stewards – of a 6-month disqualification before discounting for plea – might not fully take into account the appellant's long and exemplary record as a

trainer. When someone has trained for 38 years without a blemish of the kind involved here, the integrity of the sport can in appropriate circumstances still be maintained and upheld by the imposition of a lesser penalty than might be given to someone without such a consistently good and long record.

14. We are of the view that taking into account all matters of mitigation, and the appellant's plea of guilty, but still recognising the objective seriousness of the breach of the rules, the appropriate penalty here is a 2-month disqualification in lieu of a 4-month disqualification.

Orders

1. Appeal against severity of penalty allowed.
2. In lieu of a 4-month disqualification for breach of AR240(2), the appellant's licence is disqualified for a period of 2 months. That penalty is to commence forthwith, unless deferred under AR 283(7) by agreement of the Stewards.
3. Appeal deposit to be refunded.