Appeal decision

Parties:	Peter Moncrieff and Racing Queensland
Decision date:	18 November 2015
Hearing date:	10 November 2015
Code of racing:	Thoroughbred
Appeal panel:	Mr Brock Miller (Chair), Mr Paul James and Mr Daryl Kays
Appearances:	Mr M Tutt appeared on behalf of the appellant Mr D Aurisch appeared on behalf of the respondent
Decision being appealed:	Finding of guilt pursuant to AR. 178
Appeal result:	Dismissed.

The Appellant was the trainer of the horse Judge Ruby which competed at Doomben Racecourse on 22 August 2015. Judge Ruby was the subject of a pre-race testing procedure from which a blood sample was obtained and subsequently analysed revealing a reading of 37.7 millimoles. Subsequently the second laboratory test that was undertaken by RASL reflected a reading of 37.2 millimoles. Each of the readings exceed the threshold allowed under AR.178 which is noted at 36.0 millimoles per litre in plasma.

As a result, the Stewards of Racing Queensland opened an Enquiry into the presence of the substance in question and evidence was taken from the trainer who confirmed that he had no knowledge whatsoever of how it was possible that his horse had tested above the threshold limit other than for him to say that the area in which he trained utilised bore water which he understood to contain a significant quantity of bicarbonate. In support of that statement, the trainer tendered a Veterinary Statement from Dr David Hodge dated 14 September 2015 which confirmed that *the bicarb levels in the bore water used at the Moncrieff's property showed 0.833g/L, i.e. every 25L of water contains 20.83g of bicarb, higher when water has evaporated.* The trainer also tendered a certificate from Symbio Alliance which identified the bicarb level as noted in the Veterinary Statement. At the same time, the trainer confirmed that Judge Ruby was agitated and excited on the day in question and that it had not been possible to walk the horse in the confines of Doomben Racecourse to alleviate that agitation or excited state. The trainer believed that the combined effect of the use of the bore water and the agitation and excitement from which the horse was suffering was capable of raising the bicarb level significantly.

The Stewards charged the Appellant under AR.178 and AR.178C(1)(a).

AR.178 – *Subject to AR.178G, 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 taken 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.*

AR.178C(1) – *The following prohibited substances when present at or below the concentrations respectively set out are excepted from the provisions of AR.178B and AR.178H:*

(a) Alkalinising agents, when evidenced by total carbon dioxide (TCO2) have a concentration of 36.0 millimoles per litre in plasma.

The Appellant entered a plea of guilty and the Stewards imposed a penalty of disqualification of four months of his licence. The Appellant has appealed against the severity of that penalty to this Board.

There can be no doubt that the Appellant was convinced that the bore water and the heightened state of anxiety, activity or agitation suffered by the horse are the sole reasons for the increase in the usual level of TCO2 in the horse's system. Mr Tutt on behalf of the Appellant submitted an outline of submissions which categorised numerous bases upon which this Board was asked to conclude that there should be a doubt in the minds of the members of the Board which would persuade them to accept that the contributing factors were the overriding factor that raised the level and that therefore the Appellant should be excused from the penalty other than for perhaps a suspension of some smaller period of time imposed in lieu of a disqualification plus a fine. Needless to say, Racing Queensland Stewards strongly objected to such a proposition evidencing their concern that the Rule in question was mandatory in requiring that because the substance was beyond the threshold level, no leniency should be allowed unless it could be established that the evidence properly pointed to those contributing issues being the sole factors.

In support of their contention, the Stewards referred to the evidence given by Dr Bruce Young as to the standing level of thoroughbreds with TCO2 being a naturally occurring substance and the supporting documented evidence from Dr Vine which had been submitted during the course of the Enquiry.

This Board has considered many matters that involve the finding of levels of TCO2 above the threshold level and has been consistent in accepting that when the tested levels exceed 37 millimoles (1 millimole above the threshold level adopted in the Legislation) it is incumbent on the Appellant to produce evidence that is capable of proving that the levels exceeded the threshold by means other than ingestion of bicarbonates to a significant degree. In this instance, Mr Tutt, for the Appellant, has identified that the trainer in question has had a blemish free record of 26 years standing and that it would be totally improper for a disqualification to be allowed to remain in place when there are doubts emanating from the

evidence of the use of the bore water and the excited or agitated state of the horse in question at the time.

Whilst we accept that there is no doubt that the bore water and agitation had some impact, this Board does not believe and does not accept that the level could have been achieved merely by the advent of those two elements. It is not a matter for this Board to determine how the horse became positive at a level higher than that allowed suffice to say that once the level of 37 millimoles has been exceeded, then a penalty must be imparted which will act as a warning against all trainers to be more careful and mindful in the treatment and management of their horses.

This Board does not believe that it is appropriate that, in the particular circumstances of this matter, the penalty should be reduced to either a suspension or a suspension plus a fine. It is cognisant of the financial impact that the trainer may face but at the same time the Stewards were aware of exactly the same issues and it was, in the opinion of this Board, something that the Stewards took onboard when assessing the penalty as they determined that a period of four months was appropriate to act as a deterrent and to be by way of a disqualification rather than what a normal penalty would be for a first offence of six months. This Board is not prepared to intervene in identifying that the Stewards acted inappropriately. In fact, the Board is of the belief that the Stewards took all matters into concern when assessing the penalty in question. The Appeal is dismissed and the penalty stands at a four months disqualification.