Appeal decision

Hearing Date:	6 October 2015
Decision Date:	24 March 2016
Code of racing:	Thoroughbred

Appeal panel:	Mr B Miller (Chairman), Mr P James and Mr G Casey
Appearances:	Mr T Pincus, Counsel appeared for Mr Glenn Lobb Mr Ian Brown, Stipendary Steward appeared on behalf of the Stewards
Decision being appealed:	4 charges and penalties of $1,000.00 fine, 2 disqualifications of one month and 1 disqualification of three months with disqualifications to be served concurrently (the commencement having being stayed pending the result of this appeal)
Appeal result:	Appeal Dismissed in respect of convictions and penalties

Charge 1

This is an appeal against a decision by Racing Queensland Stewards made on 4 August 2015 in respect of the Appellant Mr Glenn Lobb whereby the Appellant was charged and convicted and penalised in respect of four charges, the first charge being under AR Rule 80E(i) which reads as follows: -

> "Any person commits an offence if he has in his possession or on his premises any substance or preparation that has not been registered or labelled or prescribed, dispensed or obtained, in compliance with the relevant State and Commonwealth legislation."

Mr Lobb at the Steward's hearing on 20 July 2015 pleaded guilty to this charge and was fined the sum of $1,000.00.

It is also worthy of note that he did not seek to contest this charge in his Notice of Appeal but has subsequently sought to withdraw his guilty plea after receiving legal advice and appeal against both conviction and penalty.

Charge 2

The second charge against Mr Lobb related to AR Rule 175(g) which states as follows: -

> "The principal racing authority may penalise any person who gives at any interview, investigation, inquiry, hearing and/or an appeal any evidence which is false or misleading in any particular."

The particulars of the charge related to Mr Lobb giving misleading evidence as to the contents of a bag found in his possession at an interview with RQ IRU Officers on 20 June 2015. Mr Lobb pleaded not guilty to this charge but he was convicted and a penalty imposed of one month disqualification.

Charge 3

Charge 3 also related to Rule AR Rule 175(g) which has already been quoted above and will not be repeated for the purposes of this judgment. This charge was particularised in the Stewards' report and to the same affect at the hearing of the transcript on page 70, lines 32 and 39 "Mr Lobb…. gave misleading evidence when he indicated to RQ Stewards that five bottles of an unregistered product, one of which was unlabelled, were in his possession for the purposes of providing them to Ms Willick."

Mr Lobb pleaded not guilty to this charge but was convicted and the penalty imposed was one month disqualification.

Charge 4

Charge 4 was a charge under AR Rule 175(A) as follows: -

> "Any person bound by these rules who either within a racecourse or elsewhere in the opinion of the Committee of any Club or the Stewards has been guilty of conduct prejudicial to the image, or interests, or welfare of racing may be penalised."

The particulars of this charge being as follows: -

> "Mr Lobb attended the stables of Mrs Alicia Willick, where Diademe was stabled, in the company of Michael Kelly, a disqualified person with Harness Racing New South Wales. Furthermore, he had unregistered products in his possession which resulted in Stewards being unable to satisfy themselves that Diademe had not been treated on race day and being subsequently withdrawn from the Group 1 Tattersall's Tiara. Conduct which in the opinion of the Stewards was prejudicial to the image of racing."

Mr Lobb pleaded not guilty to this charge but was convicted and a penalty was imposed of three months disqualification. That conviction and penalty are also appealed.

At the hearing of this appeal Mr T Pincus of Counsel instructed by Baker and McKenzie appeared on behalf of the Appellant and Racing Queensland was represented by Ian Brown Steward, assisted by Mr Alan Reardon Chief Steward and Steward Daniel Aurisch.

At the outset of this appeal the chairman queried if the appeals were restricted to charges two, three and four as it appeared that there was no formal appeal against charge one being the fine of $1,000.00.

This board had read the lengthy transcript over a period of two days and received submissions on behalf of the Stewards and by Mr Pincus of Counsel on behalf of the Appellant.

Mr Pincus for the Appellant identified that they were seeking the board to exercise its discretion to allow them to withdraw their plea of guilty to charge one and argue the issue before this appeal and he tendered submissions in writing in respect of that issue and the other charges as well as the New South Wales legislation and supporting documentation. He asked if that could be considered by members of the tribunal.

Mr Brown for Racing Queensland provided submissions in respect of the matters in question but relied so far as charge one was concerned on the issue of late lodgement or application for an appeal against such charge and stipulated that Racing Queensland was of the view that the plea of guilty should stand.

This appeal was adjourned for a period of forty minutes to allow members of the tribunal to read all submissions. It became apparent on reading the submissions that charge one related to the presence of an unregistered and unlabelled substance in the hands of the Appellant in or near the vicinity of the stables of the horse Diademe which was stationed in the stables operated by Ms Alicia Willick on the Gold Coast.

The gist of the submission by Mr Pincus was to the effect that Mr Lobb had pleaded guilty to the charge at the hearing on 20 June 2015 and whilst it was not included with his Notice of Appeal it had been foreshadowed with Racing Queensland to reopen that plea and have the guilty plea set aside so that he could withdraw the plea as a base of conviction and penalty. Mr Pincus said that the charge particularised in the Stewards' report on the basis that Mr Lobb had in his possession four products of Kentucky Green which was unregistered and one unlabelled bottle. The particulars given during the hearing of the Stewards' inquiry at page 69, lines 15 to 27, were the same.

Mr Pincus' view therefore was that Mr Lobb had been charged with having four bottles of a substance or preparation which was not registered in compliance with the relevant State and Commonwealth Legislation and one bottle which was not labelled in compliance with the relevant State and Commonwealth Legislation. Mr Pincus also stated that during the Stewards' hearing there had been no identification of the Legislation with which compliance was said to be required, but not met, in either the case of registration or labelling and he provided statements of example at paragraph 6(a) to (e) of his submissions in that respect.

There was no doubt that Mr Lobb admitted having the product in question in his possession but Mr Lobb was not aware that any such product was unregistered simply stating that he did not know whether that allegation was correct.

Mr Lobb had explained that registered vet Mr Lloyd had informed him that there was nothing illegal in it and that it was Mr Lloyd who made the substance or compound and makes it for his clients. Mr Lobb admitted that he used the product having obtained the product from Mr Lloyd on many horses. He did not use it on the horse in question but had it in his bag.

Mr Lloyd gave evidence to the effect that: -

(1) He prepares the product and uses the product himself for horses whilst in training;

(2) The product assists in decreasing the occurrence of bleeding in horses but is not a performance enhancing drug in any way;

(3) As he is a registered vet in New South Wales he was entitled to prepare and dispense the product in the period that was relevant to this charge.

Mr Lobb pleaded guilty to charge one but did say that he did not understand the asserted lack of registration and labelling and was really only admitting that the bottles in question were in his possession and further at the transcript, page 76 line 17, he did not concede he had done anything wrong by possession of the bottles and then again at page 79 of the transcript, that he could not understand why it was said to be wrong.

Mr Pincus said taking those matters into account what really occurred at the hearing was that the Stewards assured Mr Lobb that there was a requirement for registration and labelling which had been breached. Mr Lobb's plea of guilty amounted merely to a reluctant acceptance of what the Stewards confidently asserted to be the position with an omission only of possession of the substance in question and not of the requirements asserted to apply to it.

As a result Mr Pincus believes that the plea cannot be said to be attributable to a general consciousness of guilt and further since the plea was accompanied by statements indicating that Mr Lobb did not admit the element of the charge comprising the asserted requirement that the plea cannot be taken to have been a confession of guilt.

Mr Pincus was of the view that an appeal against conviction will be entertained notwithstanding a guilty plea if the Appellant on the admitted facts, could not in law have committed the offence charged. That is a proper argument and the question it would appear that has to be answered is whether it was a requirement for the substance or compound to be labelled and registered or whether it was excused from labelling or registration. Mr Pincus argued that there is no identifiable requirement for registration and labelling of the substance in either State or Commonwealth Legislation.

He went on further to say that whilst the appeal is made late it was done with ample notice to Racing Queensland – refer to numerous e-mail correspondence between Mr Brown and Mr McKenzie Solicitor and there is no identified prejudice if the issue is allowed to be ventilated.

It seems apparent that Mr Pincus argues and accepts that there is preparedness by Mr Lobb to accept the offence as being committed if Racing Queensland does identify a statutory requirement for the substance to have been registered or labelled. He said there was no such requirement identified at the Stewards' hearing and none has been identified in subsequent correspondence between the parties in the lead up to this appeal.

This board has identified that the imperative question is, is there legislation in Queensland or New South Wales that there is a statutory requirement for the substance in question to have been either registered or labelled.

Under the Commonwealth Agricultural and Veterinary Chemicals Code Act 1994 and the Code which is a schedule to the Act, veterinary chemical products is defined broadly but subsection 4 stipulates *it does not include a substance or a mixture of substances that is prepared by a veterinary surgeon as permitted in the course of his/her practice and*

> *The requirements in the Code for registration by the APVMA and for control of matters including labelling, all apply only to chemical products and thus relatively to veterinary chemical products.*

At the Stewards' inquiry evidence from Mr Lloyd noted that he was a registered vet in New South Wales and in that capacity was entitled to and did prepare the substance. He did not resile from that. Mr Pincus argued as a result, the Code requirements for registration and labelling did not apply. For the conviction to be sustained there would have to be some other legislation requiring registration and labelling to be identified.

As Mr Lloyd is a New South Wales vet and prepared and provided the substance to Mr Lobb in New South Wales one needs, according to the Appellant's Counsel, to look at the Stock Medicines Act 1989 New South Wales. In that Act: -

(a) Section 39(c) prohibits a vet from supplying an unregistered stock medicine unless it has been compounded by the vet;

(b) Section 37 prohibits any person from possessing an unregistered stock medicine unless it was prescribed or supplied by a vet in the course of the practice of his/her possession to deal with the particular condition of an animal or animals under his/her care.

Both Mr Lloyd and Mr Lobb accept that the substance was prepared by Mr Lloyd and provided to Mr Lobb. He had done that many times before, apparently with respect to Mr Lobb's own horses. However Mr Lobb had the substance with him in Queensland and made

various references to the fact that he had some substances that may be of some use to Ms Willick. He was obviously referring to this substance known as Kentucky Green.

A strict reading of the New South Wales sections stipulates that the person must not have an unregistered stock medicine in his/her possession unless it was prescribed by a veterinary practitioner in the course of the practice of his profession to deal with the particular condition of an animal or animals under his/her care.

The words his/her care identifies that Mr Lobb could only have been the beneficiary of the exclusion, if the substances were to have been used on an animal that was under Mr Lobb's care.

In this case the horse Diademe was not under Mr Lobb's care, it was trained by Mr Bjorn Baker (for whom Mr Lobb was a stable hand) and was in the stables of Ms Willick at the Gold Coast who had no association with Mr Lobb.

Subsection 1(b) of Section 37 gives indemnity to the veterinary practitioner who may have possession of the medicine during the course of his practice provided it is for use on an animal other than an animal of a food producing species therefore subparagraph 1(a) of Section 37 can only benefit Mr Lobb if the substance was in his care for the treatment of his own animals and not someone else's animals.

As such Mr Lobb is not afforded the benefit of the qualification in Section 37.

Section 39(c)(1) stipulates that a veterinary practitioner must not prescribe or supply a stock medicine for use by a person on stock unless a veterinary practitioner is authorised by the Act to use the stock medicine on that stock. Mr Lloyd had no relationship with the horse or Ms Willick. It cannot be seen that he was therefore authorised to prescribe the use of the medicine for use on the particular horse. It was not under his care.

An argument exists that the substance was manufactured by a vet in accordance with the New South Wales regime presumably for Mr Lobb to use on his own horses, but the consequences of his taking the substance out of the State of New South Wales to use on other horses then made it an offence in Queensland if the requirement for labelling is found.

It is the findings of this board that we reject the defence to this charge and find that the Defendant was not authorised to use this product on horses not under his care and out of the state of New South Wales and we find the Appellant guilty as charged and therefore dismiss the appeal on conviction and penalty in respect of charge one.

Charge 2

The Appellant had been licensed in the Racing Industry for thirty-nine years (page 84 of the transcript line 47). As such he ought to have known that the bottles were in his possession when questioned. With such a lengthy experience in the industry he ought to also have known that the products would have been an item of interest to the Integrity Officer when

conducting a stable inspection. The Appellant was also aware of the implications of being found with such products in his possession at that point in time when he replied "yeah, I know" to Mr Hackett's comment "that doesn't look good, does it?" (transcript of interview on 20 June 2015 page 7 lines 27 to 30).

We therefore find that there was a motive for the Appellant to mislead the Integrity Officers. The Appellant's defence that he simply forgot that they were in his bag is not reasonable in all the circumstances. We find that the actions of the Appellant appear to be a deliberate attempt to mislead and or stall the efforts of the Integrity Officers. We therefore dismiss the appeal in respect of charge two and confirm the one month disqualification penalty.

Charge 3

In respect of charge 3 of giving misleading evidence when Mr Lobb indicated to Racing Queensland Stewards that the five unregistered products, one of which was unlabelled, were in his possession for the purpose of providing them to licence trainer Alicia Willick, we find that the evidence of Miss Willick on multiple occasions was unable to corroborate the defence put forward by the Appellant. We refer to the first transcript on 20 June 2015 (page 3 lines 40-45) and the transcript of 4 August 2015 (page 35 lines 24-29 and page 37 lines 2-3 and 20-23).

Ms Willick had an unblemished record in the Racing Industry and as such we prefer her evidence over the Appellant's. We find that the location of the bottles in Mr Lobb's bag initially outside the box where Diademe was stabled would indicate that they may have not in fact been for Ms Willick otherwise the bottles (in accordance with the Stewards' submission) would have been either left with her personally or in her feed room. In summation in regard to charge three we prefer the evidence of Miss Willick in this regard to the evidence of Mr Lobb and we therefore dismiss the appeal in respect of charge three and confirm that penalty of one month disqualification.

Charge 4

This charge is particularised as follows on the transcript (page 74, lines 25 to 48) "Mr Lobb attended the stables of Miss Alicia Willick, where Diademe was stabled, in the company of Michael Kelly, a disqualified person from Harness Racing New South Wales. Furthermore, he had unregistered products in his possession which resulted in Stewards being unable to satisfy themselves that Diademe had not been treated on race day and been subsequently withdrawn from the Group 1 Tattersall's Tiara. Conduct which in the opinion of the Stewards was prejudicial to the image of racing.

It was argued by Mr Pincus on behalf of the Appellant that the Stewards were not aware that Mr Kelly was a disqualified person at the time the late scratching was made and that the chairman subsequently conceded that he was not so aware in the transcript (page 75 lines 35 to 47) where he says "we are aware of it now". He also referred to exhibit 7 the last page which was apparently a search concerning Mr Kelly's disqualification which was only

conducted on 23 June 2015 some three days after the late scratching. He also argued that this charge in fact contravened the rules against double jeopardy.

It is the finding of this board that Mr Lobb would have been well aware and was in fact well aware, having been a close friend of Mr Kelly, that Mr Kelly was a disqualified person. The Appellant entered the stables with Mr Kelly knowing full well that as a disqualified person Mr Kelly should not be present in licenced stables.

We refer to the transcript (page 75 line 16) "Mr Lobb – yes – well I agree with having Mr Kelly there, that was an oversight by me. I like I say I plead guilty to having Mr Kelly with me, but I am not going to plead guilty to ….".

The facts in relation to this matter support that the Appellant knowingly took unregistered and an unlabelled bottle into the stables which were located by Integrity Officers in the vicinity of Diademe's stables. The bag in which the bottles were found was initially located directly outside the box in which Diademe was stabled. The bag also contained unused syringes.

The Appellant's conduct was the main factor in the Stewards' decision to scratch Diademe. This charge was not brought by the stewards until after an inquiry on 4 August 2015 when stewards knew about Mr Kelly being a disqualified person and certainly Mr Lobb knew this all along. This was an ongoing inquiry but to take a disqualified person to any stables at any time is not only against the Rules of Racing but certainly prejudicial to the interests of racing. We find this charge can stand on its own. As a consequence that conduct received national attention in the media. We consider that the conduct of the Appellant did have a detrimental effect on the image of racing in Queensland and Australia.

We therefore dismiss the Appellant's appeal in respect of charge four. We have considered the good record and personal circumstances of the Appellant and the possible hardship which will be suffered by the Appellant but consider in the interests of the integrity of racing that a significant deterrent effect is necessary to prevent any likeminded individuals from repeating conduct which we consider of a serious nature. We therefore dismiss the appeal in respect of penalty and confirm the penalty of three months disqualification in respect of charge four.

We find that all penalties of disqualification should be served concurrently.

Further right of appeal information: The Appellant and the Steward may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **28 days of the date of this decision**. Information in relation to appeals to QCAT may be obtained by telephone on (07) 3247 3302 or via the Internet at www.qcat.qld.gov.au