

RACING NEW SOUTH WALES

APPEAL PANEL

4 March 2015

MR R CLUGSTON — PRINCIPAL MEMBER
MR J FLETCHER
MR D McKEE

IN THE MATTER OF THE APPEAL OF
D GASKIN & M CORNISH

REASONS FOR DECISION

CHAIRMAN: This is an appeal by licensed trainer partners Donna Gaskin and Michael Cornish (hereinafter referred to as “the Appellants”) against the severity of penalties imposed by Stewards at the Wagga Wagga Racecourse on 20 January 2015 in respect of two (2) breaches of AR 178.

That rule provides that:

“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.”

The particulars of charge one (1) were that as the trainers of *Mary’s Discretion* they did bring that mare to the Berrigan District Race Club’s meeting on Saturday 1 November 2014 to compete in Race 2 a Benchmark 55 Handicap of 950 metres whereby a prohibited substance namely caffeine was detected in the urine sample taken from the mare prior to the race. The particulars of charge two (2) were that as the trainers of *In The Cash* they did bring that gelding to the Berrigan District Race Club’s meeting on Saturday 1 November 2014 to compete in Race 3 a Maiden Plate

over 1500 metres whereby a prohibited substance namely caffeine was detected in the urine sample taken from that gelding subsequent to the race.

The Appellants pleaded guilty to both charges before the Stewards and the Stewards imposed a penalty of four (4) months suspension in respect of each count with each sentence to be served concurrently. The Appellants adhered to their pleas of guilty in the proceedings before the Panel. The appeal is therefore a rehearing on the question of penalty. The Stewards were represented in the proceedings before the Panel by Mr G Rudolph, Deputy Chairman of Stewards – Racing, and the Appellant Cornish appeared in person and on behalf of the Appellant Gaskin. The transcript of the Stewards' inquiry conducted in the Stewards' room at Wagga Wagga Racecourse on 20 January 2015 and the transcript of the hearing of the charges which took place on the same day and the exhibits tendered in those proceedings have been admitted into evidence in the proceedings before the Panel. The Appellants tendered to the Panel a bundle of documents comprised of a submission and a number of character testimonials and the Appellant Cornish and Mr Robert Bird gave oral evidence.

The essential facts of this case are not in dispute. The Appellants who are a licensed training partnership with stables at Echuca in Victoria were the trainers of the racehorses *Mary's Discretion* and *In The Cash* in the period leading up to and on 1 November 2014. On 1 November 2014 *Mary's Discretion* was presented to race and did race in the Benchmark 55 Handicap at Berrigan racecourse whilst *In The Cash* was presented to race and did race in the Maiden Plate at the same racecourse. At 12.40pm on that race day pre-race urine samples were taken from *Mary's Discretion* by Steward D R McLean in the presence of the Appellant Gaskin whilst at 3.15pm a post-race urine sample was taken from *In The Cash* by the same Steward in the presence of the Appellant Gaskin. By email dated 25 November 2014 the General Manager of the Australian Racing Forensic Laboratory ("the ARFL") Mr John Keledjian informed the Chairman of the Stewards that "these samples received from SDRA on 4 November have returned high levels of caffeine with lower levels of metabolites detected on screening only." Following receipt of that advice Mr TJ Davidson Chief Steward of the Southern District Racing Association, and Mr C Marshall, Steward, attended the Appellants' stables at Echuca on 27 November 2014 where an inspection of those stables was conducted.

In Certificate of Analysis No. ARF14/3372-C dated 18 December 2014 the ARFL certified that the urine sample taken from *Mary's Discretion* on 1 November 2014 was found to contain caffeine, theophylline, paraxanthine and theobromine. As a result the ARFL forwarded the samples to the Racing Science Centre ("the RSC") Hamilton, Queensland for confirmatory analysis. In Certificate of Analysis No. 40928 R dated 7 January 2015 the RSC certified that the urine sample taken from *Mary's Discretion* was shown to contain caffeine, theophylline, paraxanthine and theobromine.

In Certificate of Analysis No. ARF 14/3372-B dated 18 December 2014 the ARFL certified that the urine sample taken from *In The Cash* on 1 November 2014 was found to contain caffeine, theophylline, paraxanthine and theobromine. As a result the ARFL forwarded the samples to the RSC for confirmatory analysis. In Certificate of Analysis No. 40929 R dated 8 January 2015 the RSC certified that the urine sample was found to contain caffeine, theophylline, paraxanthine and theobromine .

In his report to the Chairman of Stewards of 9 January 2015 Dr C Suann, Senior Official Veterinarian with Racing NSW, opined:

"The methylxanthine substance caffeine would be a 'prohibited substance' according to the Australian Rules of Racing. It has actions and effects principally on the central nervous system, the cardiovascular system and the respiratory system (AR 178B(1)). It is categorised as a 'central nervous system stimulant' and 'stimulant' (AR 178B(2)).

Caffeine is a central nervous system stimulant, and it also has stimulant action on the cardiovascular system, causing a dose- dependent increase in heart rate, blood pressure and cardiac output. In the respiratory system, caffeine increases the respiration rate and causes relaxation of bronchial smooth muscle. Caffeine also has lesser effects on the urogenital system where it causes diuresis (increased urine production), and in the musculoskeletal system where it facilitates muscular work. Through all these actions, caffeine has the potential to improve racetrack performance.

Paraxanthine, theobromine and theophylline are all metabolites of caffeine and are therefore prohibited substances accordingly (AR 178B(3)), and their detection in a urine sample would imply the administration of caffeine to the horse from which the

sample was obtained. The caffeine is subsequently metabolised in the liver, and caffeine and its metabolites are excreted in the urine.”

In the proceedings before the Stewards Dr A Cawley, Science Manager for the ARFL, gave evidence that his estimate of the quantity of caffeine in the samples taken from each horse was 2,000 nanograms per ml for *Mary's Discretion* and 2,900 nanograms per ml for *In The Cash*. Dr Cawley's evidence was that an estimated level of 1,000 nanograms per ml would be regarded as “quite high. “Dr Cawley went on to say (at page 13 lines 612-615):

“It would be likely that the exposure to caffeine has between one and two hours, very recent. The reason I am able to state that is because the ratio of caffeine to the metabolites is quite high.” The Appellant Cornish and his witness Robert Bird both dispute Dr Cawley's evidence in relation to the likely time of administration.

In their evidence before the Stewards the Appellants could not account for the finding of caffeine in the samples taken from the horses *Mary's Discretion* and *In The Cash*. The only explanation they could advance was that the caffeine was administered to each horse by an unknown party.

The Panel has considered the evidence and the submissions on the question of penalty. In considering the issue of the seriousness of the Appellants' offending conduct the Panel has regard to the observations made by another Panel concerning breaches of AR 178 in the Appeal of Gary Portelli (delivered on 15 December 2014). In that case the Panel said:

“The Panel considers that the Appellant's breach is serious in the overall framework of the Australian Rules of Racing as it impinges on the level playing field which is fundamental to the overall integrity of racing. The Panel considers that it is necessary to impose a penalty such as would be likely to deter the Appellant from reoffending as well as other licensed trainers who may, in the future, be minded to commit the same or a similar offence.”

On the other hand, the Panel takes into account the Appellants' pleas of guilty entered at the first available opportunity before the Stewards and their full co-operation with Stewards during their investigation. The Panel has also taken into account that the Appellants have been licensed trainers for twenty (20) years (Appellant Gaskin) and eighteen (18) years (Appellant Cornish) with approximately two hundred (200) winners in that period and there have been no previous “prohibited substance” breaches by the Appellant Cornish and one prior breach of

“possession of syringes which could be used to administer prohibited substances” by the Appellant Gaskin in 2006.

The Panel has also considered the precedent table of penalties in previous cases of breach of AR 178 involving the substance caffeine. That table refers to a number of cases emanating from various racing jurisdictions in Australia and the table indicates a variety of penalties including fines, periods of suspensions and periods of disqualification.

The Panel considers that it is necessary to impose a suspension period for each breach. The Panel also considers that having regard to the principles of totality of sentencing the periods of suspension to be served by the Appellants should be served concurrently. Ultimately, the Panel considers that the appropriate penalty for each breach is a suspension of three (3) months.

The Panel notes that the Appellants lodged their Notice of Appeal on 21 January 2015 and that there was no application for a stay of proceedings.

For the above reasons, the orders of the Panel are as follows:

1. Appeal against penalty upheld;
2. Penalty of four (4) months suspension imposed by Stewards in relation to charge one (1) is varied to a suspension of three (3) months to commence on 20 January 2015 and to expire on 19 April 2015;
3. Penalty of four (4) months suspension imposed by Stewards in relation to charge two (2) is varied to a suspension of three (3) months such suspension to commence on 20 January 2015 and to expire on 19 April 2015;
4. Appeal deposit of \$200 forfeited.