

RACING NEW SOUTH WALES APPEAL PANEL

IN THE MATTER OF THE APPEAL OF DANIEL WANT

Appeal Panel:	Mr R Beasley SC – Principal Member Mr K Langby Mr M Daniels
Appearances:	Racing NSW: Mr M Van Gestel, Chairman of Stewards Appellant: Mr M Tutt, Solicitor
Date of Hearing:	04 September 2017
Date of Reasons	04 September 2017

REASONS FOR DECISION

Introduction

1. On 13 February 2017, the racehorse “I Too Can Dance” won Race 3, The Maiden Plate, at Grafton Racecourse. That horse was trained by the appellant Mr D Want, who is a licenced trainer, and a farrier.
2. Analysis of a urine sample collected from the horse after the race revealed that the horse had 161 micrograms of cobalt per litre of urine.
3. Cobalt is a prohibited substance under the Australian Rules of Racing (the Rules), and the legal threshold amount is 100 micrograms per litre of urine.
4. Mr Want was charged with a breach of AR178 which is in the following terms:

AR178: *Subject to AR178G, when any horse that has been brought to the racecourse for the purposes of engaging in a race and a prohibited substance is detected in any sample taken from it prior to or following its run in any race the trainer or any other person who was in charge of such horse at any relevant time may be penalised.*

5. On 21 April 2017, following a Stewards Inquiry, Mr Want was found guilty of a breach of AR 178, and his licence was disqualified for a period of 15 months. The horse was disqualified from the race it won.
6. Mr Want had reserved his plea during the Stewards Inquiry. It is clear enough from the transcript of the Stewards Inquiry (which was admitted into evidence on this appeal as part of the appeal book: Exhibit A) that Mr Want reserved his plea as he at least wished to explore whether the cobalt concentration detected by the laboratory was influenced by possible dehydration of the horse. At the time also there were some arguments perhaps available to him regarding the construction of the Rules. Since the date when he was found guilty and penalised however, the Panel handed down its decision in the Appeal of Kent Fleming (Racing Appeal Panel, 14 July 2017). This appeal involved similar issues to those mentioned above that were potentially relevant to Mr Want's Appeal.
7. Following the Panel's decision in the appeal of Kent Fleming, Mr Want (through his solicitor) indicated to the Stewards that he would change his plea to guilty, and contend only for a lesser penalty.
8. It is clear from many previous decisions of the Panel and the Racing Appeal Tribunal that a first offence under AR178 involving cobalt, when a guilty plea is entered, generally results in a 12 month disqualification if the appellant does not have a bad record.
9. Given the circumstances by which the appellant has now pleaded guilty before the Panel, we see no reason to deprive him of a discount for his plea today. Mr Van Gestel very fairly did not put up any resistance to such a course.
10. The appellant has no relevant bad record, and we accept that any disqualification will have severe consequences for him given that he is a farrier and a Trainer. In the circumstances, and consistently with prior decisions, we set aside the 15 month disqualification, and impose a disqualification of 12 months.

Orders

1. Appeal against severity of penalty allowed.
2. Penalty of 15 month disqualification set aside.
3. In lieu, a penalty of a 12 month disqualification is imposed. Such penalty is to commence on 5 September 2017, and is to expire on 4 September 2018, on which date the appellant may re-apply for his licence.
4. Appeal deposit refunded.