

NEW SOUTH WALES HARNESS RACING APPEAL PANEL

APPEAL PANEL MEMBERS

Hon. W Haylen KC

B Skinner

R Smith

RESERVED DECISION

3 OCTOBER 2023

APPELLANT CAMERON ROSS

RESPONDENT HRNSW

SEVERITY APPEAL

AUSTRALIAN HARNESS RACING RULES

190(1) & 196A

DECISION

- 1. The appeal is upheld, a disqualification for a period of 7 months in relation to both the presentation case and the administration case to be served concurrently.**

1. Mr Cameron Ross has appealed against two decision of Stewards to disqualify him for a period of 7 months and 10 months and 2 weeks, arising from the circumstances around his horse, Machs Legacy, winning race 5 at Newcastle on Friday 10 February 2023. Analytical tests conducted by two approved laboratories on a post- race urine sample obtained from that horse reported the presence of Dexamethasone at a prohibited level.
2. After taking evidence in their inquiry Stewards issues three charges against Mr Ross. Charge 1 was issued pursuant to the provisions of AHRR 190 (1)(2)&(4), namely:
 - (1) A horse shall be presented for a race free of a prohibited substance.
 - (2) If a horse is presented for a race otherwise than in accordance with sub rule (1), the trainer of the horse is guilty of an offence.
 - (4) An offence under sub rule (2)...is committed regardless of the circumstances in which the prohibited substance came to be present in or on the horse.Particulars of the charge were: That Mr Cameron Ross, being a licensed trainer of the horse Machs Legacy did present that horse to race at Newcastle on Friday 10th February 2023 not free of a prohibited substance, namely dexamethasone as reported by two laboratories approved by Harness Racing NSW.
3. The second charge was issued pursuant to the provisions of AHRR 196A (1)(ii)&2:
 - (1)A person shall not administer or cause to administer to a horse any prohibited substance (ii) which is detected in any sample taken from such horse prior to or following the running of any race. (2) a person who fails to comply with sub-rule (1) is guilty of an offence.The particulars of that offence were that Mr Cameron Ross, did administer a prohibited substance, namely dexamethasone, to the horse Machs Legacy which was detected in a urine sample taken from that horse following its win in race 5 at Newcastle on Friday 10th February 2023.
4. The third charge, which is not challenged on appeal, arose under AHRR190B (5) and (6) and concerned an obligation to retain possession of a log book for a period of 2 years with the failure to do so constituting an offence.
5. Mr Ross pleaded guilty to all 3 charges. The Stewards imposed a disqualification of 7 months on the first charge, a period of 10 months and two weeks on the second charge and a fine of \$500 on the third charge. The disqualifications under charges one and two were to be served concurrently.
6. The evidence before the Stewards was that Mr Ross nebulised the horse with 1ml of Dexapent mixed with 5-7 mls of plain saline about 10am on Tuesday 7 February. It was noted that Dexapent contained the active constituent dexamethasone. Mr Ross gave evidence that he had previously received veterinary advice relating to the use of dexapent by nebuliser. He stated that no other person provided treatment to the horse.
7. The Stewards then summarised evidence given by Dr Knox, the NSWHR Assistant Regulatory Veterinarian. Dr Knox referred to 1.4 nanograms per millilitre of dexamethasone had been detected in the post- race urine sample. It was further noted that by reference to a study in 2019 the level found in the urine would have occurred around 24-32 hours post-administration.
8. Having regard to the evidence gathered, the Stewards then announced their decision on these matters, in the following terms: " In view of the available evidence, the results of the administration trial and the absence of any evidence to the contrary, on the balance of probabilities, the Stewards cannot be comfortably satisfied that

the treatment regime as disclosed by Mr Ross for the horse Machs Legacy on Tuesday 7 February 2023 was responsible for the dexamethasone detected in the subject sample obtained from that horse on Friday 10 February 2023. The evidence of Dr Knox, based on the available study, suggests that the administration of the dexamethasone in the manner outlined by M Ross would need to have occurred closer to the time the subject sample was obtained from the horse to provide a level of 1.4ng/ml in urine. In her evidence Dr Knox provided evidence that the detection time for dexamethasone was at least 72 hours and a possible withdrawal time was 6-7 days.

9. In reaching their penalty decisions the Stewards noted that breaches of rules relating to prohibited substances were to be viewed as most serious when taken into account in respect to the overall objectives of the Rules of harness racing because they had the potential to directly and adversely affect the public image and integrity of the harness racing industry. Further, participants, connections and the public were entitled to have the reasonable expectation that all horses compete to their best ability and free of substances prohibited by the rules.
10. The Stewards then considered the HRNSW Penalty Guidelines noting that dexamethasone was classified as a Class 3 Prohibited Substance. For a first offence for this class, a penalty of no less than 12 months disqualification applied. It was then noted that where a trainer has committed their first offence relating to a Class 3 Prohibited Substance, a fine might be considered where each of the following requirements have been satisfied by the trainer: the prohibited substance was prescribed and/or administered by a registered veterinarian; and, all details relating to the treatment are recorded in the Trainer's Log Book; and, the trainer complied with advice from a registered veterinarian regarding the withholding period for the relevant substance; and, the trainer has complied with all relevant notices issued by HRNSW; and, class 3 Prohibited Substance only; and, first offence committed by trainer that has resulted in a penalty being issued by Stewards.
11. The Stewards noted that Mr Ross was unable to provide any evidence that details relating to this treatment were recorded in his log book. Further, the evidence of Dr Knox that the level for dexamethasone of 1.4ng/ml suggested that administration was not in accord with the advice provided by Dr Argyle in that the administration would have occurred within 24-32 hours of the sample being obtained, a timeframe which was less than the 3 days advised by Dr Argyle. Based on the available evidence, it was apparent that either the timeline of administration was incorrect or the dosage of Dexapent was increased. In those circumstances the Stewards did not regard a fine as being appropriate in this case. How this prohibited substance came to be found in this horse had not been appropriately explained.
12. On Appeal to this Panel HRNSW closely examined the reasoning of the Stewards and highlighted the shortcomings of Mr Ross's handling of the treatment prior to the race. Shortly after the race Mr Ross moved to Western Australia and was then interviewed by local Stewards in regard to the administration of dexamethasone to Machs Legacy when racing at Newcastle on 10 February 2023. He was asked if he made a record in his medical book about the use the nebuliser and the substance treated. Mr Ross replied that his medical books may have been in boxes at home,

having only recently arrived in the State. When asked if he would normally record nebulisers, Mr Ross replied, "Not really", but added that "everything else" was there. He then said that he would not be able to remember if he put that information in the book or not. When asked if he normally did that, Mr Ross replied "I normally just nebulise them and, yeah, don't write it....I probably wouldn't have wrote it in there." He then spoke of recording any injections but probably not the nebuliser. The Stewards then asked to see Mr Ross' medical book but he was unable to say where it was at the time but it might be in his boxes at home. Ultimately Mr Ross was unable to produce the medical book. In the July 2023 Inquiry before the Stewards Mr Ross stated that he was unable to find his log book. His attention was drawn to the statement he made to the Western Australian Stewards that he would not write the use of the nebuliser in his log book and he responded by saying: "I would like to think my practice was to obviously put everything in the treatment book" but he did not have the book and it was a long time ago. This response appeared to be more a sentiment than a statement of fact.

13. Attention was also drawn to a September 2018 HRNSW Notice to Industry, which in part provided advice to trainers regarding Administering Therapeutic Substances. That Notice was in the following terms: "Prior to the administration of any therapeutic substance it is important for trainers to obtain advice from their veterinarian regarding the withdrawal time for that therapeutic substance which is specific to the circumstances in which it is being administered. It is recommended that Trainers ask their veterinarian to provide a withdrawal time using the "clear day" terminology. The introduction section of the Harness Racing NSW Log Book contains the definition of a "clear day". Harness Racing NSW provides an elective testing service for a number of long acting substances that may have unpredictable detection times."
14. AHRR 196B, deals with Administering Substances and makes the following provisions: (1) A person shall not without the permission of the Stewards within one (1) clear day of the commencement of the race administer, attempt to administer or cause to be administered an injection to a horse nominated for that race. (2) for the purposes of this rule- (a) One clear day means twenty four (24) hour period from 12.01am to midnight. Commentary on the rule states that one clear day refers to one (1) clear day prior to the day of the race and does not include the day of the treatment or the day of the race. In this case Mr Ross stated that the horse was nebulised around 10am on 7th February. It raced at 8.22pm on 10 February. Under this rule the 7th and the 10th February are not included. Thus, the horse had the 8th and 9th counted but that amounted to 48 hours, not 72 hours "at least" specified by Dr Argyle.
15. The Appellant's case was concisely put as to the relevant facts and what flowed from them. Mr Ross had complied with the advice of his veterinarian regarding the withholding period for this substance, that is at least 72 hours. He may not have entered the administration in his treatment book but it was now misplaced as a result of moving to Western Australia. This was the first presentation offence committed by Mr Ross. The failure in recording the treatment should not be viewed as decisive in this case and has been adequately covered by the monetary penalty imposed by the Stewards. There was no evidence that the horse was administered the prohibited substance at any other relevant time than that given by Mr Ross.

16. Having regard to those matters, it was submitted that this was an appropriate case to adopt the class 3 Guidelines and to impose a fine. The Penalty Guidelines are repeated here for convenience and refer to a first presentation case where a fine might be considered “where each of the following requirements have been satisfied by the Trainer-
- The prohibited substance was prescribed by a registered veterinarian; and
 - All details related to the treatment are recorded in the trainer’s Log book; and
 - The trainer complied with advice from a registered veterinarian regarding the withholding period for the relevant substance; and
 - The trainer has complied with all relevant notices issued by HRNSW; and
 - Class 3 Prohibited Substance only; and,
 - First presentation Offence committed by trainer that has resulted in a penalty being issued by Stewards.
17. The difficulty for Mr Ross is that he had clearly not maintained a presentation or Log book and had not recorded the time and nature of the nebulised substance. This is a significant requirement of the scheme. The requirement to make these entries means that they cannot be later altered and may be of assistance in establishing a time line for the Stewards. Mr Ross was running a fine line to have at least 72 hours before running this horse. Further Mr Ross has not established that he has complied with all relevant notices issued by HRNSW, especially the clear day requirement. He was not a Trainer that had complied with all the requirements of this provision.
18. The last and lengthy submission for Mr Ross centred on the decision of the Racing Appeals Tribunal NSW in the case of Amanda Turnbull, decided in September 2022. Ms Turnbull was a licensed trainer and driver who had been disqualified for 3 months for a breach of the presentation rule ,AHRR 190. She had pleaded guilty to the charge and appealed on severity grounds. She had a prior offence where a 16 day disqualification was imposed.
19. The Tribunal noted that Ms Turnbull was a leading driver who had won numerous Premierships and feature races. As a trainer she had been licensed for 10 years but had associated with the industry for some 15 years and had been around stables from the age of 10.
20. In this case her veterinarian had injected the horse and advised a 10 day withholding period. The treatment was not entered into the log book but she followed the advice. This was a long acting substance.
21. The Tribunal noted that the factors to be taken into account when determining the nature of the penalty to be imposed would depend on the circumstances of each matter. It was not a mathematical exercise but a case by case approach. The Tribunal was not bound to increase penalties because of prior offences. In this case the objective seriousness was on a fine balance and was assessed as low level. A number of subjective facts were taken into account and the testaments by referees were considered. A fine of \$10,000 was the starting point and that figure was reduced by 25% due to the guilty plea .
22. The circumstances in that case are significantly different to those presented in in the case of Mr Ross. Ms Turnbull had a previous presentation case resulting in a penalty of 16 days. In the 2022 case she was fined \$7500. Clearly exceptional subjective factors influenced the decision in each case. The case for Mr Ross did not attempt to place his circumstances on the same level as

enjoyed by Ms Turnbull but simply argued for a monetary penalty.

23. In summary, Mr Ross did not qualify for a fine under the penalty guidelines, having failed to maintain a trainers log book and having failed to record in that book the details of the treatment rendered to Machs Legacy. He had also failed to comply with relevant notices issued by HRNSW and the terms of AHRR 196B relating to the “clear day” requirement. Further, it is to be noted that submissions for Mr Ross did not address how the horse had returned a high reading of 1.4ng/ml for dexamethasone, a level that Dr Knox said would have occurred around 24-32 hours post administration. These are serious breaches of the rules, deserving a significant penalty.
24. In this case Mr Ross has been a trainer for a relatively short time of 4 years or so. His record during this period has not been called into question in the setting of a penalty. However, the Panel is satisfied that an appropriate penalty for this first offence is disqualification for a period of 7 months in relation to both the presentation case and the administration case to be served concurrently. It is noted that Mr Ross has already served two and a half months and therefore will remain disqualified for a further four and a half months. The Appeal is upheld to the extent referred to above.

Hon Wayne Haylen KC – Principal Member

Mr B Skinner – Panel Member

Mr R Smith – Panel Member

3rd October 2023