RACING APPEALS TRIBUNAL NEW SOUTH WALES

TRIBUNAL MR E SELWYN OAM

DECISION

THURSDAY 26 JULY 2018

APPELLANT MITCHELL REESE

AUSTRALIAN HARNESS RACING RULE 250(1)(a)

DECISIONS: 1. Appeal dismissed
2. Appeal deposit forfeited

Mitchell Reese is an A Grade licensed driver and appeals against the severity of the stewards' decision to suspend him for 10 weeks for a breach of Rule 250(1)(a).

The respondent was represented in this appeal by Mrs Prentice, who relied on the exhibits tendered at the stewards' inquiry, emails and letters forwarded to the appellant and the transcript of the evidence before the Stewards. She also tendered the changes made to the drug and alcohol policy by Harness Racing New South Wales, and a stewards' report, and gave the Tribunal a list of recent penalties imposed for breaches of this rule.

The appellant's solicitor, Mr Bucksath, has tendered two additional references from a Miss Clements and a Brayden Matheson, two press releases showing the suspension of two jockeys for failing a breath test, one in 2016 and one in 2018. The solicitor for the appellant also tendered a Westmead Hospital discharge summary as a result of an admission to hospital sustained by the appellant following an incident, or a fall, during the course of harness racing. The discharge summary does say that the appellant must not, or should not, return to racing until the orthopaedic people had cleared him, and the appellant's solicitor has advised the Tribunal that that clearance was given.

The appellant told the stewards that he had been engaged by a Mr John Wheeler to drive in Trial 2 at Penrith on 27 June 2018. The Tribunal records that the appellant seems to be a very hard-working gentleman, and not only was he doing this, or intending to do this work for Mr Wheeler, but he had finished working for his father-in-law, Mr Brown, at roughly 3:30 on the day in question. And as well as intending to work for Mr Wheeler that day, he got a call from another trainer – Mr Tandy is a trainer – asking him to help out on that day with what he describes as helping driving or helping for education purposes. And as he was going to the Penrith track, anyway, Mr Tandy thought it might have been possible for him to undertake the two tasks.

He finished work about 3:30 and he said he shared a six-pack with Mr Tandy at 4 o'clock and had his last drink at 5:30. There were some submissions made about the way the three pints of beer were ingested, but the Tribunal is concerned as to this aspect: he knew that day that he was going to be engaged by Mr Wheeler. Mr Tandy's approach was in addition to Mr Wheeler's approach. The weather was inclement. He says it was raining and something like he had not seen before. And it was not clear to the appellant whether the trials would proceed.

He made an inquiry at 5 o'clock. He cannot name the person to whom the inquiry was made. But it was not clear to him at 5 o'clock whether the trials would proceed. Irrespective of that, having given his commitment to deal with Mr Wheeler earlier on and then adding Mr Tandy's approach, it was

injudicious of the appellant to keep drinking until 5:30 because if he had been drinking until 5:30, he did not know that the trials were not going proceeded.

The rules are clear. It does not matter whether it is a trial or a race. That particular difference troubled the Tribunal at some stage as well. But it is clear from what Mrs Prentice has submitted, and it is clear from Mr Bucksath's understanding, too, that the distinction is not part of the rule structure and Tribunal must approach what happened from the same point of view, whether it was a trial or a race meeting.

The most important aspect of this is the Tribunal finds that the appellant did not give enough consideration to what may have happened as a consequence of his drinking that afternoon before he went to the track. It is a weighing situation. The Tribunal has to weigh the integrity of the industry, as both Mrs Prentice and Mr Bucksath have outlined, and Mr Reese's own subjective material. His subjective material is important. But the stewards took that into account. They gave him a discount for pleading guilty early. They gave him an extra discount of 12½ percent for his own individual circumstances.

It is a first offence in his history – although it is not his only offence in his history – and that weighs heavily on the Tribunal's mind that he was injudicious in his actions that day, Mr Bucksath's submissions have some force, but in this case the Tribunal cannot accept them as being possible to change the way the penalties were imposed by the stewards because Harness Racing New South Wales has got high standards.

The other incidents Mr Bucksath raised of Mr Damien Oliver and the other fellow's case, as Mrs Prentice says, are from a different code and Mr Oliver's matter was in 2016. Harness racing is a dangerous industry. People have to be careful, not only for their own welfare but for the welfare of the other drivers and, as Mrs Prentice says, the general public as well.

Based on the evidence given to the Tribunal, it is a weighing situation and unfortunately for the appellant, the integrity of the industry's interests outweighs his personal subjective material.

Therefore, I uphold the decision of the stewards that the suspension shall be for 10 weeks. The appellant has served already one month so there remains whatever the balance is.

The appeal deposit shall be forfeited.
