

**CITATION:** *Weeks v Queensland Racing Integrity Commission* [2017] QCAT 345

**PARTIES:** Darren Gordon Weeks  
(Applicant)  
v  
Queensland Racing Integrity Commission  
(Respondent)

**APPLICATION NUMBER:** OCR 213-16

**MATTER TYPE:** Occupational regulation matters

**HEARING DATE:** 4 October 2017

**HEARD AT:** Brisbane

**DECISION OF:** **Member Olding**

**DELIVERED ON:** 11 October 2017

**DELIVERED AT:** Brisbane

**ORDERS MADE:**

1. The decision that the Applicant breached rule 190(1) of the Australian Harness Racing Rules (AHRR) is confirmed.
2. The decision to impose a penalty of disqualification for 15 months is set aside and substituted with a decision that:
  - a) The Applicant is disqualified for a period of 6 (six) months from the date of this order.
  - b) Immediately upon expiration of the period of disqualification and upon reinstatement of the Applicant's licence, the Applicant is suspended for a period of 9 (nine) months, with that period of suspension fully suspended.
  - c) If the Applicant is charged with a prohibited substance-related offence (under AHRR, rule 188A, 189, 190, 190A, 190AA, 190B, 192, 193, 194, 194A, 196, 196A or 196B) ("new charge") during the period of suspension, the

suspension of the penalty will be immediately lifted, so that the licence suspension is reactivated and the 9 (nine) months period of suspension served in full. (Matters that are the subject of any new charge will be treated and dealt with as a separate proceeding.)

- d) During the period of disqualification, the Applicant will be permitted to remain living on his property, break in horses (for the purpose of harness racing) and undertake farrier work. Otherwise the restrictions under AHRR, rule 259 apply.

**3. The Tribunal makes no order as to costs.**

**CATCHWORDS:**

PROFESSIONS AND TRADES – LICENSING OR REGULATION OF OTHER PROFESSIONS, TRADES OR CALLINGS – OTHER PROFESSIONS, TRADES AND CALLINGS – where harness racing trainer failed to present horse for racing free of the permitted concentration of the prohibited substance cobalt – where parties agreed on proposed penalty – where Tribunal agreed to a period of disqualification and a fully suspended period of suspension – where trainer exempted from certain prohibitions applying to disqualification – where suspension of period of suspension subject to trainer not being charged with prohibited substance offences during the period of suspension

*Australian Harness Racing Rules*, r 190, r 191, r 256(2)(b), r 256(5), r 259

*Racing Act 2002 (Qld)*, s 4

*Racing Integrity Act 2016 (Qld)*, s 10(1)(j)

*Standard – Powers under the Rules of Racing (Qld)* dated 1 July 2017, s 6.3

*David Crawford v Stewards of Greyhound Racing Victoria*, Racing Appeals and Disciplinary Board (13 July 2016)

*Hooper v Queensland Racing Integrity Commission* [2017] 236

*Medical Board of Australia v Martin* [2013] QCAT 376

*Queensland Racing Integrity Commission v Gilroy* [2016] QCATA 146

**APPEARANCES:**

**APPLICANT:**

Darren Gordon Weeks

**RESPONDENT:**

Queensland Racing Integrity Commission

**REPRESENTATIVES:**

**APPLICANT:**

represented by Mr M O'Connor of O'Connor, Ruddy & Garrett

**RESPONDENT:**

represented by Mr A Forbes of Lander & Rogers

**REASONS FOR DECISION**

- [1] The Applicant, Mr Weeks, is a harness racing trainer.
- [2] A Stewards Inquiry found that Mr Weeks breached r 190(1) of the *Australian Harness Racing Rules* (AHRR) by presenting a horse for racing with a prohibited concentration of cobalt and imposed a penalty of disqualification for 15 months.
- [3] The Respondent Commission confirmed the decisions on internal review and Mr Weeks applied to the Tribunal for review of the internal review decisions. The Tribunal's role is to conduct a fresh hearing of the matter to produce the correct and preferable decisions.<sup>1</sup>
- [4] However, with one exception relating to the detail of the penalty to be imposed, the parties have come to an agreement for the finalisation of the review and ask the Tribunal to make orders in accordance with their agreement.

**The proposed orders**

- [5] The proposal is that the finding of the breach be confirmed but the penalty of fifteen months disqualification be replaced with 6 months disqualification followed by 9 months of suspension. The period of suspension itself would be suspended subject to Mr Weeks not being charged with any of the prohibited substance offences listed in the proposed order during the period of suspension.<sup>2</sup>

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<sup>1</sup> *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 20.

<sup>2</sup> A penalty of suspension may be conditional or unconditional: AHRR, r 256(2)(b).

- [6] The consequences of replacing 9 months of the 15 months disqualification period with suspension are twofold: suspension is not attended by the same onerous conditions as disqualification<sup>3</sup> and, unlike disqualification, a penalty of suspension may itself be suspended.<sup>4</sup> Additionally, the parties propose some conditions that would partially exempt Mr Weeks from the consequences of disqualification, which would otherwise apply under r 259, and thus allow him to continue to carry on his occupation to a limited extent during the disqualification.<sup>5</sup>

### The alleged offence

- [7] Mr Weeks presented the horse Sheza Shadow for racing on 24 July 2015. Post-race urine testing of two samples revealed cobalt at mass concentrations of 366 and 400 micrograms per litre, contrary to the then applicable limit of 200 micrograms per litre<sup>6</sup> under r 190(1).
- [8] Being a strict liability offence, based on the evidentiary certificates<sup>7</sup> produced, I would confirm the decision that Mr Weeks breached r 190(1).

### Consideration of penalty

- [9] It has been held that the Tribunal ought not depart from a proposed sanction agreed between parties unless it falls outside the permissible range of possible sanctions for the conduct.<sup>8</sup>
- [10] Guidance on setting penalties in a racing industry context is provided by the reasoning of Thomas J, in the capacity of President of the Tribunal, sitting as the Appeal Tribunal, in *Queensland Racing Integrity Commission v Gilroy*<sup>9</sup>, a case involving a greyhound trainer convicted of presenting a greyhound with prohibited levels of cobalt. His Honour noted that “[a] key consideration is to maintain the integrity of the industry as a whole and to demonstrate to participants in the industry and the public, that behaviour which breaches the rules will not be tolerated.”<sup>10</sup>
- [11] This is consistent with the objects of the *Racing Act 2002* (Qld), which include to maintain public confidence in racing, ensure the integrity of all

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<sup>3</sup> AHRR, r 259.

<sup>4</sup> AHRR, r 256(5).

<sup>5</sup> Under r 259(6), the “Controlling Body may make determinations waiving, varying or qualifying the prohibitions set out in” r 259. However, subsection 6.3 of the *Standard – Powers under the Rules of Racing* made with effect from 1 July 2017 provides that, in applying Rules of Racing for a code of racing, if a rule provides for an entity to perform a function that is a function of the Commission, the Commission and not the entity may perform the function. Under s 10(1)(j) of the *Racing Integrity Act 2016*, the functions of the Commission include making decisions about disciplinary matters.

<sup>6</sup> Now reduced to 100 micrograms per litre.

<sup>7</sup> AHRR, r 191.

<sup>8</sup> *Medical Board of Australia v Martin* [2013] QCAT 376, cited with approval in *Queensland Racing Integrity Commission v Gilroy* [2016] QCATA 146, [12].

<sup>9</sup> [2016] QCATA 146.

<sup>10</sup> *Ibid*, [24].

persons involved with racing, and safeguard the welfare of animals involved in racing.<sup>11</sup>

- [12] Specifically in relation to cobalt, the Appeal Tribunal in *Gilroy* also endorsed<sup>12</sup> comments in *David Crawford v Stewards of Greyhound Racing Victoria*, including in relation to general deterrence that:

a message needs to be sent to the trainers that the cobalt threshold must not be breached as it is not satisfactory that performance enhancing substances are used especially those which may impact on the welfare of greyhounds.<sup>13</sup>

- [13] The Appeal Tribunal in *Gilroy* went on to note that it is appropriate to take into account all of the circumstances, which may include the factors listed below against which I have included observations relevant to this matter:

- a) *The concentration of the prohibited substance* – At 366 and 400 micrograms per litre in the two samples tested, the concentration in this case is relatively high.
- b) *The number of animals involved* – This case involved a single horse.
- c) *The number of races involved* – This case involved a single race.
- d) *Any prior disciplinary history* – Although Mr Weeks has some other disciplinary history, the offences are at the lower end of seriousness. Importantly, he has no prior disciplinary history in respect of prohibited substances.
- e) *Co-operation with the authorities* – Although Mr Weeks exercised his right to seek internal and external review of the decisions, there is no suggestion of any lack of co-operation. Additionally, Mr Weeks' consent to resolving this matter without a full hearing is a relevant factor to take into account.
- f) *Insight demonstrated by the trainer* – On the available material, I make no observation, favourable or adverse, in relation to this factor.<sup>14</sup>

- [14] With the exception of the high cobalt levels, these factors generally point to a lower rather than higher penalty. Although it is an inevitable consequence of a period of disqualification, I take into account the financial impact upon Mr Weeks, noting that the impact would be mitigated to a degree by the proposed exemptions from the prohibitions that would otherwise apply under r 259 to a disqualified trainer.

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<sup>11</sup> *Racing Act 2002* (Qld), s 4.

<sup>12</sup> *Ibid*, [25].

<sup>13</sup> Racing Appeals and Disciplinary Board (13 July 2016). These observations have been applied in the context of prohibited cobalt levels in harness racing: *Hooper v Queensland Racing Integrity Commission* [2017] 236, [97].

<sup>14</sup> [2016] QCATA 146, [26].

- [15] The Appeal Tribunal in *Gilroy* also noted that it is appropriate to take into account sanctions that have been imposed in respect of similar offences.<sup>15</sup> After surveying the sanctions imposed in a number of previous prohibited substance cases, the Appeals Tribunal imposed upon the trainer a penalty of disqualification for a period of 15 months, with the period of disqualification suspended after 7 months,<sup>16</sup> subject to similar conditions to those proposed for the suspension of the 9-month period of suspension for Mr Weeks.
- [16] The circumstances in *Gilroy*, which involved a single offence and an agreed penalty proposal, are similar to this case. Although the penalty did not include the exemptions from the conditions of disqualification proposed in this case, it is notable that, unlike Mr Weeks, Mr Gilroy had a prior prohibited substance offence in his disciplinary history.
- [17] Having regard to this decision and the cases referred to in the Appeal Tribunal's reasons, I am satisfied that the proposed penalty is within the range of permissible sanctions for Mr Weeks' conduct.
- [18] As noted, the parties propose that the suspension of the period of suspension would be subject to Mr Weeks not being charged with any of the prohibited substance offences listed in the proposed order during the period of suspension. Mr Weeks takes issue with the inclusion of logbook offences under r 190B, his concern being that lifting the suspension would be a harsh consequence of an inadvertent breach of logbook requirements.
- [19] While sympathetic to Mr Weeks' point, as Mr Forbes for the Commission noted, logbooks are a key part of the prohibited substance regime. Avoiding a breach of the condition merely requires Mr Weeks to do what he is otherwise required by law to do. On balance, I accept the Commission's submission that this condition should be included.
- [20] I will make orders along the lines agreed by the parties, but including the logbook offence condition.

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<sup>15</sup> Ibid, [27].

<sup>16</sup> Unlike the position under the AHRR, s 256(5), the rules applied in *Gilroy* allowed for a penalty of disqualification to be suspended.