

**CITATION:** *Morrisey v Queensland Racing Integrity Commission* [2018] QCAT 161

**PARTIES:** John Power Morrisey  
(Applicant)  
v  
Queensland Racing Integrity Commission  
(Respondent)

**APPLICATION NUMBER:** OCR085-17

**MATTER TYPE:** Occupational regulation matters

**HEARING DATE:** 3 October 2017

**HEARD AT:** Brisbane

**DECISION OF:** **Member Holzberger**

**DELIVERED ON:** 5 June 2018

**DELIVERED AT:** Brisbane

**ORDERS MADE:**

1. **The decision, in respect of penalty imposed, be set aside and substituted with the decision that:**
  - (a) **John Power Morrisey is suspended for a period of nine (9) months from the date of this order;**
  - (b) **The period of suspension is suspended after five (5) months for a period of twelve (12) months;**
  - (c) **If John Power Morrisey is charged with a prohibited substance related offence during the period of suspension, the suspension of the penalty will be immediately lifted so that the licence suspension is reactivated and the nine (9) months period of suspension will be served in full.**

**CATCHWORDS:** PROFESSIONS AND TRADES – LICENSING OR REGULATION OF OTHER PROFESSIONS, TRADES OR CALLINGS – OTHER PROFESSIONS, TRADES AND CALLINGS – where administration of prohibited substance – where consideration of factors

related to penalty – whether appropriate penalty includes disqualification or suspension

*Racing Integrity Act 2016 (Qld), s 3*

*Queensland Racing Integrity Commission v Gilroy* [2016] QCATA 146  
*Weeks v Queensland Racing Integrity Commission* [2017] QCAT 345

**APPEARANCES:**

**APPLICANT:** Mr T Ryan of Counsel, instructed by Butler McDermott Lawyers

**RESPONDENT:** Mr J Farren of Counsel, instructed by Queensland Racing Integrity Commission

**REASONS FOR DECISION**

- [1] John Power Morrissey has applied to the Tribunal for review of a decision by the Queensland Racing Integrity Commission (QRIC) to disqualify him for a period of nine months.
- [2] The following facts are agreed by the parties and I make findings accordingly:<sup>1</sup>
- a) On 3 April 2017 at a Stewards' inquiry, the applicant pleaded guilty to a charge under AR175(h)(ii) of the Australian Rules of Racing that alleged he administered or caused to be administered to a horse a prohibited substance which was detected in a sample taken from such horse prior to or following the running of a race.
  - b) The particulars of the charge were that the applicant administered a substance known as "bleed-X"(sic) for a significant period prior to the horse "Gorada" competing at the Gold Coast on 31 December 2016, that the substance contained the prohibited substance "Cobalt" and that a post-race sample was taken from Gorada after it won on the day.
  - c) According to the certificate of analysis relating to the urine sample taken from Gorada, the mass concentration of cobalt in the sample was greater than 200 micrograms per litre.
  - d) The prohibited substance threshold for cobalt under the Australian Rules of Racing was 100 micrograms per litre.
  - e) The Stewards imposed a nine-month disqualification on the applicant.

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<sup>1</sup> Applicant's outline of submissions, paras [1]-[9].

- f) The applicant unsuccessfully sought a review of the Stewards' decision by the respondent.
- g) The penalty of nine-months' disqualification was affirmed by the respondent on 5 May 2017.
- h) The applicant applies for a review of the internal decision of 5 May 2017.
- i) This application for review relates only to the penalty imposed.
- [3] Mr Morrissey told the Stewards' inquiry that he personally fed the horse Gorada a one-half to three-quarter scoop of the product called Bleedex each evening for a period of four months before the horse was tested.<sup>2</sup> This does not appear to be controversial.
- [4] Mr Morrissey said that the product was given to Gorada and another horse because they were '*mad crazy sweating horses*' and he wanted to see if the product would help.<sup>3</sup>
- [5] Mr Morrissey sourced the product from an Irish company, Peak Performance, although he does not say how he did this, what investigations he undertook or what representations were made to him in the course of selecting the product.
- [6] It is common ground that labelling on the container of the product claimed the product to be free of prohibited substances and included a list of active ingredients which included a reference to cobalt sulphate.
- [7] It is not completely clear from his evidence whether Mr Morrissey did not read the list of ingredients or the reference to cobalt sulphate was not picked up by him, but he certainly read and accepted the more prominent reference to the product being free of prohibited substances.
- [8] Having regard to Mr Morrissey's good record over a long period, his '*forthright evidence*' and guilty plea<sup>4</sup> the Stewards disqualified Mr Morrissey for a period of nine months, less than '*the previous precedent of a penalty of 12 months disqualification*'.<sup>5</sup>
- [9] In confirming the original decision on penalty, the internal review decision-maker had regard to '*the applicant's guilty plea, his forthright evidence and complete acceptance of his actions*'<sup>6</sup> and '*his relative (sic) unblemished training record over a 50 year period*'.<sup>7</sup>

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<sup>2</sup> Transcript of proceedings, 7.

<sup>3</sup> Transcript of proceedings, 8.

<sup>4</sup> Transcript of proceedings, 12.

<sup>5</sup> Transcript of proceedings, 13.

<sup>6</sup> Internal review decision, 3.

<sup>7</sup> Internal review decision, 3.

- [10] QRIC's Counsel, Mr Farren, submits that '*the candour of the applicant has been overstated*'<sup>8</sup>.
- [11] This submission appears to be based on the belief that the applicant claimed during the Stewards' Inquiry to have been informed by an unidentified veterinarian that the supplement contained natural materials, a submission also made on Mr Morrissey's behalf.
- [12] The transcript, however, indicates that the recommendation made by the unnamed veterinarian, '*a couple of years ago*'<sup>9</sup> was for the company Peak Performance, rather than this particular product.<sup>10</sup> Clarification was not requested and the point was not pursued during cross-examination of Mr Morrissey.
- [13] I do not find that those comments were an attempt of Mr Morrissey's to qualify his acceptance of responsibility for his actions. It does not, in my view, impact adversely on his credit. Mr Morrissey has been, and was at the hearing, a candid and truthful witness.
- [14] In oral submissions it was also suggested that the obstacles facing Mr Morrissey on return from the period of disqualification had been overstated. During cross-examination Mr Morrissey was asked a number of questions about the transfer of horses he had trained. His response was that some of the horses had been transferred to his son, Scott Morrissey, and others had gone to other trainers. He had, he said, promoted the transfer to Scott with some of the owners hoping that his son would stay in the industry. That in itself does not support a finding that Scott Morrissey is caretaking those horses until Mr Morrissey's return. His responses do not impact adversely on his credibility.
- [15] Mr Ryan submitted that Mr Morrissey's actions were '*not deliberate*' but rather a '*mistake*'.<sup>11</sup> The Stewards appeared to have agreed.
- [16] The internal review decision accepts that he '*erred in failing to identify the active ingredients*'.<sup>12</sup>
- [17] QRIC is not bound to adopt the findings of the Stewards or the internal review decision-maker and has, in fact, taken a sterner view of Mr Morrissey's behaviour. In written submissions Mr Farren says the characterisation of Mr Morrissey's conduct as a mistake '*lacks credit and plausibility*'.<sup>13</sup>
- [18] Mr Farren continues '*at the least it is submitted that it is open to the Tribunal to be reasonably satisfied that the applicant administered Bleed-X(sic) to*

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<sup>8</sup> Respondent's outline of submissions, [13].

<sup>9</sup> Transcript of proceedings, 9.

<sup>10</sup> Transcript of proceedings, 8.

<sup>11</sup> Applicant's outline of submissions, [15(ii)].

<sup>12</sup> Internal review decision, 4.

<sup>13</sup> Respondent's outline of submissions, [10].

*Gorada with reckless disregard for whether it contained a prohibited substance*.<sup>14</sup> And later *'at best he acted with reckless disregard... the information was literally in his hands and he chose not to look'*.<sup>15</sup>

- [19] If this later comment is intended to imply something beyond reckless disregard, there is nothing in evidence that supports the suggestion that Mr Morrissey had acted deliberately and that was not put to him in cross-examination.
- [20] Nothing occurred during cross-examination which adversely affected Mr Morrissey's credibility as a witness or the plausibility of his version of events which led to the charge.
- [21] Clearly, Mr Morrissey was negligent in the limited extent of his inquiry into the contents of the product. He acknowledges that and accepts the serious consequences which flow from it. Having regard to his exemplary record over a long period of time, I am unable to see that his admitted negligence could be seen as an utter disregard for the consequences of his actions or a deliberate act.
- [22] The objects of the *Racing Integrity Act 2016* (Qld) (the Act) include the maintenance of public confidence in racing, ensuring the integrity of all persons involved with racing, and safe guarding the welfare of animals involved in racing.<sup>16</sup>
- [23] In *Queensland Racing Integrity Commission v Gilroy*,<sup>17</sup> Thomas J commented:<sup>18</sup>
- A key consideration in determining penalty 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.
- [24] It is conceded by Mr Morrissey that ensuring that horses compete free of prohibited substances is essential to maintaining the integrity of the industry.
- [25] Both parties submit that a period of disqualification is *'often'* the appropriate penalty for a breach of AR175(h)(ii).
- [26] They disagree as to whether it is appropriate here. QRIC says that the nine-month disqualification should be confirmed. Mr Morrissey says that the appropriate penalty in all the circumstances is a suspension of his licence for nine months, suspended after four and a half months for a period of 12 months.

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<sup>14</sup> Respondent's outline of submissions, [11].

<sup>15</sup> Respondent's outline of submissions, [12(c)].

<sup>16</sup> *Racing Integrity Act 2016* (Qld), s 3.

<sup>17</sup> [2016] QCATA 146.

<sup>18</sup> *Queensland Racing Integrity Commission v Gilroy* [2016] QCATA 146, 6 [24].

- [27] Mr Morrisey refers me to a decision of the Victorian Racing Appeals and Disciplinary Board in the matter of *RVL Stewards v Peter Moody*.<sup>19</sup>
- [28] In that matter, Mr Moody was convicted of a charge under AR175(h)(ii) and an alternate charge under AR178 and suspended for a period of 12 months, of which six months was suspended.
- [29] Mr Ryan submits that there are two factors in Mr Moody's case that indicate that Mr Morrisey should receive a lesser penalty, namely:
- a) Mr Moody, unlike Mr Morrisey, did not enter an early guilty plea; and
  - b) The horse which was the subject of the sample placed in a group ran one race.
- [30] Mr Farren says Mr Moody's case is distinguishable because while Mr Morrisey has acted with reckless disregard, Mr Moody was found to have been merely careless.
- [31] I disagree with that submission. Mr Moody's carelessness was identified by the board as '*high level*'.<sup>20</sup> He was, even at the hearing, unable to identify '*who had been feeding what horses what substance and when*'<sup>21</sup> and that was only one of '*many shortcomings at Mr Moody's stables*'.<sup>22</sup>
- [32] In my view, Mr Moody's lack of care is far closer to reckless disregard than Mr Morrisey's.
- [33] Mr Farren refers the Tribunal to the Tasmanian Racing Appeal Board in the matter of *Mark Ganderton*.<sup>23</sup>
- [34] As in Mr Morrisey's case, Mr Ganderton had co-operated with the Stewards and entered an early plea. He also had a good record. He administered cobalt to one of the horses he trained through supplements. It was accepted that the packaging of the product did not disclose cobalt as an active ingredient and that he had received advice, albeit inappropriate advice, from an experience veterinarian that it was safe to use the product. It was also accepted that the impact of any disqualification was devastating including a requirement that he find employment away from his children.
- [35] Nonetheless, the Tasmanian Appeal Board was not persuaded to impose a suspension. It imposed a 12-month disqualification suspended after six months for two years.

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<sup>19</sup> (Unreported, Racing Appeals and Disciplinary Board, Bowman J, Mr C. Fox, Mr J. Rosenthal, 16 March 2016).

<sup>20</sup> *RVL Stewards v Peter Moody* (Unreported, Racing Appeals and Disciplinary Board, Bowman J, Mr C. Fox, Mr J. Rosenthal, 16 March 2016), 12.

<sup>21</sup> *Ibid*, 11.

<sup>22</sup> *Ibid*, 10.

<sup>23</sup> Appeal No 13 of 2015/16.

- [36] Accepting the findings of the Appeal Board, Mr Ganderton's behaviour is less culpable than Mr Morrisey's and the consequences of disqualification are significantly greater.
- [37] On the basis of the Ganderton decision it is difficult to imagine a set of circumstances where the Appeal Board would find a suspension appropriate.
- [38] In *Gilroy*, the Appeal Tribunal noted that in assessing penalty, all the particular circumstances of the case should be considered:<sup>24</sup>

These may include matters such as:

- a) the concentration of the prohibited substance;
  - b) the number of animals involved;
  - c) the number of races involved;
  - d) any prior disciplinary history;
  - e) co-operation with the authorities; and
  - f) insight demonstrated by the trainer.
- [39] In this matter, the concentration of the prohibited substance is not particularised beyond being above the permitted threshold. The concentration was not raised as a particular concern in the proceedings, or in the Stewards' decision and internal review decision.
- [40] Bleedex was administered to two horses trained by Mr Morrisey. Only one of those horses was involved and only in one race.
- [41] QRIC concedes that Mr Morrisey has '*an exemplary record*' over a long period.<sup>25</sup>
- [42] Mr Morrisey has, throughout the process, co-operated fully and candidly and entered a plea of guilty at the earliest available opportunity.
- [43] Mr Morrisey immediately ceased using Bleedex and has taken active steps to ensure that he does not repeat his error.
- [44] In those circumstances, I consider Mr Morrisey's offence to be at the less serious end of the scale.
- [45] Mr Morrisey's primary concern with the penalty is that it imposes a period of disqualification rather than a period of suspension.

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<sup>24</sup> *Queensland Racing Integrity Commission v Gilroy* [2016] QCATA 146, 6-7 [26].

<sup>25</sup> Respondent's outline of submissions, [12(j)].

- [46] Under the Australian Rules of Racing, there are two significant differences between disqualification and suspension.
- [47] Firstly, if disqualified Mr Morrisey could not, amongst other things, without the consent of the principal racing authority enter any racecourse or training track,<sup>26</sup> or training complex,<sup>27</sup> provide any service to a thoroughbred racing stable,<sup>28</sup> or attend racehorse sales or related events.<sup>29</sup>
- [48] Secondly, unlike a suspension, the operation of any disqualification cannot be suspended either wholly or in part.<sup>30</sup>
- [49] No such restriction exists under the Australian Harness Racing Rules or Greyhound Australasia Rules 2013.
- [50] In *Gilroy*, a case involving greyhounds, the Appeal Tribunal accepted the joint submission of the parties and imposed a 15-month disqualification suspended after seven months.
- [51] Mr Gilroy had a recent previous offence for a prohibited substance, did not cooperate with the authorities and contested the matter before the Board.
- [52] In *Weeks v Queensland Racing Integrity Commission*,<sup>31</sup> the Tribunal again accepted a joint submission from the parties to set aside a decision to impose a 15-month disqualification and to substitute a decision to impose a six month disqualification, and upon reinstatement of the licence at the expiry of the disqualification a wholly suspended nine months suspension.
- [53] QRIC submits that Mr Morrisey has failed to show the financial implications of disqualification are worse than the financial implications of suspension.<sup>32</sup> I do not understand Mr Morrisey to suggest they are.
- [54] Mr Morrisey's evidence is that before his disqualification he trained 25 horses. At the date of the hearing he trains two. It is not in dispute that he has been a trainer his whole working life, and at 68 years of age he will suffer some financial hardship. By submitting that a suspension is appropriate he accepts that as a consequence of his actions.
- [55] It is submitted on Mr Morrisey's behalf that the disqualification, as opposed to a suspension, will be crushing because it would '*have the effect of divorcing him entirely from all aspects of the industry*'.<sup>33</sup> Having regard to the restrictions imposed by AR182 I accept that it is the inevitable consequence of a lengthy disqualification.

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<sup>26</sup> AR182(a).

<sup>27</sup> AR182(b).

<sup>28</sup> AR182(d).

<sup>29</sup> AR182(m).

<sup>30</sup> AR196(4).

<sup>31</sup> [2017] QCAT 345.

<sup>32</sup> Respondent's outline of submissions, [12(k)].

<sup>33</sup> Applicant's outline of submissions, [15(vii)].

- [56] In oral evidence, Mr Morrissey said that an inability to attend yearling sales during the proposed disqualification would put back his re-entry by 12 months.
- [57] I find it difficult to accept that QRIC would agree in the cases of *Gilroy* and *Weeks* to lesser periods of disqualification after the suspensions are taken into account, than it submits should be imposed on Mr Morrissey.
- [58] To say that disqualification is an appropriate penalty is not to say that there are not circumstances to justify the imposition of a suspension instead as occurred in *Moody*.
- [59] The decision in *Moody* is significant, in my view, because of Mr Moody's high profile and the publicity his case attracted. The proceedings themselves and the outcome were widely reported in mainstream media.
- [60] From the public's perspective at least, *Moody* establishes a benchmark penalty.
- [61] A suspension is, on any view, a severe penalty. It will deprive Mr Morrissey of his livelihood for the period of the suspension. By interrupting an ongoing enterprise it is likely to have an ongoing effect on future income after it is served, at least in the short to medium term.
- [62] I do not accept that the imposition of a suspension consistent with the penalty in *Moody* will demonstrate a tolerance of breaches of the rules or will adversely affect public confidence in the industry.
- [63] For reasons stated earlier, I accept that a lesser penalty than that imposed on Mr Moody is appropriate in all the circumstances.
- [64] The Tribunal's orders are as follows:
1. The decision, in respect of penalty imposed, be set aside and substituted with the decision that:
    - a) John Power Morrissey is suspended for a period of nine (9) months from the date of this order;
    - b) The period of suspension is suspended after five (5) months for a period of twelve (12) months;
    - c) If John Power Morrissey is charged with a prohibited substance related offence during the period of suspension, the suspension of the penalty will be immediately lifted so that the licence suspension is reactivated and the nine (9) months period of suspension will be served in full.