

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Currie v Queensland Racing Integrity Commission*
[2019] QCAT 107

PARTIES: **BENJAMIN MARK CURRIE**
(applicant)
v
**QUEENSLAND RACING INTEGRITY
COMMISSION**
(respondent)

APPLICATION NO/S: OCR033-17

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 29 May 2018

AMENDED ON: 18 April 2019

HEARING DATE: 22 March 2018; 23 March 2018

HEARD AT: Brisbane

DECISION OF: Member Hanger AM QC

ORDERS: **1. The appeal against the decision of the Queensland Racing Integrity Commission is dismissed.**
2. The appeal against the penalty imposed by the Queensland Racing Integrity Commission is allowed and ~~the respondent~~ Benjamin Mark Currie is to pay a fine of \$5,000.

CATCHWORDS: GAMING AND LIQUOR – RACING – RACING COMMISSIONS, BOARDS AND TRIBUNALS – OTHER MATTERS – where review against decision of the Queensland Racing Integrity Commission that respondent breached Australian Rule of Racing 178 – where post race urine sample taken from the horse was found upon analysis to contain methamphetamine – whether the methamphetamine got into the horse’s urine sample by going through the gastrointestinal tract of the horse or whether it got into the urine sample by virtue of some environmental contamination at the time that the sample was taken

Edmondson v Queensland All Codes Racing Industry Board [2016] QCAT 70
Hudson v Queensland Racing [2008] QRAT 8
Wallace v Queensland Racing (2007) QDC 168
Webb v Racing Queensland (2011) QCAT 44

APPEARANCES &
REPRESENTATION:

Applicant: J Murdoch QC, instructed by O'Connor Ruddy & Garrett

Respondent: J Ford, instructed by the Queensland Racing Integrity Commission

REASONS FOR DECISION

- [1] This is an appeal against a decision of the Queensland Racing Integrity Commission.
- [2] QCAT is given jurisdiction to externally review decisions by the respondent by section 246 of the *Racing Integrity Act 2016 (Qld)*. In carrying out its function the Tribunal must hear and decide the matter by way of a fresh hearing on the merits of the case and stands in the shoes of the original decision maker.
- [3] The mare *PARTY TILL DAWN* trained by the applicant raced at Toowoomba on 16 July 2016. She won.
- [4] Mr Currie was later charged with breaching Australian Rule of Racing (AR) 178 which reads:
- a. when any horse that has been brought to a race course for the purpose of engaging in a race and a prohibited substance is detected in any sample taken from it prior to or following its running in any race, the trainer and any other person who was in charge of such horse at any relevant time may be penalised.
- [5] The particulars of the charge were:
- that as the trainer, Mr Currie brought that mare to race into Toowoomba on 16 July when a post race urine sample taken from the mare was found upon analysis to contain methamphetamine.
- [6] It is accepted by the applicant that methamphetamine is a prohibited substance for the purposes of AR 178.
- [7] Ms Robyn Burchmann is a Sample collection officer. Her job involves collecting urine samples from horses on race day and she has been trained in that skill. She said that she follows a standard collection procedure that she has been taught. She gave evidence as to the procedure she follows. It should be said that her evidence related to her standard procedure. She had no memory of this particular episode.
- [8] She opens a sealed pack and removes three bottles the one containing a control solution. She uses the control solution to rinse the pan in which the urine sample is to be taken. It looks like a saucepan or large ladle about 16 cm in diameter. Having rinsed the pan and the collection bottles with the control solution which she retains, she takes the horse from the handler and attempts to collect the urine. She holds the lead rope of the horse in one hand and the pan in the other and collects the urine in the pan. When questioned about it she indicated that experience has taught her to recognise the few moments before the horse is about to urinate and that gives her enough warning to get the pan in position. She then splits the urine and puts it into the

two prerinsed containers for analysis by different laboratories. Each bottle is sealed with a tamperproof seal and they are placed into a three pocket pouch. She shows a witness that the pouch has been sealed properly and the relevant signatures are obtained. The trainer's representative who has witnessed the procedure signs a relevant form. The evidence is that the pouch itself is also tamperproof and hence there are at this point two levels of security: the tamperproof pouch and the seal on the bottles.

- [9] The tamperproof pouch is then placed in a security bag secured by a blue zipper tag. That tag is designed to break if manipulated. The evidence which I accept is that the tag on this bag was present before the sample was couriered to Racing Science Centre but missing when the samples arrived. The two inner levels of security were not compromised and the evidence is that sometimes the tag on the outer bag is lost in transit.
- [10] Despite the absence of the outermost blue tag I am satisfied that the integrity of the samples was not compromised in transit.
- [11] Both samples of urine proved positive to the presence of methamphetamine.
- [12] Methamphetamine comes in many forms but the evidence appears to suggest that it is sticky and therefore can be easily transferred from one substance to another. There is no suggestion that it is floating around in the atmosphere but there is evidence that it can be thrown up by an excited horse. Ms Burchmann is experienced in her work and was observed in performing her task by a representative of the trainer. She is independent. The representative of the trainer has an opportunity to protest if he has concerns about the integrity of the process. While she had no memory of the particular event she described her normal procedure and I am satisfied that it was appropriate to avoid contamination of the urine.
- [13] The substantial issue in these proceedings is as to whether the methamphetamine got into the urine sample by going through the gastrointestinal tract of the horse or whether it got into the urine sample by virtue of some environmental contamination at the time that the sample was taken.
- [14] This involves a consideration of a difference of opinion between two expert professors, Prof Chapman and Prof Mills. When ingested, methamphetamine metabolises into, among other things, amphetamine. The scientific laboratories that analysed the samples did not find reportable amphetamine in the urine samples.
- [15] Prof Chapman says that without a positive finding for the metabolites of methamphetamine in a urine sample one can't be sure that the methamphetamine has passed through the horse.
- [16] Prof Mills disagrees. He asserts that methamphetamine can be passed through a horse without the presence of amphetamine being detected in the sample. He also makes the point that there is potential that a metabolite was there but the rules of racing do not require a metabolite to be detected. That may be putting it a little highly. The evidence is that if there was a metabolite present it was not such as to be scientifically regarded as reportable.
- [17] I'm confronted with the evidence of two undoubted experts in their field. I prefer the evidence of Prof Mills given his particular expertise. He is professor of veterinary

pharmacology and has been a veterinary pharmacologist for 30 years. He has written over 150 papers on veterinary pharmacology and particularly pharmacokinetics. His PhD was on the pharmacology of drugs in raising animals. He is currently teaching veterinary pharmacology at the Institute of Queensland and he is also the editor-in-chief of the major international journal of veterinary pharmacology and therapeutics. Prof Chapman is also enormously experienced and well-qualified but in a less specialised field relating to animals.

- [18] It therefore follows that I do not accept that the absence of metabolites means that the horse did not ingest methamphetamine.
- [19] One is left therefore with the issue as to how the prohibited substance entered the urine. Was it through the animal? Or was it through contamination in the swab stall?
- [20] One issue in the proceedings was the state of cleanliness of the swab stall in which the urine sample was taken. Once again it must be remembered that Ms Burchmann is speaking generally and not necessarily about the events on this night.
- [21] She says that the swab stall contains about 10 to 20 cm of wood shavings on the floor and that during the course of a day it gets kicked up and stamped down by the horses. It was suggested that the dust gets on the walls and on the ceiling but the witness denied that and said, 'not after we hose it down, but before we've hosed it down it would though. Through the week, the air conditioning would maybe throw it up.' She said that the state of the stalls are not clean that 'there is cockroaches, there's mice, there's turds everywhere' and 'we hose them down at the start of the day and – because – if they're still a bit dusty after the first race we hose them again and then it is usually right for the night... There is no more dust because the horses wet in and mix it up so it is not dusty anymore'.
- [22] Mr Currie also gave evidence to the effect that in his opinion the swab stall is not a clean area.
- [23] Other horses on the day used the swab stall and there were no other positive drug tests. That is not determinative of the matter but it is of assistance. The person taking the urine sample was experienced and obviously if she had concerns, she would have raised them at the time. Her work was observed by the trainer's representative and no complaint was made. There is simply no evidence that contamination occurred in the swab stall.
- [24] Mr Currie had given a job to his cousin Luke Collins who had handled the horse on the day of the race. Mr Collins had been battling with drugs for some time. He had told Mr Currie that he had given up drugs but that was not the case. Mr Currie very frankly admitted that he knew there was always a chance that his cousin could relapse at any time but he found Mr Collins to be a good employee. He did admit to the previous inquiry that he knew his cousin was still taking drugs on weekends.
- [25] Mr Collins gave evidence that he asked Mr Currie for a job because he wanted to put his life back on track. He agreed that at the time he asked for the job he was still using drugs but says that while he was employed by Mr Currie he was attempting to ween himself off drugs.
- [26] It is probable that he is inadvertently responsible for the presence of the methamphetamine in the horse.

- [27] I am satisfied that, applying the Briginshaw test on the balance of probabilities:
- (a) Party till Dawn was a horse brought to a racecourse which, after racing, tested positive to a prohibited substance, methamphetamine; and
 - (b) the applicant breached AR178.

Penalty

- [28] The imposition of a penalty under AR 178 is discretionary. The penalty must be appropriate having regard to the degree of culpability of the trainer. As I said in the course of the hearing, 'No good deed goes unpunished'. Mr Currie was trying to do the right thing by a relative and to assist in his rehabilitation. As DCJ McGill said in *Wallace v Queensland Racing* (2007) QDC 168:

Cases where the trainer was able to show a specific explanation which did not involve any blameworthiness on his part are really examples of the situation where the trainer has for the purpose of penalty been able to show a mitigating circumstance.

- [29] Mr Currie must take some responsibility for what occurred by virtue of knowing of his cousin's drug habits. He is not entirely free of blame because in the previous enquiry he said '... As I said, I don't think at the time of this he was like an addict as such because he was still functioning and working, but he was definitely using on weekends'.
- [30] I have been referred to a number of cases on the question of penalty. There is a need for consistency and obviously one must be concerned to protect the public and ensure confidence in the industry.¹
- [31] In *Webb v Racing Queensland* (2011) QCAT 44, a stable hand's use of cocaine was entirely unknown to the trainer and a breach but no penalty was recorded.
- [32] In April 2017, Stephen Lee was fined \$6,000 for a presentation with methamphetamine. It was his first offence in 30 years.
- [33] In October 2015, Greg Weholw presented a horse which tested positive for methamphetamine and amphetamine. It was his second breach. He was disqualified for six months. His previous AR 178 offence was in September 2010 which received a \$4,000 fine.
- [34] Leading trainer Gay Waterhouse was fined \$15,000 after her horse returned a positive swab to cocaine. One of her stable hands admitted to having twice used cocaine but denied using the drug in the hours leading up to the race. On appeal the finding of breach stood but the penalty was reduced to nil.
- [35] Counsel has referred to a decision of the Victorian Racing Appeals and Disciplinary Board in 2011 when a trainer was convicted of presenting a horse to the Pakenham races with the opioid narcotic analgesic oripavine in its system. He pleaded guilty but the Tribunal imposed no penalty as contaminated feed was to blame.

¹ *Edmondson v Queensland All Codes Racing Industry Board* [2016] QCAT 70, [22].

- [36] In *Hudson v Queensland Racing* [2008] QRAT 8 a fine of \$2,000 was imposed on a trainer who presented a horse with the drug Isocuprine in its system. The drug had been clandestinely administered to the horse by a family member in order to embarrass the owner.
- [37] I have been referred to a New South Wales decision involving the trainer Chris Waller. Four horses were found to have been presented to a race with the prohibited substance ibuprofen in their systems. No penalty other than disqualification from the events was imposed on the trainer when it was established that the fault lay with the manufacturer of the premix feed that had been contaminated prior to supply to the stable.
- [38] These last three cases are distinguishable from the present in so far as they involve no fault on the owner.
- [39] Doing the best I can with the cases to which I have been referred I impose a fine of \$5,000.