

Appeal decision

Date: 2 December 2013

Code of racing: Thoroughbred

Appeal panel: Judge W Carter (chair), Mr B Miller and Mr P James.

Appearances: Ms S Ryan, solicitor, appeared on behalf of trackwork rider Glen Courtney.

Mr D Aurisch, stipendiary steward, appeared on behalf of the stewards.

Decision being appealed: Six months disqualification – AR81A.

Appeal result: Appeal dismissed.

Extract of proceedings – in the matter of a swab sample taken from trackwork rider Glen Courtney on 28 October 2013.

THE CHAIRMAN: This is an appeal by Mr Courtney, who is licensed by the control body in this State as a trackwork rider and also as a rider's agent. The appropriate licence in respect of the latter is effectively controlled by Local Rule 47.

The appellant on 28 October 2013 provided a sample at Eagle Farm race course on that morning which was later analysed and found to be positive to the illicit substances cocaine and methamphetamine.

As a consequence of that the stewards opened an inquiry and as a result of that inquiry charged the appellant with the offence under Australian Rule 81A. After evidence was taken and the matter was considered by the stewards, the stewards imposed a disqualification of six months. The complicating factor in the case arises by reason of the dual licence which the appellant held. Because of the order of disqualification which was imposed, Australian Rule 182 provided certain consequences, some of which are quite well known, others less well known.

In this case, it is considered by the control body and the stewards that if a person is disqualified in relation to his or her trackwork licence, in the special circumstances of this case, because the appellant was also the holder of a rider's agent's licence, and because his remuneration is fixed in accordance with the rules, the quantum of which is ultimately

determined by the amount of money won by the horse and earned by the jockey and then by the rider's agent, the view is taken, and has been taken in this case, that the order of disqualification has the effect upon the other licence to the extent that the appellant is also prevented from acting as a rider's agent for the relevant period. No argument has been addressed to us as to whether or not the terms of Australian Rule 182(1)(h) have been properly dealt with or not.

Accordingly, we are in the position of having to determine whether or not in the particular circumstances of this case the order of disqualification imposed by the stewards for six months was manifestly excessive for the reason that the consequences of that order have impacted on the appellant's other licence.

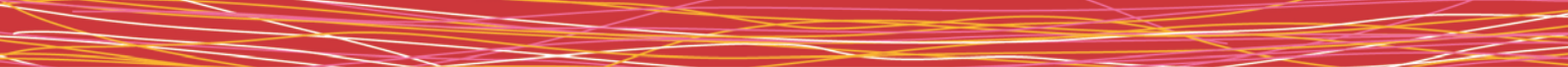
For the appellant it is submitted that the order of disqualification was excessive for the reason that it did have a significant impact on his licence as a rider's agent. Ms Ryan's submission is that a suspension, even for a longer period, would have been a more appropriate penalty and one which, in the circumstances, would from the point of view of the appellant's position, be less excessive or less severe.

The stewards submit that the penalty should not be altered because it is in all of the circumstances consistent generally with penalties imposed by the stewards on trackwork riders, particularly those who may have been found to have ingested significant drugs, such as cocaine and methamphetamine, and there are other cases where such an order has been made.

Australian Rule 182 provides that there is a discretionary power in the control body to relieve against the consequences which operate in this case in respect of the rider's agent's licence. That has been considered by the control body, which has decided not to exercise its discretion with the consequence that the significant impact on his rider's agent's licence is maintained.

In all of those circumstances, a significant question arises as to whether or not given the dual licences held by the appellant the consequences for him of the order of disqualification, was excessive. It is, in our view, a serious matter and the whole issue of drug consumption, not only in respect of horses but also in respect of humans who are licensed persons, is a matter of major concern. In this particular case, it is submitted that the appellant's licence would qualify him to act as a licensed agent in respect of young persons, both male and female, either as licensed jockeys or as apprentice jockeys.

We have given serious consideration to all of the relevant matters in this particular case and we are of the view that the appeal should be dismissed. The consequence of that will be that the rider's licence is also impacted because of Australian Rule 182(1)(h). I wish to make it perfectly clear that it is not part of our jurisdiction to finally determine the question whether Rule 182(1)(h) applies in this case. It seems to us that it does. That of course may or may



not be questioned in other proceedings. But, for our purposes, and dealing with the matters within our jurisdiction, we are of the view that the penalty imposed was not, in all of the circumstances, excessive and accordingly the appeal will be dismissed.

Further right of appeal information: The appellant and the stewards may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **14 days of the date of this decision**. Information in relation to appeals to QCAT may be obtained by telephone on (07) 3247 3302 or via the Internet at www.qcat.qld.gov.au