



APPEAL DECISION

TRENT GERMAINE

and

RACING VICTORIA STEWARDS

Date of Hearing: 17 May 2017

Heard By: Judge Bowman (Chair)

Appearances: Sam Cochrane appeared on behalf of the stewards.
Peter Jurkovsky appeared on behalf of Mr Germaine.

At a stewards' inquiry on 8 May 2017, apprentice jockey Trent Germaine pleaded guilty to a charge under AR 81A(1)(b) which provides that:

“Any rider commits an offence and may be penalised if he refuses or fails to deliver a sample as directed by the Stewards, or tampers with, adulterates, alters, substitutes or in any way hinders the collection of such sample or attempts to do any of those things”.

The particulars of the charge are that at Warrnambool on 3 May 2017, Mr Germaine failed to deliver or provide a urine sample when directed to do so.

Mr Germaine had his permit to ride in races suspended for a period of 3 months, commencing at midnight on 3 May 2017 and expiring at midnight on 3 August 2017.

A Notice of Appeal against the **severity of the penalty** was lodged on 9 May 2017.

DECISION: Appeal allowed.

Penalty varied to a period of suspension for 2 months, expiring at midnight on 3 July 2017.

**TRANSCRIPT OF
PROCEEDINGS**

RACING APPEALS AND DISCIPLINARY BOARD

HIS HONOUR JUDGE J. BOWMAN, Chairman

EXTRACT OF PROCEEDINGS

DECISION

TRENT GERMAINE

and

RACING VICTORIA STEWARDS

RACING VICTORIA CENTRE, FLEMINGTON

WEDNESDAY, 17 MAY 2017

MR P. JURKOVSKY appeared on behalf of Mr T. Germaine

MR S. COCHRANE appeared on behalf of the RVL Stewards

CHAIRMAN: Mr Trent Germaine, you have appealed against the severity of the penalty of three months' suspension imposed on you by Stewards for a breach of AR 81A(1)(b). It is alleged that you refused or failed to deliver a urine sample as directed by the Stewards on 3 May 2017. You left the second day of the Warrnambool carnival without providing that required sample.

It is not challenged that you had checked in, checked out and undergone a breath test. It is not challenged that you simply forgot about the urine sample, left the course, got back in your car and drove back towards Melbourne. After a stop for a rest and some lunch, you were in the vicinity of the area between Geelong and Werribee at about 4 pm. You received a phone call effectively as to why you had failed to provide a urine sample. I accept again there is no challenge to the proposition that you were willing to drive back to Warrnambool and provide such sample. However, because of the time and health and safety reasons, you were advised not to do this.

You provided a clearance sample which was negative the following day but that is, in my view, of limited utility in the circumstances of the case.

I do accept that you had nothing to fear by providing a sample. There was nothing that would have shown up and again, this is not challenged. It was a simple mistake or incident of forgetfulness. I also accept Mr Jurkovsky's argument that there are levels of culpability under this rule. There is a distinction between a refusal to provide a sample and a failure so to do which is less culpable.

General deterrence is an important factor. Again, the image of racing and safety of riders are amongst the matters that are involved. I also take into account your very good record, nothing to your discredit has been alleged, and your plea of guilty.

Parity of penalties, whilst not wholly determinative, is another important consideration. I accept that you have been unlucky, in the sense that you made an honest mistake or error because of forgetfulness. You had been told by Steward, Mr Hadley, that a urine sample would be required but you completely forgot.

Mr Jurkovsky has asked for a fully suspended sentence on your behalf. This is a serious matter and I am not prepared to impose such a sentence. Jockeys must be aware of the importance of testing procedures. I am prepared to vary the sentence, having regard to penalties imposed over the years. The most recent penalty imposed for a failure to provide a sample was one of two months' suspension from riding trackwork which was imposed on Daniel Maloney. I am not aware of the circumstances in that case.

I am aware of the circumstances surrounding the case of stablehand Kylie McKechnie which was also on earlier this year. They were unusual, involving a failure to provide a satisfactory urine sample which was the charge, which was followed, on the same day, the same occasion, by a refusal to provide another one when the first one was not satisfactory. She was suspended from riding trackwork for a period of three months. She appealed but ultimately

abandoned that appeal, essentially because of the stress that the whole affair caused her. It is stated she was charged with a failure, but there was an ingredient of refusal in the circumstances.

Bearing these matters, including all of the circumstances that I have set out, in mind, I am prepared to vary the penalty imposed to one similar to that in the most recent case of Moroney, that is, your permit to ride in races is suspended for a period of two months.

There is one further matter. I appreciate that you were told quite properly by Mr Hadley that a urine sample would be required. However, in the hustle and bustle of race day, such a thing can be forgotten. I wonder whether, if it does not already exist, some reminder or warning sign could be placed near the exit of the jockeys' room. This may seem an excessive measure, but I can understand how, particularly with apprentices, the necessity of providing a urine sample could be overlooked. But overall, as I say, the penalty is varied and your permit to ride in races is suspended for a period of two months.
