# TASMANIAN RACING APPEAL BOARD

**Appeal No 26 of 2017/18**

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| **Panel:** | **Tom Cox (Chair)**<br>**Kate Cuthbertson**<br>**Wendy Kennedy** | **Appellant:** | **Mark Reggett** |
| **Appearances:** | **Anthony O'Connell on behalf of the Appellant**<br>**Adrian Crowther on behalf of the Stewards** | **Rules:** | **Australian Harness Racing Rule 190 (1) (2) (4)** |
| **Heard at:** | **Hobart** | **Penalty:** | **$3,000 fine** |
| **Date:** | **20 June 2018** | **Result:** | **Varied to 50% of fine suspended on condition.** |

## REASONS FOR DECISION

1. The appellant, Mr Mark Reggett, is the owner and trainer of a horse named 'Dasher Houli' which raced and won in Race 5 at the Launceston Pacing Club race meeting on 11 March 2018. Following the race, a urine sample was taken from the horse which subsequently, on analysis, revealed the presence of arsenic above the permitted threshold of 0.30 ug/ml, to wit 0.33 ug/ml.

2. As a result, the stewards convened an inquiry on 24 May 2018. In thecourse of the inquiry the appellant acknowledged that the horse had presented with a prohibited substance, contrary to Australian Harness Rules of Racing, rule 190(1), which provides that

> "A horse shall be presented for a race free of prohibited substances."

3. The stewards proceeded to fine the appellant the sum of $3,000. The appellant now appeals to this Board on the basis that the fine imposed by the stewards was manifestly excessive in all the circumstances.

4. In arriving at penalty, the stewards stated as follows:

*Come in Mr Reggett, have a seat. The stewards have had the time to determine the matter of penalty and on deciding on determining penalty considered the following matters:*

*Considered your guilty plea. We've considered your cooperation with the inquiry, both leading up to and including today's proceedings. We've then considered you licence history and this is the first offence of prohibited substances. We've also considered your length of time as the holder of a Trainers licence, being two years. We considered penalty precedent in this and other racing jurisdictions. We also considered an Industry Notice was published in September 2017 making trainers aware of the risk of exposure to CCA timber and also warning trainers of the ingesting of CCA timber would not necessary be considered a mitigating penalty factor. We've also considered the need for penalties to act as a specific and general deterrent to both yourself and other industry participants. We've also have had to consider the negative impact the prohibited substances offences would have upon the image and integrity of harness racing. We believe the appropriate penalty in this instance is a fine. We've determined to impose a fine of $4,000 of which we've applied a discount of 25% for your guilty plea, meaning that the fine imposed is one of $3,000 in this instance.*

5. It should be noted at the outset that it is not a requirement, nor is it an element of the offence, that the stewards prove that the appellant administered the prohibited substance to the horse or, indeed, that the stewards establish how and by what means the horse came to be presented with a prohibited substance. Obviously, there may be matters and facts which suggest how the horse came to present with a prohibited substance and those matters and facts may inform the stewards and this Board's determination as to the appropriate penalty. In this case, the stewards accepted the possibility that the horse had ingested treated timber, which contained inorganic arsenic, but they did not proceed to determine penalty on the basis that the horse had, in fact, ingested treated timber and that was the cause of the elevated reading. Essentially, the appellant contends that the stewards ought to have found the horse's ingestion of treated timber as the probable cause of the elevated reading and, coupled with the further matters below, imposed a lesser fine.

6. Those further matters include:

   (a) The appellant's acknowledgment that he was in breach of the rule;

   (b) That there was no evidence to suggest that the appellant had administered any substance which may have produced the elevated reading;

   (c) That the appellant was the first offender to be fined for a breach of this rule relating to the prohibited substance arsenic, whereas previous offenders had been reprimanded without further penalty;

   (d) That comparable cases in Western Australia resulted in reprimands without further penalty

   (e) That comparable cases in Victoria resulted in fines in the order of $2,000 to $3,000 which were in large part suspended;

(f) That the reading was only marginally above the permitted threshold and, at that level, was not a welfare issue; and

(g) Upon the disqualification of the horse, the appellant lost in the order of $1,900 as the owner of the horse.

7. By contrast, the stewards contend that the appellant, along with all industry participants, had been duly warned in September of last year that the ingestion of treated timber by horses carried with it the risk of elevated readings for arsenic, and that the appellant and other industry participants should have been wary of allowing their horses, particularly those that are prone to chew, come into contact with treated timber. Further, the stewards say that arsenic has been used in the industry as an appetite stimulant and can be toxic if it builds up within a horse's system.

8. In our view, the stewards were entitled to impose a fine of $3,000. Indeed, it has long been the practice of this Board to impose a period of disqualification for offences contrary to rule 190. In this instance, a fine was imposed and, although we consider a disqualification may have been more appropriate in the circumstances, the proceedings before this Board were only directed towards determining whether the amount of the fine was appropriate. In those circumstances, we do not consider it appropriate to exercise our discretion to consider and impose a period of disqualification.

9. We have not interfered with the amount of the fine for the following reasons:

(a) We accept and adopt the reasons given by the stewards.

(b) The presentation of a horse with a prohibited substance is a serious offence, even in circumstances where the presentation occurred as a result of inadvertence;

(c) It was not necessary in this case for the stewards to conclude that the ingestion of treated pine was the cause of the elevated reading;

(d) As noted above, it is not an element of the offence to prove the cause of the elevated reading and the evidence relating to the horse's ingestion of treated pine while persuasive was not certain;

(e) Even if the stewards or this Board determined that the ingestion of treated pine was the cause, the appellant's culpability was not diminished. He was a builder and acknowledged that he was well-qualified to identify treated pine. He ought to have known that a piece of treated pine was at his stables and in close proximity to this horse and other horses. He was also aware that his horses were timber chewers. In fact, he had covered the hard wood fence with felt to try and protect it from his horses. He should have known that this horse was chewing on the treated pine post from time to time.

(f) Moreover, he knew of the risk that the treated pine posed in producing elevated readings of arsenic and did nothing to remove or minimise that risk. Indeed, on one view, the appellant's culpability may be viewed at a higher level than it would have been in the absence of any finding as to the cause of this horse's elevated reading.

(g) To date there is no reasoned decision from either the Victorian or Western Australian authorities equivalent to this Board for the penalties imposed for a

breach of rule 190(1) concerning arsenic. It would be unwise for this Board to follow any particular trend without supporting reasons.

10. One further issue remains and that is whether we should suspend any part of the penalty. The appellant has only been a registered trainer for two years. This is his first offence for a breach of this rule. He, no doubt, intends to remain as a trainer for some time. If he were found to be in breach of this rule again, a significant period of disqualification could be expected. In order to encourage him to better manage his stables, and also in acknowledgment of the mitigating factors in this case, we consider it appropriate to suspend half of the fine on condition that the appellant not commit any breach of rule 190(1) for a period of 12 months.

11. The stewards' determination is varied accordingly. 25% of the appellant's deposit and the transcript costs will be forfeited to the Secretary of the Department.