

RACING APPEALS AND DISCIPLINARY BOARD
(Original Jurisdiction)

RVL Stewards v Danny O'Brien, Mark Kavanagh and Dr Tom Brennan

Reasons for Decision - Penalty

Judge R Lewis	Executive Member
Mr B Forrest	Deputy
Mr G Ellis	Member

Appearances

DR C. PANNAM QC (instructed by James Ogilvy) appeared on behalf of the RVL Stewards.

MR D. SHEALES, with MR T. PURDEY (instructed by Lander and Rogers) appeared on behalf of Mr M. Kavanagh and Mr D. O'Brien.

MR A. ANDERSON (instructed by Tony Hargreaves and Partners) appeared on behalf of Dr T. Brennan.

Danny O'Brien, Mark Kavanagh and Dr Tom Brennan have each been found guilty of committing one or more offences under Australian Rule 175(h)(i).

In particular Danny O'Brien has been found guilty of four offences in relation to horses trained by him namely *Caravan Rolls On*, *Bondeiger*, *De Little Engine* and *Bullpit*.

Mark Kavanagh has been found guilty of one offence in relation to a horse trained by him namely *Magicool*.

Dr Tom Brennan has been found guilty of five offences in relation to each of the above mentioned horses.

10 The essential facts and circumstances relating to these offences have been covered in the Board's reasons for decision delivered on 23 December 2015.

Pursuant to AR 196(5), a penalty of disqualification for a period of not less than three years must be imposed for a breach of AR 175(h)(i) unless there is a finding that a special circumstance exists, whereupon the penalty may be reduced.

15 In this case only Dr Brennan has sought to rely on the existence of a special circumstance.

Sentencing Considerations

A breach of AR 175(h)(i) is the most serious offence relating to prohibited substances in the Rules of Racing.

In considering penalty the matters which the Board takes into account include:

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- the seriousness of the offending;
 - denunciation of the conduct;
 - general deterrence;
 - the integrity and image of racing, particularly when the offending occurred during the Spring Racing Carnival.

25 Although the penalties for the subject breaches are mandatory, where there are multiple offences, the principles of proportionality and commonality are taken into account. The consequences of the mandatory penalty are self-evident and include loss of reputation in the general racing community and significant financial hardship.

Danny O'Brien and Mark Kavanagh

30 Each has an unblemished record in racing and has enjoyed considerable success as a trainer. That said, neither has demonstrated any remorse, a fact conceded by their Counsel.

Dr Tom Brennan

35 Mr Anderson who appeared on behalf of Brennan submitted inter alia that a special circumstance existed based on his client's assistance to stewards which included his client's plea of guilty to charges laid under AR 175(k) and (l) (laid in the alternative to AR 175(h)(i)) and his admissions made to stewards on 20 July 2015.

Further, Mr Anderson submitted that his client at the Board hearing in December 2015 had in essence made an early plea to the subject charges save for an argument based on a construction of the Rules.

40 The Board, having considered Mr Anderson's submissions as they relate to a special circumstance for the purposes of LR 73A, is of the opinion that the facts relied upon do not establish a special

circumstance either by way of assistance to stewards, by an early plea of guilty, by reasons of impaired mental functioning or in the interests of justice.

45 The Board accepts that as a result of his admissions made to stewards on 20 July 2015, Brennan exhibited genuine remorse and moral contrition. Further, Brennan voluntarily stood down as an equine veterinarian on 1 August 2015.

In addition to the above the Board accepts that Brennan's offending was completely out of character. In so concluding the Board was most impressed by the list of references which were provided.

Conclusions

50 The Board having considered the submissions of the parties and the matters to which the Board has already referred, has determined the appropriate penalties be as follows:

In relation to each of the horses trained by him Danny O'Brien is disqualified for a period of three years, an aggregate of twelve years. Four months of the penalties imposed in relation to *Bondeiger*, *De Little Engine* and *Bullpit* are to be served cumulatively upon the penalty imposed in relation to *Caravan Rolls On* and upon each other. A total of four years disqualification is therefore imposed.

55 In relation to the horse *Magicool* Mark Kavanagh is disqualified for a period of three years.

In relation to the each of the five named horses, Dr Tom Brennan is disqualified for a period of three years, an aggregate of fifteen years. Six months of the penalty imposed in relation to *Bondeiger*, *De Little Engine*, *Bullpit* and *Magicool* is to be served cumulatively upon the penalty imposed in relation to *Caravan Rolls On* and upon each other, a total of five years disqualification is therefore imposed.

60 The Board orders that the commencement of the periods of disqualification be deferred until midnight, 27 January 2016, it being the maximum period of deferral of the disqualification as permitted by the rules; see AR 196(6). Pursuant to the provisions of AR 177, each of the five horses must be and is disqualified from the race in which it started.

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HEARING RESULT

Distribution: Chief Executive
Group Integrity Services, Group Racing
Group Racing Development
Credit Controller
ARB, ATA, VJA
Office of Racing
T Moxon – National Drug Register
Racing Press

FROM: Registrar – Racing Appeals and Disciplinary Board

DATE: 20 January 2016

SUBJECT: **HEARING RESULT - TRAINER: DANNY O'BRIEN**

Panel Judge Russell Lewis (Executive Member), Mr Brian Forrest (Deputy),
Mr Geoff Ellis.

Appearances Mr Damian Sheales and Mr Tim Purdey, instructed by Lander & Rogers,
appeared on behalf of Mr Kavanagh.

Dr Cliff Pannam QC, instructed by Mr James Ogilvy, appeared as Counsel for
the Racing Victoria stewards.

Charge 1 Breach of AR 175(h)(i)

Any person who administers, or causes to be administered, to a horse any prohibited substance: (i) for the purpose of affecting the performance or behaviour of a horse in a race or of preventing its starting in a race.

Charge 2 Breach of AR 175(h)(ii) [alternative to Charge 1]

The Committee of any Club or the Stewards may penalise: Any person who administers, or causes to be administered, to a horse any prohibited substance which is detected in any sample taken from such horse prior to or following the running of any race.

Charge 3 Breach of AR 178 [alternative to Charges 1 & 2]

Subject to AR 178G, when any horse that has been brought to a racecourse 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.

Charge 4 Breach of AR 175(k) [alternative to Charges 1 – 3]

Any person who has committed any breach of the Rules, or whose conduct or negligence has led or could have led to a breach of the Rules.

Particulars

Each of the 4 charges relating to a prohibited substance, being cobalt at a concentration in excess of 200µg/l in urine, which was detected in pre-race urine samples taken from each of the Four Horses *Caravan Rolls On*, *Bondeiger*, *De Little Engine* and *Bullpit*.

Plea

Charge 1 – not guilty.
Charge 2 [alternative to Charge 1] – not guilty.
Charge 3 [alternative to Charges 2 & 3] – not guilty.
Charge 4 [alternative to Charges 1 – 3] – not guilty.

Decision

Handed down on 23 December 2015.

In relation to Charge 1 the Board finds the charge proved in relation to each of the Four Horses.

Penalty

In relation to each of the horses trained by him Danny O'Brien is disqualified for a period of three years, an aggregate of twelve years. Four months of the penalties imposed in relation to *Bondeiger*, *De Little Engine* and *Bullpit* are to be served cumulatively upon the penalty imposed in relation to *Caravan Rolls On* and upon each other. A total of four years disqualification is therefore imposed.

The Board orders that the commencement of the period of disqualification be deferred until midnight, 27 January 2016, it being the maximum period of deferral of the disqualification as permitted by the rules; see AR 196(6).

Pursuant to the provisions of AR 177, each of the Four Horses must be and is disqualified from the race in which it started.

Pursuant to AR 196(6)(b), Mr O'Brien must not start a horse in any race from the date of the Board's decision until the expiration of the period of disqualification.

Georgie Gavin
Registrar - Racing Appeals and Disciplinary Board

HEARING RESULT

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FROM: Registrar – Racing Appeals and Disciplinary Board

DATE: 20 January 2016

SUBJECT: **HEARING RESULT - TRAINER: MARK KAVANAGH**

Panel Judge Russell Lewis (Executive Member), Mr Brian Forrest (Deputy),
Mr Geoff Ellis.

Appearances Mr Damian Sheales and Mr Tim Purdey, instructed by Lander & Rogers,
appeared on behalf of Mr Kavanagh.

Dr Cliff Pannam QC, instructed by Mr James Ogilvy, appeared as Counsel for
the Racing Victoria stewards.

Charge 1 Breach of AR 175(h)(i)

Any person who administers, or causes to be administered, to a horse any prohibited substance: (i) for the purpose of affecting the performance or behaviour of a horse in a race or of preventing its starting in a race.

Charge 2 Breach of AR 175(h)(ii) [alternative to Charge 1]

The Committee of any Club or the Stewards may penalise: Any person who administers, or causes to be administered, to a horse any prohibited substance which is detected in any sample taken from such horse prior to or following the running of any race.

Charge 3 Breach of AR 178 [alternative to Charges 1 & 2]

Subject to AR 178G, when any horse that has been brought to a racecourse 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.

Charge 4 Breach of AR 175(k) [alternative to Charges 1 – 3]

Any person who has committed any breach of the Rules, or whose conduct or negligence has led or could have led to a breach of the Rules.

Particulars

Each of the 4 charges relates to a prohibited substance, being cobalt at a concentration in excess of 200µg/l in urine, which was detected in a pre-race urine sample taken from the horse *Magicool*.

Plea

Charge 1 – not guilty.

Charge 2 [alternative to Charge 1] – not guilty.

Charge 3 [alternative to Charges 2 & 3] – not guilty.

Charge 4 [alternative to Charges 1 – 3] – not guilty.

Decision

Handed down on 23 December 2015.

In relation to Charge 1 the Board finds the charge proved.

Penalty

In relation to the horse *Magicool* Mark Kavanagh is disqualified for a period of three years.

The Board orders that the commencement of the periods of disqualification be deferred until midnight, 27 January 2016, it being the maximum period of deferral of the disqualification as permitted by the rules; see Australian Rule 196(6).

Pursuant to the provisions of AR 177, *Magicool* must be and is disqualified from the race in which it started.

Pursuant to AR 196(6)(b), Mr Kavanagh must not start a horse in any race from the date of the Board's decision until the expiration of the period of disqualification.

Georgie Gavin
Registrar - Racing Appeals and Disciplinary Board

HEARING RESULT

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FROM: Registrar – Racing Appeals and Disciplinary Board

DATE: 20 January 2016

SUBJECT: **HEARING RESULT – VET: DR TOM BRENNAN**

Panel Judge Russell Lewis (Executive Member), Mr Brian Forrest (Deputy),
Mr Geoff Ellis.

Appearances Mr Adrian Anderson, instructed by Tony Hargreaves and Partners, appeared on
behalf of Dr Brennan.

Dr Cliff Pannam QC, instructed by James Ogilvy, appeared as Counsel for the
Racing Victoria stewards.

Charge 1 Breach of AR 175(h)(i)

Any person who administers, or causes to be administered, to a horse any prohibited substance: (i) for the purpose of affecting the performance or behaviour of a horse in a race or of preventing its starting in a race.

Charge 2 Breach of AR 175(h)(ii) [alternative to Charge 1]

The Committee of any Club or the Stewards may penalise: Any person who administers, or causes to be administered, to a horse any prohibited substance which is detected in any sample taken from such horse prior to or following the running of any race.

Charge 3 Breach of AR 175(k) [alternative to Charges 1 & 2]

Any person who has committed any breach of the Rules, or whose conduct or negligence has led or could have led to a breach of the Rules.

Charge 4 Breach of AR 175(l) [alternative to Charges 1 – 3]

The Committee of any Club or the Stewards may penalise: Any person who attempts to commit, or conspires with any other person to commit, or any person who connives at or is a party to another committing any breach of the Rules

Particulars

Each of the 4 charges relates to a prohibited substance, being cobalt at a concentration in excess of 200µg/l in urine, which was detected in pre-race urine samples taken from the Five Horses - *Magicool* (trained by Mark Kavanagh), *Caravan Rolls On*, *Bondeiger*, *De Little Engine* and *Bullpit* (trained by Danny O'Brien).

Plea

Charge 1 – not guilty.

Charge 2 [alternative to Charge 1] – not guilty.

Charge 3 [alternative to Charges 2 & 3] – guilty in so far as those charges concern the trainers' breaches of AR 178. Not guilty to all others.

Charge 4 [alternative to Charges 1 – 3] – guilty in so far as those charges concern the trainers' breaches of AR 178. Not guilty to all others.

Decision

Handed down on 23 December 2015.

In relation to Charge 1 the Board finds the charges in relation to each of the Five Horses proved.

Penalty

In relation to the each of the five named horses, Dr Tom Brennan is disqualified for a period of three years, an aggregate of fifteen years. Six months of the penalty imposed in relation to *Bondeiger*, *De Little Engine*, *Bullpit* and *Magicool* is to be served cumulatively upon the penalty imposed in relation to *Caravan Rolls On* and upon each other, a total of five years disqualification is therefore imposed.

The commencement of the disqualification to be back dated to 1 August 2015 when Dr Brennan voluntarily stood himself down.

Georgie Gavin
Registrar - Racing Appeals and Disciplinary Board