

DATE: 19 December 2023

TRIBUNAL: Chairman: Teresa Hall  
Deputy Chairman: Alastair Shields  
Member: Alexandra Craig

APPELLANT: Graeme (Dick) Leech

IN THE MATTER of an Appeal by Mr Graeme (Dick) Leech against a decision of Thoroughbred Racing Northern Territory Stewards (Stewards).

BREACH OF RULE: AR 240(2)

### DETERMINATION

This is an appeal by Mr Graeme (Dick) Leech against a decision of Thoroughbred Racing Northern Territory (TRNT) Stewards made on 20 October 2023 to fine Mr Leech the sum of \$6,000 for a breach of Australian Rules of Racing, Rule 240(2).

The particulars of the charge are that Century Fox, a horse trained by Mr Leech, competed in and came second in the Darwin Guineas at the Darwin Turf Club in Fannie Bay on 8 July 2023, and a pre-race blood sample was found to contain nicotine and its metabolite cotinine which are prohibited substances under Division 1 of Part 2 of Schedule 1 of the Australian Rules of Racing (prohibited list B). Cotinine was also detected in a post-race blood sample taken from Century Fox.

The Racing Appeals Tribunal (the Tribunal) was provided with the full transcript of the hearing before the Stewards, the exhibits and associated technical documentation, and the Stewards report imposing the penalty. Mr Leech lodged a written submission, and the Stewards also provided a comprehensive submission. The Tribunal was also provided with a schedule of TRNT penalties for positive swab cases since 2011.

In addition to being the Trainer of Century Fox, Mr Leech owns 90% of the horse and is the managing part owner. In his written submission he stated that in that capacity he was invoiced the sum of \$12,738.70 for the return of prize money following the disqualification of Century Fox in the race. In his submission and at the hearing, Mr Leech sought to argue that this amount should be taken into consideration when considering the severity of the fine imposed by the Stewards. The Tribunal agrees with the submission of the Stewards that the repayment of prize money is not a mitigating factor when considering the penalty under appeal. The return of the prize money is a consequence of Century Fox's disqualification as a result of the horse's positive swab result (see Australian Rules of Racing, Rule 240(1)), and not a separate penalty for the breach of the Australian Rules of Racing.

The other matters raised by Mr Leech in his submission and at the hearing come under the following broad headings:

- a. There is an allowable tolerance for other performance enhancing substances (e.g. bicarb has a tolerance of 0.035), but not for nicotine;
- b. Mr Leech is a heavy smoker himself and he does not consider nicotine to be performance enhancing; and
- c. Given the prevalence of smoking and vaping around horse stables and racetracks, it is very difficult to manage exposure of racehorses to nicotine.

In respect of a and b above, the Tribunal notes that there is no discretion in the Australian Rules of Racing for either the Stewards or the Tribunal to set an allowable tolerable level of nicotine or cotinine, nor question the inclusion of nicotine and cotinine on prohibited list B.

The Tribunal accepts that it is likely that the presence of nicotine and cotinine in the samples taken from Century Fox are most likely due to the inadvertent exposure to or ingestion of a tobacco product. Nevertheless, this is a strict liability offence, and the fact is that Century Fox was present at the racecourse for the purpose of participating in a race, and a prohibited substance was detected.

The Tribunal notes that the Stewards considered all relevant matters in determining the penalty, such as:

- The seriousness of the breach;
- The low detected levels of nicotine and cotinine;
- Mr Leech's guilty plea, cooperation and personal circumstances;
- Mr Leech's prior breaches of this rule in 2019 and 2008; and
- Other penalties for breach of this rule.

This Tribunal has previously opined that it is the function of the Stewards to police the operation of the racing industry, to uphold and enforce standards that meet industry expectations and to protect the integrity and image of the sport, and that in the absence of error on the part of the Stewards, this Tribunal will not intervene to interfere with a penalty that the Stewards believe is consistent with the discharge of those functions.

The Tribunal has carefully considered the Stewards decision, along with the submissions by both Mr Leech and the Stewards, and the evidence that was available at the Stewards hearing. Having done so, we are of the opinion that the \$6,000 fine imposed by the Stewards is within the acceptable range, and we are therefore unable to conclude that the penalty was manifestly excessive.

Therefore, the appeal is dismissed.