

DATE: 9 July 2024

TRIBUNAL: Chair: Teresa Hall  
Deputy Chair: Alastair Shields  
Member: Amy Corcoran

APPELLANT: Mr Mark Nyhan

IN THE MATTER of an Appeal by Mr Mark Nyhan against a decision of Thoroughbred Racing Northern Territory (TRNT) Stewards (Stewards) made on 15 April 2024.

BREACH OF RULE: AR 140(1)(a)

### DETERMINATION

#### **Background**

1. The Appellant, Mark Nyhan (**Mr Nyhan**) is a licensed trainer under the Australian Racing Rules, and is bound by the Australian Rules of Racing (**AR**) pursuant to AR 3.
2. As a licensed trainer, Mr Nyhan is a 'horse handler' under AR 2.
3. An inquiry was conducted by the Stewards into the Australian Racing Forensic Laboratory (ARFL) analyst's report of the urine sample provided by Mr Nyhan at the Darwin Turf Club, prior to the race meeting conducted on 23 February 2024.
4. Subsequent to the inquiry by the Stewards Mr Nyhan pleaded guilty to a charge under AR 140(1)(a) which provides:

#### **AR 140 Offences where horse handlers use banned substances**

(1) A horse handler breaches these Australian Rules if:

- (a) a banned substance under AR 137(1) is detected in a sample taken from the horse handler; or
- (b) the horse handler refuses or fails to deliver a sample as directed by the Stewards, tampers with, adulterates, alters, substitutes, or in any way hinders the collection

of, a sample or attempts to do any of those things.

5. The particulars of the charge were:
  - On 23 February 2024, whilst track work was being conducted, the Stewards had a reasonable suspicion that My Nyhan was affected by a banned substance and in accordance with the power granted to them under AR 22(1)(h) directed him to provide a urine sample for testing.
  - A banned substance under the Australian Rules of Racing, namely cannabis was detected in the urine sample
6. The Stewards found Mr Nyhan guilty and imposed the following penalty:
  - Suspension of his trainer's licence for a period of 6 months.

7. In determining the penalty the Stewards indicated that they took into account the following matters:
- The circumstances at his stables that led to the direction to provide a sample
  - The nature of the banned substance and the high level detected
  - His guilty plea and personal circumstances
  - His disciplinary record
  - He saddled two runners at the race meeting on that day

#### **Jurisdiction**

8. The appeal in this matter was lodged and heard by the Tribunal prior to the commencement of the *Racing and Wagering Act 2024 (RW Act)*, which is now in force.

9. Section 311(3) of the RW Act provides that:

*Any acts done or matters under consideration by the Racing Appeal Tribunal that were not determined under the repealed Act before the commencement are to be determined by the Northern Territory Racing Appeals Tribunal in accordance with the repealed Act as if it were not repealed.*

10. Pursuant to section 145D(1) of the *Racing and Betting Act 1983 (NT) (Act)*:

*A person or the owner of an animal aggrieved by a decision of a steward or an official of a club made in respect of that person or that animal, as the case may be, may, subject to this Part, appeal from the decision:*

*(a) to the appropriate appeal committee; or*

*(b) where the decision of the steward or official was:*

*(i) to impose a fine greater than \$1,000 or such other amount as may be prescribed; or*

*(ii) to impose on the person a suspension or disqualification for a period longer than 3 months; or*

*(iii) subject to subsection (3)(c), to impose on an animal a disqualification or suspension; or*

*(iv) to warn off the person for more than 12 meetings; or*

*(v) to impose on the person a fine of more than \$500 or such other amount as may be prescribed together with a suspension or disqualification for longer than one month,*

*to the Tribunal.*

11. Further, section 145D(4) provides:

*An appeal shall be commenced by lodging a notice of appeal and the prescribed fee with, where the appeal is to:*

*(a) an appeal committee, the secretary of the committee; or*

*(b) the Tribunal, the Secretary,*

*not later than 7 days after notice of the decision by which a person is aggrieved has been delivered to that person.*

12. Mr Nyhan, a person aggrieved by a decision of the Stewards (being a fine of more than \$1000), brought his appeal on 15 April 2024, that is, within 7 days of being notified of the decision appealed against. Accordingly, the Tribunal has jurisdiction to hear the appeal and neither party has contended to the contrary.

### **Hearing**

13. Each party was self-represented at the hearing and each party was given an opportunity to provide written submissions.
14. The Stewards provided written submission prior to the hearing and both parties gave oral submission at the hearing.
15. Neither party sought leave to introduce new evidence at the hearing, which was conducted on 3 June 2024.

### **Mr Nyhan's appeal grounds and Submissions**

16. The written appeals grounds put forward by Mr Nyhan were brief and are set out below:
  - *"I am appealing the length of sentence 6 months for first offence having held licence since 1986 36yrs and is my first offence depending on date remotely".*
17. At the hearing Mr Nyhan made further submissions about his personal circumstances during the period of offending. He was suffering with poor mental health, felt unsupported by the industry and was having difficulty covering the cost of medication and treatment.
18. The penalty has had a significant impact on him and further contributed to his deteriorating mental health, although he had found support in his current employer interstate.

### **Steward's submissions**

19. The Stewards submissions, firstly provided more information regarding the matters that had been taken into account when imposing the penalty including:
  - The circumstances at the stables that led to the direction to provide a sample. The Stewards noted that despite a strong smell of marijuana, Mr Nyhan denied smoking the drug, claimed he did not use it and suggested the smell was from haylage.
  - The nature of the banned substance and the high level detected. The level of cannabis detected was 80 times the maximum amount allowed.
  - Guilty plea and personal circumstances. The Stewards contended that Mr Nyhan did not express any real acceptance of responsibility or show any remorse for his actions; further that if he has showed any insight into this offending it could have been a mitigating factor in determining penalty.
  - Disciplinary record. Mr Nyhan has been involved in the industry since 1988. He has not been charged with an offence under rule AR 140 previously. At the time of the inquiry Mr Nyhan was currently serving a suspension imposed after being found guilty of engaging in improper behaviour towards an assistant steward, later in day on 23 February 2024.
  - Handling of horses at the race meeting on the day. At the time of the offending, Mr Nyhan was responsible for the care, custody and control of four thoroughbreds in his stable. Two of those competed at the race meeting on the day. Participating in any activity involving the handling of racehorses has inherent risks and being affected by cannabis places the welfare of horses, jockey's and other race goers at risk.
20. Secondly the Stewards made submissions that:

- The penalty imposed is within the range of recorded precedents which consist of suspensions from 1 month to 9 months and periods of disqualification between 3 and 15 months and meets industry expectations.
- That this Tribunal has previously determined 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, the Tribunal will not intervene to interfere with a penalty that the Stewards believe is consistent with the discharge of those functions.

### **Determination**

#### *Penalty*

21. This Tribunal has previously applauded the Stewards in the difficult task of upholding the integrity of the racing industry in the Northern Territory.
22. When considering the range of penalties imposed for a breach of this particular rule the Tribunal considered the following Northern Territory matters:
  - Steven Banks (2018) 9 months suspension, previous breach of the same rule;
  - Johnson (2019) 3 months suspension, previous breach of the same rule;
  - Drake (2020) 1 month suspension, no previous breach of the same rule;
  - Penney (2023) 3 months disqualification, previous breach of the same rule;
  - Lefoe (2024) 3 months suspension (6 weeks suspended if evidence of treatment provided).
23. Noting that Mr Nyhan has no previous breach of this rule and at the time of the offending (albeit some hours before further offending) no other significant history of rule breaches; the Tribunal finds that the penalty is excessive in all the circumstances; we allow the appeal and decrease the suspension period to 3 months.
24. Further the Tribunal orders that the whole fee payable under section 145D of the Act be refunded to My Nyhan.
25. Section 145ZF of the Act provides the determination of the Tribunal is final and conclusive.



TERESA HALL  
CHAIR