IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN FULL COURT

SUIT NO. M 48 OF 1988

CORAM: THE HON. MR. JUSTICE BINGHAM, J
THE HON. MR. JUSTICE PANTON, J
THE HON. MR. JUSTICE CLARKE, J.

REGINA

VS.

RACING COMMISSION

EX PARTE CLIFTON MORGAN

Donald Scharschmidt, instructed by Messrs Robinson, Phillips and Whitehorne for the applicant.

Dr. Lloyd Barnett and Richard Ashenheim for the respondent.

Heard: 27th and 28th February, 1989

This is a judgment of the Court.

The applicant has challenged the decision of the Tribunal in relation to its finding that he was negligent in failing to give proper instructions to the groom of the horse Ankaar Moor which was under their care.

He has submitted that rule 161 of the Jamaica Racing Commission Racing Rules, 1977, has not been breached and that there is no specific duty on him as trainer to instruct the groom not to administer anything to the horse except on his (the trainer's) instruction.

Rule 161 provides in part:

> "The trainer, groom and any other person having charge, custody or care of a horse are obliged properly to protect the horse and guard it against the administration or attempted administration .... of any Prohibited Substance or of any substance other than a substance which can be traced to a normal nutrient....."

Rule 207 (3) provides that a finding that a Prohibited Substance has been administered shall, unless the contrary is proved by the owner, trainer, groom or other person having charge and custody or care of the horse, be proof that it was administered with the intention that the horse would carry the substance in its body while participating in a race; further, any such finding as aforesaid shall, unless the contrary be proved, be evidence of negligence on the part of the owner, trainer, groom or other person having charge, custody, or careof such horse.

The question for our determination is this: was there evidence to support the Tribunal's finding of negligence on the part of the applicant? The answer to that question is undoubtedly in the affirmative. The evidence given by Phillip Brown was that no trainer (and this included the applicant) had ever instructed him that he should not administer a pain killer to a horse. The witness had been a groom since 1972. In the instant matter he had administered a prohibited drug to the horse with a view to easing pain that he said the horse was suffering. It matters not whether he knew that he was doing wrong.

The Rules referred to earlier place a burden on any person who has charge, custody or care of a horse. Once the fact of the administration of the drug has been proven, the burden shifts to the person charged.

The record does not disclose that the applicant presented any evidence to discharge this burden that was on him. The applicant would wish the Court to say that Rule 161 imposes only an ordinary duty of care on a trainer. With this we disagree. We regard the submission of Dr. Barnett as apposite, in pointing out that there is a high duty of care imposed on all who have charge, custody or care of horses. On a true construction of Rule 161, any person having charge, custody or care of a horse is obliged to show that all reasonable care had been taken to protect and guard the horse against the administration of a Prohibited Substance. As the Tribunal has properly found, this clearly was not done.

Accordingly, the motion is dismissed. The respondent is to have the costs of the application: such cost to be agreed or taxed.