DETERMINATIONS AND REASONS FOR DETERMINATION OF

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT : **PETER GEOFFREY CRIBB**

APPLICATION NO. : **A30/08/245**

PANEL :

MR P HOGAN	**(PRESIDING MEMBER)**
MS P HOGAN	**(MEMBER)**
MR T MULLIGAN	**(MEMBER)**

DATE OF HEARING : **30 MAY 1995**

IN THE MATTER OF an appeal to the Tribunal by Mr P Cribb against the decision of the Western Australian Turf Club Stewards on 7 February 1995 imposing a fine of $2 000 under *Australian Rule of Racing* 175(a).

Rule 175 states:

> "The Committee of any Club or the Stewards may punish:
>
> (a) Any person, who, in their opinion, has been guilty of any dishonest, corrupt, fraudulent, improper or dishonourable action or practice in connection with racing.
>
> ..."

At the Stewards' inquiry, the appellant was charged with improper action, contrary to Rule 175(a), as follows:

> "... you accepted three bets as outlined on confirmation slip 139326 relating to the Railway Stakes of 31/12/94, those bets being accepted at a place other than as permitted by Section 23 and also Section 5(1)(a) of the Betting Control Act. ..."

The appellant is a registered bookmaker with the Western Australian Turf Club ("WATC"). He fielded at the Railway Stakes meeting on 31 December 1994. He had been accepting bets pre post, having been given permission to do so.

Following the race, the appellant faced a Stewards inquiry into certain aspects of his pre post betting. The inquiry was held over three days, being 13 January 1995, and 3 and 6 February 1995. As a result of the inquiry, the appellant was charged with an offence of improper action contrary to Australian Rule of Racing 175(a). He pleaded not guilty, but was found guilty and convicted.

The particulars of the improper action alleged were made clear by the Chairman of Stewards when he framed the charge against the appellant. The Chairman said "... you accepted three bets as outlined on confirmation slip 139326 relating to the Railway Stakes of 31/12/94, those bets being accepted at a place other than as permitted by Section 23 and also Section 5(1)(a) of the Betting Control Act."

The evidence given to the Stewards' inquiry satisfied the Stewards that the appellant had accepted the bets by telephone at a hotel room the previous evening.

The appellant now appeals against his conviction on 2 grounds, as follows:

1. the decision of the Stewards is unsupportable having regard to the evidence in the case.

2. The Stewards dismissed out of hand Supreme Court Judgement dated 8 August 1994 and in particular the definition of bet.

In our opinion, the question to be answered in this appeal is whether, on the evidence the Stewards were justified in coming to their conclusion that the appellant's words and conduct amounted to the acceptance of bets.

The prohibition on betting off-course is contained in Section 23(1) of the *Betting Control Act 1954* ("**the Act**"), read together with Section 5(1)(a).

Section 23(1) is in the following terms:

"23. (1) No person shall make a bet at or in a place, or at or in a public place, either personally or by means of an agent, or by post, telegraph, telephone or other manner, whether of the same kind as or a different kind from any manner specified in this paragraph -

(a) unless the premises are premises to which section 5(1a) for the time being applies, or the place is a racecourse where -

(i) a race meeting is being held at the racecourse by the Western Australian Greyhound Racing Association or under permit or licence issued under Part VI of the *Western Australian Greyhound Racing Association Act 1981* or under the *Racing Restriction Act 1917*; or

(ii) in the case of a race meeting held at the racecourse within the meaning of subparagraph (1) on Anzac Day, a bookmaker is permitted by section 12(3) to bet or carry on business as such as the racecourse on Anzac Day;

(b) unless the bet is made in accordance with the provisions of this Act or the *Totalisator Agency Board Betting Act 1960*;

or

(c) unless the bet constitutes permitted gaming within the meaning of the *Gaming Commission Act 1987*.

Penalty: $500

Section 5(1)(a) is in the following terms:-

"5 (1) Notwithstanding any law to the contrary, persons may, in accordance with this Act, lawfully bet by way of wagering or gaming on a race course -

(a) on races -

(i) during the holding at the race course of a race meeting; or

(ii) in the case of a race meeting held at the race course on Anzac Day, during the period commencing at 12 noon on Anzac Day and ending at the completion of that race meeting;

...."

Section 23(1)(b) permits betting to be in accordance with Section 5(1)(a). Anything else is "off-course betting" and is prohibited unless authorised by other parts of section 23. None are applicable in this case.

In this case, permission had been granted for pre post betting. That is provided for by the Betting Control Regulations, 64(1)(d) and 65(1)(d), as well as Rule 29A of the Rules of Betting (WATC). Telephone Betting is permitted by Regulation 72. There is nothing in the Regulations relating to pre post betting or telephone betting which takes away from the general requirement in Sections 23 and 5(1)(a) that all betting be on-course.

If the appellant accepted a bet off-course, then he was guilty of an offence.

The Railway Stakes was run on 31 December 1994. Starters in that race included ISLAND MORN, CALYPSO, SAMMY THE BULL, and TAOS. The race was won by ISLAND MORN.

ISLAND MORN started the race at odds of 4 to 1. (Transcript of Stewards' inquiry page 5, line 2 -(T5:2)).

On the night before the race, the appellant spoke by telephone to Mr Escanda. At the time, the appellant was at a hotel room in Perth (T10:3).

The appellant gave in evidence differing versions of what was said during this conversation. The first version was that Mr Escanda wanted to have $4 000 each way on ISLAND MORN, $1 000 each way on TAOS, and $600 each way on SAMMY THE BULL. He would send his agent, Jimmy Woods, to the course the next day to confirm bets (T10). The appellant quoted the prices which had been published in the newspaper (T12:3/T12:6).

A second version was that Mr Escanda asked for quotes on the field, with no reference that there was to be a bet laid (T18:2).

A third version was that there was general talk about pricing, no price quoted, and the appellant spoke to Mr Escanda about approximate odds (T45:5). A fourth version was that the appellant was going to handle the business for Mr Escanda at the best price (T52:3 and T67:7).

On each occasion that the appellant related his evidence to the Stewards, he maintained or did not resile from his position that the arrangement with Mr Escanda was that the bets would be confirmed by Mr Woods on-course the next day and that the bets would be laid at the best price available.

The appellant himself saw the possibility that his conversation with Mr Escanda may amount to taking a bet off-course. He said "... my last conversation was to him, I said you know if you're having any other bets, don't discuss this bet over the phone because it will cause problems" (T52:4).

Mr Woods gave evidence at the inquiry. He said that on the Railway Stakes day, he received a phone call from Mr Escanda. On instructions, he wrote down the names of three horses. He wrote down the amounts. He took this piece of paper to the course and gave the note to the appellant, saying "Michael Escanda rang me this morning and said would I give these to you Pete and here they are ..." (T58:4). That occurred before the first race (T9:2 and T58:7).

The appellant did not give Mr Woods a betting ticket or confirmation slip (T23:5). Indeed, no confirmation slip could have been issued on the appellant's different versions because the best prices had not then been ascertained. However, by the time Mr Woods came to the appellant, a confirmation slip had been partly written out (T22:6).

Having received the piece of paper from Mr Woods, the appellant went to his pre post and doubles betting area and entered the three bets in his pre post ledger (exhibit C). He wrote them in at "a good average price that was available in the ring at that time ..." (T66:3). The appellant then said he wrote out the confirmation slip later in the day (T66:4).

After the events referred to above, Mr Escanda made three telephone calls on-course to the appellant. These were all duly recorded. The tape was exhibit A and the transcript was exhibit B. In the second call, Mr Escanda placed bets of $50 000 to $2 500 on CALYPSO, $10 000 to $1 000 on SAMMY THE BULL, and $5 000 to $800 on TAOS (T2). These three bets were unrelated to the three alleged bets the subject of the charge against the appellant. However, the fact that there was no mention during these telephone conversations of the previous alleged bets, the subject of the charge, was referred to in the evidence (T18:6).

On all of the evidence, the Stewards made a number of findings of fact including that there was a discussion related to price on the eve prior to the Railway Stakes. In our opinion, there was ample evidence for the Stewards to reach that conclusion. The appellant himself said so. The question, however, remains whether the appellant's admitted words and actions, which gave rise to the Stewards' finding, amounted to accepting bets off-course in contravention of Sections 23(1) and 5(1)(a) of the Act.

"Bet" is not defined in the Act. However, "to bet" is defined in section 4 as follows:

> "**to bet**" means to pay or deliver, or promise or agree to pay or deliver, or to receive or agree or promise to receive, any money or other property for the consideration for -
>
> (a) an assurance, undertaking, promise, or agreement, express or implied, to pay or give thereafter any money or other property on any event or contingency of or relating to any race or any sporting event in relation to which betting is authorised under this Act; or
>
> (b) securing the paying or giving by some other person of any money or other property on any such event or contingency;"

Obviously the word "bet" in section 23 takes its meaning from the definition of "to bet" in section 4. The allegation against the appellant, in terms of that definition, was that he:

* agreed to receive
* money
* for the consideration for
* an agreement
* to pay
* money
* on the event of a particular horse winning or placing in the Railway Stakes.

The appellant's argument is clear enough in one respect. He contended that the words and actions of the evening of 30 December 1994, did not amount to accepting a bet, for the sole reason that he accepted the bet the next day, when Mr Woods came to the course.

There is no substance in that argument. If the appellant's words and actions on the night before amounted to accepting a bet, then it matters not what happened the next day. On his view, he was trying to conform with the rules. In the Stewards' view, he was trying to legitimise what had been wrongfully done the evening before. On either view, the real question still was whether a bet was accepted the evening before.

The second aspect of the appellant's agreement is more complex. It was never clearly stated by the appellant, but arises for us to consider because of his evidence concerning the conversation he had with Mr Escanda, and because of his appeal ground which refers to the definition of "bet".

We take the appellant's argument to be that because no odds were quoted, there was no certain amount of money to pay out on the event. Because the amount to pay out was uncertain there was no agreement to pay out on the event, certainty being a necessary part of an agreement. Because there was no agreement, there was no bet, agreement being a necessary part of a bet.

There have, of course, been many cases on the question of what it means "to bet". A great many of these have had to do with charges laid against persons for using premises or permitting premises to be used for betting. In BRADFORD v DAWSON (1897) 1QB 307, it was held that the paying of bets, previously made elsewhere, was not betting. In GROW v LORD (1947) SASR 451, it was held that the recording of bets, made elsewhere was not using premises for the purpose of gaming. Thus it is not enough that there be some parts of a betting transaction present. The essential part of the business of making a bet is the acceptance of the bet - MILNE v COMMISSIONER OF POLICE (1940) A.C 1 per Lord Wright at page 37.

The definition of "to bet" in section 4 of the Act has a history going back to 1853 in England. By section 1 of the *Betting Act 1953 (U.K.)*, it was enacted that (in summary) "No place shall be used for the purpose of any designated person betting with persons resorting thereto; or for the purpose of any money or valuable thing being received by or on behalf of any designated person, as consideration for any promise or agreement to pay, thereafter any money or valuable thing on any event relating to sport or exercise or as consideration for the paying or giving by some other person of any money or valuable thing on any such event." MILNE v COMMISSIONER OF POLICE per Lord Maugham at page 12.

In that earlier English legislation the provisions which have now become sections 23(1) and 4 (definition of "to bet") of the *Betting Control Act 1954 (W.A.)* were contained in section 1.

Similarly, the early English legislation has carried on into legislation in other Australian States. In particular, in Victoria, sections 17(1)(a) and (b) of *The Lotteries, Gaming and Betting Act* are in the following terms:

> No house or place shall be opened kept or used for any of the following purposes:

(a) For the purpose of the owner occupier or keeper thereof or any person using the same or any person procured or employed by or acting for or on behalf of such owner occupier or keeper or person using the same or of any person having the care or management or in any manner conducting the business thereof, betting with any persons whomsoever in person or by messenger agent post telegraph, telephone or otherwise;

(b) for the purpose of any money or valuable thing being received by or on behalf of the owner occupier or keeper thereof or any person as aforesaid -

as or for the consideration for any undertaking to pay or give thereafter any money or valuable thing on any sporting contingency;

as or for the consideration for securing the paying or giving by some other person of any money or valuable thing on any such contingency."

The Victorian legislation was considered in the case of DPP v COSTER (UNREPORTED SUPREME COURT OF VICTORIA Appeal No. 10412 of 1993 delivered 8 August 1994 per Ashley J).

In that case His Honour was considering an appeal from a magistrate's decision which dismissed a charge against Coster, laid under section 18(1)(a) of the Victorian Act. The facts there were similar to those in the present appeal before us. Further, the critical question was whether the respondent had used the premises in question for the purpose of betting.

Coster was a licensed bookmaker. He admitted to receiving by phone what may be described as requests to place bets on-course. He received those requests at premises away from the course. The requests were received on the basis that he would obtain the best odds on-course. On the particular transactions which formed the basis of the charge is that case, the police officer (Sergeant Smith) confirmed that he provided the names of the horses on which he wanted to bet, the amount he wished to bet, and that he was not provided with any odds or prices about the horses which he asked to back.

In dismissing the charge. the learned magistrate said

> " Without any doubt. the essential elements of a bet are not present - nobody knew what Mr. Smith would have got if he had won. The evidence was - you will get the best odds and it will be placed at the track. The bet will be placed at the track. Because of the evidence I must dismiss the case and do so."

In dismissing the appeal, the learned Judge said:

> "In the present case, as at 1 May 1992 the short conversation between Sergeant Smith and the respondent not only constituted no betting transaction or part thereof; there was no certainty that there would be a betting transaction (ie: as in the case of the horse that was scratched); and there was complete uncertainty whether, if a bet was laid, it would be laid with the respondent. As the arrangement was expressed between Sergeant Smith and the respondent, any bet would be laid on the following day at Flemington, at best odds - whether with a bookmaker or on the tote. When the magistrate in his reported observations referred to the bet being placed at the track, and to Mr. Smith getting the best odds, it appears to me clear that his Worship accepted that the conversations on 1 May 1992 could not have been said, at that time, to have involved any necessary or likely financial participation by the respondent in any bets that were later transacted."

His Honour also said:

> "In his Reasons the learned magistrate shortly concluded that the bet was to be placed "at the track". He assigned in support of this conclusion the circumstance that, as at 1 May 1992 "nobody knew what Mr. Smith would have got if he won". The learned magistrate thus said, in substance, that no part of a transaction constituting a bet was made at the Elwood premises on 1 May 1922; in which circumstances the charge, as particularised, could not be made out. The specific reason which he assigned in support of his factual conclusion was not by any means the sole matter which would have supported it. Indeed, the learned magistrate appears to have recognised this. Hence his reference to "the essential elements of a bet" being not present - of which the specified matter was but one.
>
> Upon the view of the evidence which the learned magistrate obviously took, he was correct to reach the factual conclusion which he did. The conclusion in law which followed was in accord with principle."

With respect, it seems to us that the conclusions arrived at by His Honour in that case were entirely correct in law. Bearing in mind the similarities in the facts and the legislation with the case before us here, it seems to us that prima facie the appellant did not accept three bets as particularised in the charge against him unless odds were agreed.

We turn now to the Stewards finding of fact that "... There was a discussion related to price on the eve prior to the Railway Stakes." (T73:1)

We do not and cannot disturb this finding of fact. However, we are of the opinion that the discussion did not amount to the giving of odds sufficient to lend certainty to the transaction. Further, the racing authorities themselves had given permission for the appellant to bet pre-post. This apparently included at least tacit permission to publish prices pre-post in the West Australian Newspaper. The appellant said at T12:6.

> "I had some prices quoted in the paper, so maybe ... Oh, well, I quoted him these prices that I had given to the WA Newspapers."

And at T32:6, the appellant said:

> "I did it (pre-post betting) to provide a service and promote racing in a positive way and you know I supplied my services free of charge to the newspaper to give an opinion and give quotes."

No complaint appears to have been made against the appellant for publishing prices.

It seems to us unfair that on the one hand the appellant should apparently be permitted to publish prices in the daily newspaper, and on the other hand be penalised by having an adverse inference drawn against him by discussing those prices with the would be punter off-course.

The fact that the appellant had a discussion about price could mean that the appellant fixed a price or discussed that which he was apparently allowed to publish to the world at large. Because these two competing interpretations are open and because the Act and Rules of Racing are penal, we are of the view that, as a matter of law, the inference more favourable to the appellant should be drawn. The Stewards should have drawn the inference that the appellant was discussing the odds which he had been permitted to publish in the newspaper. The "discussion related to prices" did not lend the required certainty to the transaction to characterise it as a bet.

The Stewards made two other findings of fact, at T73:1. These two findings of fact were related to the appellant's credit as a witness and do not affect the disposition of the appeal.

In our opinion, the Stewards correctly focused their inquiry on the question whether the appellant accepted a bet. They then charged him with accepting three bets. However, for the reasons given above, the evidence as a matter of law did not support a finding that the appellant contravened Sections 23 and 5(1)(a) of the Act. Because there was no breach of the Act, it necessarily follows that there was no improper action.

The appeal is allowed . The fee paid on lodgement of the appeal will be refunded.

PATRICK HOGAN, PRESIDING MEMBER

PAMELA HOGAN, MEMBER

TED MULLIGAN, MEMBER

Seal of the Racing Penalties Appeal Tribunal of W.A. 1995

15/6/1995