

**DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL**

APPELLANT: GREGORY DONALD HARPER

APPLICATION NO: A30/08/288

PANEL: MR D MOSENSEN (CHAIRPERSON)

DATE OF HEARING: 17 JANUARY 1996

IN THE MATTER OF an application for leave to appeal by Mr G Harper against the determination made by the Committee of the Western Australian Turf Club not to grant a Strapper's Licence.

Mr E J Picton-Warlow represented the applicant.

Mr R J Davies QC represented the Western Australian Turf Club Committee.

This is an application for leave to appeal made by Mr Harper pursuant to the provisions of s13(1)(d) of the Racing Penalties (Appeals) Act.

The application is supported by four grounds. Ground two is not pressed and I will not specifically deal with it.

Grounds three and four can be dealt with together. In summary they allege a restraint of trade, victimisation, discrimination and persecution of Mr Harper by the Committee. The role of the Committee is quite different to that of the West Australian Cricket Association Incorporated in terms of its obligations and duties as the party responsible for the control of racing pursuant to the Australian Rules of Racing. The Western Australian Turf Club is a creature of statute. One can clearly distinguish Hughes v Western Australian Cricket Association (1986) 19 FCR 10 from the matter before this Tribunal. I am not persuaded there is any merit in the argument made in support of grounds three and four.

So far as the first ground is concerned, it is conceded on behalf of the controlling body that Mr Harper was in fact not heard by the Committee. It is argued that there are special facts and circumstances applicable in this particular case which justify that situation. Those circumstances are capable of being summarised, as Senior Counsel for the controlling body did in the course of his submissions, on the basis of the course of conduct of Mr Harper and the nature of his behaviour which render him unsuitable from any point of view to hold a Strapper's Licence. It has been submitted that in those circumstances it would be a futile and pointless exercise for the Committee to have entertained Mr Harper.

I agree with the propositions put to me by Senior Counsel. I am satisfied that on the basis of the record of conduct by Mr Harper the controlling authority was entitled in this particular case to determine this matter without giving Mr Harper the opportunity of being heard. In those circumstances I am not persuaded that there is any merit in this application.

The application for leave to appeal is refused and the fee paid on lodgement is forfeited.

Dan Mossenson.

DAN MOSSENSON, CHAIRPERSON

3/1/96

