

THE RACING PENALTIES APPEAL TRIBUNAL  
SUPPLEMENTARY REASONS FOR DETERMINATION OF

MR J PRIOR (MEMBER)

APPELLANT: ALLAN JAMES REEKIE  
APPLICATION NO: A30/08/312  
DATE OF HEARINGS: 14 AUGUST 1996 & 3 OCTOBER 1996  
DATE OF DETERMINATION: 25 FEBRUARY 1997

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IN THE MATTER OF an appeal by Mr A J Reekie against the determination made by the Western Australian Greyhound Racing Association Stewards on 10 July 1996 imposing a three year disqualification under Rule 245(1)(b) of the Rules Governing Greyhound Racing in Western Australia.

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Mr P Smith, instructed by M Franconi & Associates, Barristers & Solicitors, represented the appellant.

Mr B Goetze, instructed by Minter Ellison, Lawyers, represented the Western Australian Greyhound Racing Association Stewards.

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This is my supplementary reasons for determination in relation to the reasons I handed down in the above matter on 3 October 1996.

At the appearance before the Tribunal on 3 October 1996, Counsel for the appellant submitted that my reasons for the determination as set out in 3 October 1996 failed to deal with the original ground of appeal as set out in the appellant's original Notice of Appeal dated 12 July 1996.

When the matter was heard on 14 August 1996, in referring to the Notice of the Appeal dated 12 July 1996, Counsel for the appellant stated:

*"It's been drawn by a layman but it does contain two aspects:*

1. *An appeal against the finding or verdict;*
2. *An appeal against the sentence.*

*All I would do is say to add, if you like, another subparagraph in relation to the appeal against the verdict per se. That it was against the evidence and against the weight of evidence."*

Counsel for the appellant at the hearing on 3 October 1996, submitted that in my reasons for determination of 3 October 1996, I failed to consider all aspects of Mr Reekie's appeal.

Counsel for the Stewards, at the hearing on 3 October 1996, conceded that this was his recollection of the matter also.

I now consider it is appropriate that I deal with the original ground of appeal as set out in the Notice of Appeal dated 12 July 1996, which at this stage there has been no decision made on.

The ground as stated in the Appeal Notice reads as follows:

*“Not all relevant facts appertaining to the particular enquiry have been established. It will be necessary for my case to cross examine the co-accused, which I have not been permitted to do so far. Because of this I have been unable to prove my innocence. I request in the interest of natural justice that I be granted the opportunity at an appeal hearing.”*

The Chairman of the Tribunal then asked Counsel for the appellant the following:

*“Just before you proceed further can you clarify as it appears whether you are not pursuing the proposal contained on the face of the notice of appeal that is to call the co-accused in order to establish Mr Reekie’s case?”*

Counsel for the appellant answered:

*“That is the case, I’m not. I have no intention of calling the co-accused.”*

In addition to the fact that the appellant did not seek to call Mr Campbell, the co-accused, or the opportunity to cross examine him at the hearing of the appeal, the appellant’s Counsel made no submissions in support of this original ground of appeal at the hearing of appeal on 14 August 1996. The effect of these actions was therefore that this ground was not pursued or abandoned.

I am further satisfied after reading the transcripts of the various Stewards’ inquiries that this appellant was not denied natural justice in the process of the Stewards convicting him for the breach of this rule.

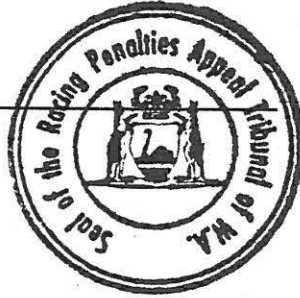
For these reasons, I would therefore dismiss this original ground of appeal.

The Tribunal has been referred letters from the Solicitors for the appellant dated 6 December 1996 and the Solicitors for the Stewards dated 19 December 1996 full copies of which appear in the additional reasons for determination of Tribunal Member Mr T Mulligan. I would not be prepared to make any orders on the submission of the appellant as set out in the appellant’s Solicitor’s letter of 6 December 1996 for the following reasons:

1. The submission was not made by the appellant at the hearing of the appeal on 14 August 1996 or when further submissions were made when my original determination was handed down on 3 October 1996.
2. The question of Mr Campbell’s mental state was before the Stewards in their hearings as there was written evidence from a psychologist Kate Orr relating to Mr Campbell.
3. As set out in my reasons for determination of 3 October 1996 there was considerable other evidence which was available to the Stewards to form the basis of them convicting this appellant of breaching the relevant rule other than the written statement obtained from Mr Campbell.

This leaves remaining for the Tribunal to entertain submissions regarding the severity of the penalty imposed on the appellant Reekie.

*John Prior*



JOHN PRIOR, MEMBER

THE RACING PENALTIES APPEAL TRIBUNAL  
SUPPLEMENTARY REASONS FOR DETERMINATION  
OF MR D MOSSENSON (CHAIRPERSON)

APPELLANT: ALLAN JAMES REEKIE  
APPLICATION NO: A30/08/312  
DATES OF HEARING: 14 AUGUST 1996 AND  
3 OCTOBER 1996  
DATE OF DETERMINATION 25 FEBRUARY 1997

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IN THE MATTER of an appeal by Mr AJ Reekie against the determination made by the Western Australian Greyhound Racing Association Stewards on the 10th day of July 1996 imposing a 3 year disqualification under Rule 245(1)(b).

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Mr P Smith instructed by M Franconi & Associates, represented the appellant.

Mr B Goetze represented the Western Australian Greyhound Racing Association Stewards.

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I have read the supplementary reasons for determination of Mr J Prior (Member). I agree with those reasons and the proposed order and have nothing to add.

*D. Mosson*

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MR D MOSSENSON, CHAIRPERSON



THE RACING PENALTIES APPEAL TRIBUNAL

SUPPLEMENTARY REASONS FOR DETERMINATION OF

MR T MULLIGAN (MEMBER)

**APPELLANT:** ALLAN JAMES REEKIE  
**APPLICATION NO:** A30/08/312  
**DATE OF HEARINGS:** 14 AUGUST 1996 & 3 OCTOBER 1996  
**DATE OF DETERMINATION:** 25 FEBRUARY 1997

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**IN THE MATTER OF** an appeal by Mr A J Reekie against the determination made by the Western Australian Greyhound Racing Association Stewards on 10 July 1996 imposing a three year disqualification under Rule 245(1)(b) of the Rules Governing Greyhound Racing in Western Australia.

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Mr P Smith, instructed by M Franconi & Associates, Barristers & Solicitors, represented Mr Reekie.

Mr B Goetze, instructed by Minter Ellison, Lawyers, represented the Western Australian Greyhound Racing Association Stewards.

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On 3 October 1996 the reasons for determination of Mr J Prior (Member) were published with which the Chairperson and third member concurred.

It was held the appellant has not made out any of the grounds of his appeal in relation to his appeal against conviction, the appeal has failed. This leaves remaining for the Tribunal to entertain submissions regarding the severity of the penalty imposed.

Mr Smith, Counsel for Mr Reekie submitted that the published reasons did not refer to all aspects of the appeal. He said on page 6:

*"... the proposition I am putting is: has in actual fact the Tribunal considered all aspects of Mr Reekie's appeal. Now, you recall the notice of appeal was drawn by Mr Reekie and it makes it quite clear:*

*I appeal on the grounds that not all the relevant facts appertaining to the particular inquiry have been established. It will be necessary for my case to cross-examine the co-accused which I have not been permitted to do so far. Because of this I have been unable to prove my innocence. I request in the interest of natural justice that I be granted this opportunity at an appeal hearing."*

He further said:

*"Now, it is true that I ran the appeal largely both by way of submissions and conclusions on that second aspect, but it is not true that I at any time abandoned the ground of appeal in the notice of appeal."*

The notice of appeal lodged with the Tribunal on 12 July 1996 was in the following form:

*"I appeal against the following determination made against me by:*

*WAGRA                      on the 10th day of July 1996*  
*3 years disqualification - Rule 245*  
*severity of the sentence & the findings of the inquiry*

*I appeal on the grounds that -*

*Not all relevant facts appertaining to the particular enquiry have been established. It will be necessary for my case to cross-examine the co-accused, which I have not been permitted to do so far. Because of this I have been unable to prove my innocence I request in the interests of natural justice that I be granted this opportunity at an appeal hearing."*

At the hearing on 14 August 1996, at page 4, Counsel added another sub-paragraph in relation to the appeal against the verdict *per se* - that it was against the evidence and against the weight of the evidence.

Mr Smith later announced:

*"Mr Chairman I elected not to pursue an application to call any evidence ... I concluded that the evidence I wanted to get in and get before the Tribunal could in actual fact be quite readily extracted from the transcript and the way I intend to approach the appeal is to highlight the parts of the transcript which I think the members of the Tribunal should pay particular attention to and that are relevant to the appeal..."*

The Chairperson asked Counsel:

*"Just before you proceed further can you clarify as it appears whether you are pursuing the proposal contained on the face of the notice of appeal."*

Mr Smith replied:

*"That is the case, I'm not. I have no intention of calling the co-accused."*

It would therefore appear the appellant's position is:

- (a) Appellant was denied the opportunity to cross-examine Mr Campbell who was the other person called before the Stewards' inquiry.
- (b) The verdict was against the evidence and the weight of the evidence.

- (c) He no longer desires Mr Campbell to give evidence before the Tribunal.
- (d) He maintains his appeal against severity of the sentence.

At page 10 of the transcript of 3 October 1996 in answer to a question put by the Chairperson, Mr Smith submitted as follows:

*"My view is that is not the appropriate way to deal with a denial of natural justice. The appropriate way to deal with it is to refer the matter back to the body which is being appealed from and that was the way my submissions ran, having dealt with as I recall my submissions - unfortunately I do not have a transcript - I do not know if you do have a transcript of them, but my understanding is near the end of those submissions. I did draw your attention to the fact that he had asked for an adjournment. He wanted to bring further evidence and that application was denied and I did specifically rely on that, although I did not dwell - spend much time of it because in my view, wrongly it now appears, it did not require that amount of time to be spent on it.*

*But I take your point, sir, what you are saying is: look, your grounds of appeal say - the way I look at them is - it is terrible to having to interpret them at this juncture, but he is saying: I was denied the right to call evidence. That has to be remedied. Now, as a lay person he thought the appropriate way to remedy that was to give me an opportunity up here. That is not the appropriate way. The appropriate way is to refer the man back to the stewards and, indeed, when that evidence was called and the jury had - sorry, the stewards having the opportunity to assess the credibility of the person giving that evidence may well in actual fact have come to a different decision. I do not think I can assist you any further, sir."*

The fact that Mr Campbell refused to give evidence or allow himself to be questioned by the Stewards is, in the way inquiries of that nature are conducted, most unusual. Had he in fact given evidence then the Stewards would have probably allowed Mr Reekie to put questions to Mr Campbell and therefore the former would have achieved his purpose to cross-examine.

The Rules of Evidence allow the calling of a person as a witness, but unless there are special provisions in a statute or rule such a person is not compelled to give evidence. Unless the requirements of the Evidence Act relating to the examination of a hostile witness are implemented the person called as a witness cannot be compelled to answer questions put in the form of cross-examination by the person calling the witness.

If in fact Counsel had requested that the matter be referred back to the Stewards for the purpose of taking the evidence of Mr Campbell and the Tribunal had so ordered and the latter was disinclined to give evidence the Tribunal order would have been ineffective.

The jurisdiction of the Tribunal is set out in section 11(3)(e) of the Racing Penalties (Appeals) Act as follows:

"(e) *the Tribunal -*

- (i) *is to make a full and thorough investigation in open court, without regard to the forms, requirements or solemnities that might have been appropriate in legal proceedings;*

- (ii) *may inform itself on any matter in such manner as it thinks fit, and admit any evidence considered by the member presiding to be relevant notwithstanding that that evidence would not be admissible in a court of law; and*
- (iii) *may take into account any matters relating to, or to the administration of, racing that are within the knowledge or experience of a member of the Tribunal or which have arisen in or as a result of other proceedings or appeals before a controlling authority or the Tribunal,*

*but may hear evidence in camera in prescribed circumstances.”*

In *Danagher's* case Mr Justice Murray explains the application of paragraph (e) as follows:

*“... the jurisdiction of the Tribunal is to conduct an appeal by way of rehearing in the sense that it is to review the decision of the body from which the appeal comes, having regard primarily to the evidence and materials before that body, but with the power often conferred upon the appellate tribunal to supplement those materials as may seem proper. It is not a case, I think, such is often found where an “appeal” is provided from an administrative body, the appeal generates a process in which the tribunal proceeds de novo upon the subject matter of the inquiry by the body from which the appeal has come, directed to making anew the determination which that body was called upon to make. ...”*

It therefore cannot be said in the circumstances of the case Mr Reekie has been denied natural justice because Mr Campbell declined to answer questions put to him or the Stewards at the Stewards' inquiry.

The second ground that the verdict of the Stewards was against the evidence and the weight of the evidence, the Tribunal has found there was ample evidence for the Stewards to come to a decision that Mr Reekie was guilty of a breach of Rule 245(1)(b).

I reproduce letters from solicitors for the appellant and solicitors for the Western Australian Greyhound Racing Association Stewards as follows:

*The Registrar  
Racing Penalties Appeal Tribunal  
Office of Racing, Gaming and Liquor*

*Dear Sir*

*When the writer and his client last appeared before the Tribunal as we understand the order of the Tribunal, the matter was adjourned generally to enable the Tribunal to reconsider the matter in the light of submissions made by the writer of that day.*

*Since then, certain information which the writer considers material to the matter, has come to our client's attention and rather than take the Tribunal by surprise by drawing this material to the attention of the Tribunal by way of further submissions when it next convened, we now address the matter on this letter to you with a view to you drawing this letter to the Chairman's attention, if you consider it appropriate to do so.*

*We are instructed by our client Mr Reekie that Mr Campbell, whose appeal was heard at the same time as Mr Reekie's at the direction of the Tribunal, has informed our client that he, Mr Campbell, resiles from statement he gave to the Police on the basis that this statement*



*was obtained under duress and while he was under psychiatric care and indeed that he has had his solicitors write to the W.A. Greyhound Racing Association requesting that in all of the circumstances the matter be "dropped". Our client has been similarly informed that not surprisingly the Association replied to the effect that because the matter was sub-judice the matter was one for the Tribunal.*

*This development raises for our client (and we say for the Tribunal and for the administration of justice generally) an untenable dilemma. The Tribunal will recall when the matter first came before the Tribunal, albeit differently constituted, after hearing submissions from all Counsel, the Tribunal directed that both appeals be heard together and as soon as possible, the two matters being heard together for inter alia the obvious reason that if they were not, the result could be the unseemly situation in that different results could be reached on different evidence arising out of the same set of facts. Although the tribunal had left both appeals in suspense pending the next appearance before it, if the Tribunal was to disallow Mr Reekie's appeal on the basis of the evidence presented to it, and allow Mr Campbell's appeal on condition that proceedings against him by the steward's be halted until the expiration of the 12 month limitation period, then, if and when those proceedings recommence Mr Campbell is acquitted on the basis of a change in his evidence, which fresh evidence was not available to Mr Reekie, the outcome of the proceedings could hardly be seen as just and equitable by the public, let alone our client.*

*Of course, if the Tribunal allows Mr Reekie's appeal, as well as Mr Campbell's, in accordance with the writer's submissions when the matter last came before the Tribunal, the possibility of such an untenable situation would be avoided. It will be the writer's submission that at the very least, no further action should be taken by the Tribunal in respect of Mr Reekie's matter, until it is abundantly clear what will be Mr Campbell's evidence, when free of the limitation period restraint now allegedly upon him, and what weight should be given to that evidence. Surely, in all the circumstances, the spectre of Mr Reekie being dealt with without the benefit of this fresh evidence, which refutes one of the most damaging pieces of evidence against him hangs over these proceedings like the sword of Damocles.*

*Yours faithfully*  
FRANCONI

*The Registrar*  
*Racing Penalties Appeal Tribunal*  
*PO Box 6119*  
*EAST PERTH WA 6892*

*Dear Mr Smith*

*We refer to your letter dated 9 December 1996.*

*With respect to the Reekie appeal, we do not object to you referring to the Tribunal the correspondence from Messrs Franconi dated 6 December 1996.*

*The only comment we make is, that, each of the Stewards and the Tribunal act upon the material before them when the matter is heard. The Tribunal should not now take any notice of this so called new information. The transcript reveals, at page 176, that Kate Orr & Associates wrote to the Stewards regarding psychological matters relating to Mr Campbell.*

*We also note that each of Messrs Reekie and Campbell were represented by counsel at the hear of the appeals before the Tribunal. In the circumstances, it is respectfully submitted, that, it is too late for any further submissions to be made.*

...

*Yours faithfully*

*MINTER ELLISON NORTHMORE HALE*

The subject matter of these letters were brought to the notice of the Stewards during the inquiry, but was not raised before the Tribunal.

No action is required by the Tribunal.



TED MULLIGAN, MEMBER

