

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: ROBERT SANGALLI
APPLICATION NO: A30/08/451
PANEL: MR J PRIOR (PRESIDING MEMBER)
DATE OF HEARING 25 MARCH 1999
DATE OF DETERMINATION: 27 MAY 1999

IN THE MATTER OF an appeal by Mr R Sangalli against the determination made by the Western Australian Trotting Association Stewards on 23 February 1999 imposing a three month suspension for breach of Rule 487 of the Rules of Harness Racing.

Mr T F Percy QC and Ms C White, instructed by D G Price & Co, appeared for the Appellant.

Mr B Goetze, instructed by Minter Ellison, appeared for the Western Australian Trotting Association Stewards.

This is an appeal against conviction and penalty.

The Appellant is a licensed trainer.

During the course of an inquiry on 23 February 1999 into the sale of the pacer KOTARE TRUST, the Appellant was charged for breach of Rule 487 of the Rules of Harness Racing in the following terms:

“ ... that you indulged in contemptuous conduct whilst attending this inquiry. Your conduct was contemptuous in the manner in which you addressed the Stewards and conducted yourself by hitting the inquiry table and pointing at myself in a threatening manner and speaking in a loud and aggressive manner.”

Rule 487 of the Rules of Harness Racing states:

“No person shall indulge in any contemptuous, improper or unseemly conduct, behaviour or language when attending any inquiry, appeal, interview or any other proceeding conducted by the Committee of the Controlling Body, the Committee of a registered Club or Association of registered Clubs, the Stewards or any other harness racing official or when in any enclosure reserved for the Stewards, the Committee of the Conducting Club or any officials of the Club or Controlling Body.”

The Appellant was convicted of a breach of the rule and his trainer's and reinsperson's licence was suspended for three months.

Senior Counsel at the commencement of the Appeal was granted leave to substitute Amended Grounds of Appeal as follows:

"A. CONVICTION

1. *The Stewards erred in convicting the Appellant of contemptuous behaviour in that the behaviour complained of did not occur during the course of any proceeding before them.*
2. *The Stewards erred in convicting the Appellant in that they failed to afford the Appellant procedural fairness in the hearing of the charge under Rule 487 by failing to:*
 - (a) *ascertain that he fully understood the charge*
 - (b) *take a firm and unequivocal plea to the charge*
 - (c) *offer the Appellant any adjournment or opportunity to take legal advice or call evidence*
3. *The Stewards erred in preferring a charge of contemptuous behaviour, such a charge being only appropriate in extremely serious cases of contempt in the face of the proceedings.*

B. PENALTY

1. *The offence in question bore no relationship to the Appellant's conduct or behaviour in his capacity as a trainer or reinsman and as such the penalty was highly inappropriate.*
2. *The Stewards gave no reasons as to why a fine rather than a suspension would be appropriate.*
3. *The Stewards erred in that they:*
 - (a) *made no inquiry into the personal circumstances or means of the Appellant when fixing the penalty, and*
 - (b) *gave no credit for his previous good record spanning 40 years in the industry.*
4. *The penalty imposed was excessive in all the circumstances of the case.*

APPEAL AGAINST CONVICTION

Ground 1 arises as a result of a comment by the Chairman of Stewards which appears at page 52 of the Transcript of the Stewards' inquiry on 23 February 1999:

Chairman: "We are giving you the opportunity to do that, Mr Sangalli it is up to you entirely. The inquiry is adjourned. Thank you, gentlemen."

When the above comment was made by the Chairman of Stewards, he was adjourning the inquiry and inviting the Appellant to obtain more information with respect to the matter they were inquiring into, the sale price of the pacer KOTARE TRUST.

Shortly after the above comment was made, the Chairman of the Stewards advised the Appellant he was free to go. The following exchange then took place:

Sangalli: "May I speak?"

Chairman: "Yes."

Sangalli: "I have done your committee man – what I have done with these people. It was one of your committee men. I have done. And you're penalising me because I said the bulk of the money was made up through work that I did at my stable for Peter Keogh. One of your top committee men had a problem with a horse from New Zealand. It was sent here to him and wasn't suitable. He said the horse was no good. So the agent in New Zealand contacted me to rectify – or have a look at the horse and see if I could get it going, which I did do. I then asked the owner of the horse to come out to my stable so –"

Chairman: "Mr Sangalli, if I could just interrupt –"

Sangalli: "What you're calling me a liar."

Chairman: "I fail to see any relevance –"

Sangalli: "What I'm trying to tell you, you think it's bullshit that I told you that the money was made up from training fees."

Chairman: "Sit down. Sit down, Mr Sangalli."

Sangalli: "That's what you're saying."

Chairman: "Mr Sangalli, if you don't sit down, we'll charge you for contemptuous behaviour."

Sangalli: "Because that's a lot of crap that you're putting up."

Chairman: "Just wait outside, Mr Sangalli."

Sangalli: "You're calling me a liar. I'm not a liar."

Chairman: "Just wait outside, Mr Sangalli."

Sangalli: "Because some white-haired bloke – you look at this –"

Chairman: "Wait outside, Mr Sangalli. Mr Sangalli, I'm giving you an instruction to wait outside."

Sangalli: "You look at that. Look at that. This white-haired silver-tongue gave me that, going back years ago. This is what you're up against, and you tell me about this smooth-tongue. Just look at that –"

Chairman: "Wait outside, Mr Sangalli."

Sangalli: " – and see what he's like. In all the years I've been in the game I've never had one inquiry. I've done three bastards with this bloke."

Following this exchange, the Appellant retired from the Stewards' room. Upon his return, the Chairman of the Stewards cited Rule 487 and charged him with the offence which has previously been referred to.

The following exchange then took place between the Appellant and the Chairman of the Stewards:

Chairman: "Do you understand what you've charged with, Mr Sangalli?"

Sangalli: "Can't even hear you. Just charge me for what you want to charge me, please. Just be the some bloody service you give some of these other fellows you get mixed up with."

Chairman: "Mr Sangalli, I caution you again: The Stewards will not tolerate this sort of conduct from a licensed person, or anyone else for that matter, when you're attending one of our inquiries. If you don't wish to conduct yourself in an appropriate manner, well, so be it, but you'll have to suffer the consequences. Is there anything you want to say in relation to the charge?"

Sangalli "No."

Chairman: "Wait outside, please."

The Appellant retired and the Stewards considered the charge. Upon the Appellant's return before the Stewards, the Stewards found him guilty as charged and cited the range of penalties which had been imposed for similar breaches of Rule 487.

The Chairman asked the Appellant if he wished to say anything on penalty and the Appellant responded with the word "No". The Stewards then considered the penalty in the Appellant's absence and when he returned to the hearing room, the penalty which has been referred to was imposed.

With respect to Ground 1, I am satisfied that the act of the Appellant requesting the opportunity to speak and then being given such opportunity by the Chairman of the Stewards whilst the inquiry was still in its formal setting, reactivated the inquiry. I am satisfied that the act of the Appellant requesting the opportunity to speak and then being given such opportunity by the Chairman of the Stewards whilst the inquiry was still in its formal setting, reactivated the inquiry. I am satisfied that in those circumstances, the proceedings were therefore formal proceedings before the Stewards for them to be able to convict him of indulging in contemptuous behaviour pursuant to Rule 487.

Once the Appellant reactivated the inquiry by requesting the opportunity to address the Stewards, which such opportunity he was given, the inquiry continued until the Chairman concluded the inquiry after the handing down of the penalty to the Appellant the subject of this Appeal with the following words:

Chairman: "Mr Sangalli, this inquiry is concluded. If you have any evidence to present to the Stewards you can do it at the next sitting of the inquiry. Thank you."

For these reasons, I consider there is no substance in Ground 1 of the Appeal and I would dismiss this ground.

With respect to Ground 2, an analysis of the excerpt of the Transcript which I have referred to above, reveals the Stewards did the following:

1. Tried to stop the Appellant from continuing his inappropriate behaviour at the time.
2. Warned the Appellant of the possibility that he may be charged with contemptuous behaviour.
3. Read the Appellant the relevant rule that they were considering charging him with.
4. Gave the specifics of the charge issued against the Appellant.
5. Asked the Appellant twice if he understood the nature of the charge.
6. Cautioned the Appellant against further unsatisfactory behaviour.
7. Asked the Appellant if he wanted to say anything in relation to the charge.

In relation to all the above acts that the Stewards took, which I find were essentially trying to provide the Appellant with procedural fairness in the inquiry, the Appellant did not avail himself of the opportunities offered, nor did he terminate his inappropriate behaviour at the time.

I am satisfied that to some extent, the Appellant's behaviour restricted the degree of which procedural fairness could have been provided to him at the inquiry. I am satisfied in any event that the rules of procedural fairness must be considered in light of the circumstances of each particular case. Such relevant circumstances in this case would be:

1. the nature of the inquiry and the forum at the relevant time;
2. the behaviour of the Appellant at the time; and
3. what steps of procedural fairness were actually afforded to the Appellant at the time.

I am further satisfied that in an inquiry of this nature and pursuant to the Rules of Harness racing, there is no requirement of procedural fairness that the Stewards should have offered the Appellant an adjournment or an opportunity to take legal advice or call evidence. In any event, no request was made by the Appellant at this inquiry for such things to take place.

I am satisfied that the rules of procedural fairness and how they should be applied in inquiries of this nature must be considered in light of the public interest and the obligation of the Stewards to deal with inquiries expeditiously.

For these reasons, Ground 2 of the Appeal is dismissed.

With respect to the third Ground of Appeal, the essence of this Ground is if the conviction for breach of Rule 487 was appropriate, the particular behaviour of which the Appellant was convicted was inappropriate in the circumstances, as the circumstances of this matter were that the Appellant's behaviour was not an extremely serious case of inappropriate behaviour.

I am satisfied that in the Rules of Harness Racing, the behaviour and language described as "contemptuous improper or unseemly" is described in a descending order of seriousness. The

question then arises – Did the behaviour of the Appellant in these circumstances constitute the most serious type of behaviour that being contemptuous behaviour?

An analysis of the excerpts of the Transcripts of the Stewards' inquiry I referred to above reveals that the Appellant engaged in behaviour which was abusive towards the Stewards and also continuously interrupted the proceedings. The verbal comments were spoken in a loud and aggressive manner. The Appellant's inappropriate verbal behaviour at the inquiry was also interspersed with inappropriate physical behaviour, which included pointing his finger at the Chairman of the Stewards in a threatening manner, hitting the inquiry table, standing up when making some of his inappropriate comments and continuing to make such comments when he had been requested to leave the Stewards' room on a number of occasions.

The Rules of Harness Racing do not define what is "contemptuous behaviour". Contemptuous is defined in the Concise Oxford Dictionary as "acts which are scornful or insolent". Contempt to a court is defined as "disobedience to or interference with the administration of justice by the courts of law". Contempt at common law was defined by Owen J in Stuart v Brown (1996) 17 WAR 525 at 531. I am satisfied that all the behaviour I have described above meets all these definitions.

In those circumstances, I am satisfied that there was no error in the Stewards in particularising the Appellant's behaviour as contemptuous. In finding this, I am certain unfortunately that the Appellant's behaviour was not the worst example of contemptuous behaviour that has occurred before the relevant bodies that this rule applies to, or is likely to occur in the future.

For these reasons, I would dismiss this third Ground of Appeal Against Conviction.

As a result of all the reasons I have referred to above, the Appellant's Appeal Against Conviction is dismissed.

APPEAL AGAINST PENALTY

In relation to the Appeal Against Penalty and the four grounds pleaded, I consider the following matters to be of significance:

1. The threshold question which the Stewards were inquiring into was the subject of a continuing inquiry of which the behaviour of the Appellant the subject of this conviction occurred at the end of an inquiry of which he was a significant participant and which was being adjourned to a further hearing date.
2. At the relevant inquiry, the Appellant was unrepresented.
3. The range of penalties for such offences as described by the Stewards in the Transcript ranged from a \$500.00 fine to a three month suspension.
4. The Appellant did not give any information in mitigation of his penalty. To some extent, this was due to his continuing improper behaviour.
5. There was no articulation by the Stewards of the Appellant's previous record.
6. The Stewards, when advising that two offences where similar penalties of a three month suspension had been imposed, merely advised that the conduct the subject of such penalties had been similar to the Appellants without giving any comparison as to the Appellant's personal circumstances.

7. The Appellant, in his letter to the Racing Penalties Appeal Tribunal dated 8 March 1999 and attached to his original Notice of Appeal, submits that the penalty of suspension would affect him with respect to his ability to earn a living and as a consequence, generally financially.
8. A perusal of decisions of the Courts of Law when dealing with behaviour which constitutes contempt of court reveals that the penalty commonly imposed is one of a fine.
9. The Appellant's behaviour was right at the end of the hearing and appeared to be a spur of the moment loss of control.

In considering the circumstances referred to above and also in considering Grounds 1 to 4 in the Appeal Against Penalty, I am satisfied that the Stewards erred in imposing a penalty of suspension as opposed to a fine.

Having considered the circumstances above and the nature of the Appellant's behaviour as revealed by both the Transcript and Submissions made by Counsel at the hearing of this Appeal, I would set aside the penalty of three months suspension and impose a penalty of a \$1,000 fine.

As a result of the reasons referred to above, I make the following orders:

1. The Appeal Against Conviction is dismissed.
2. The Appeal Against Penalty is allowed.
3. The suspension of three months imposed by the Stewards is set aside and substituted by an order that the Appellant be fined \$1,000.00.

John Prior



JOHN PRIOR, PRESIDING MEMBER