

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR D MOSSENSON
(CHAIRPERSON), MR P HOGAN (MEMBER) AND
MS P HOGAN (MEMBER)

APPELLANT: IAN EDWARD GREIG

APPLICATION NOS: A30/08/463 & 464

DATE OF HEARING: 28 MAY 1999

DATE OF DETERMINATION: 28 MAY 1999

IN THE MATTER of appeals by Mr IE Greig against the determinations made by the Western Australian Turf Club Stewards on the 13 April 1999 imposing 2 disqualifications each of 2 years for breach of Rules 182(1)(b) and 175(a) respectively of the Australian Rules of Racing.

Mr WR Maumill was granted leave to represent the appellant.

Mr RJ Davies QC appeared for the Western Australian Turf Club Stewards.

On the 27 April 1999 the Stewards commenced an inquiry into reports they had received regarding an inspection of the stables which Mr Greig was leasing at 40 Mathieson Road, Ascot. Mr Greig has been licensed with the Turf Club as a trainer since 1987. His current permit to train is subject to both '*drug conditions*', which are set out in the Committee of the Western Australian Turf Club's letter of the 28 July 1998, and restrictions as to which horses may be trained.

In the report from Mr Mackintosh, the Assistant Racecourse Investigator, Mr Mackintosh described how he had conducted this stable inspection with some of the Stewards. In the course of that inspection Mr Greig was asked whether or

not Mr George Way, a person who had been warned off by the Turf Club, had attended Mr Greig's stables the previous day. Mr Mackintosh was told Mr Way had been inside the perimeter fence of Mr Greig's stables and Mr Way was the owner of 4 standardbred pacers which were boxed on the south side of the stable complex. Mr Mackintosh believed he had initially been told by Mr Greig that the 4 horses were his and that he had put in for a trotters' training licence. Later he changed that and said they were Mr Ways. Mr Criddle, one of the Stewards who attended the stable inspection, gave evidence to the Stewards' inquiry. Mr Criddle also produced a report which referred to the fact that Mr Greig had stated at the inspection that Mr Way attended Mr Greig's stables daily.

The evidence before the Stewards revealed that when Mr Greig was relicensed for the 1997/98 season he was advised if his application were successful he was not to have any association with a disqualified person. When asked why Mr Greig did not stop a warned off person from stabling on his training establishment and visiting his property on a number of occasions Mr Greig answered that he did not have a licence for the entire property but he was '*only a caretaker there*'. In addition he tried to argue that he only occupied part of the total property. When questioned whether or not he had been asked by anybody or told that horses were coming onto the property he replied:

'I was told in February, I think it was, February sometime, George approached me, large as life, and said that they were going to divide the stable in half, he said you can stay where you are on, on that side, with the house, that half of the barn and your yards at the back, he said we're going to take over this side and it's going to be all trotters.'

Mr Greig claimed he spoke with Mr Harken about this and was told that there was a separate title and that the house, the barns and the yards where Mr Greig operated was to be divided down the centre and be blocked off in the centre and the trotters would be on the other side. Mr Way visited the property every day to train his horses which he had been doing for at least 3 weeks. Mr Greig admitted that Mr Way put his feed in Mr Greig's stable. Further Mr Greig admitted that he had thrown feed to Mr Way's horses '*every now and again*'. When asked by the Stewards if it was a concern to him that a warned off person may come onto his premises Mr Greig answered '*No*'. Mr Greig denied that he had told the Stewards at the inspection that he had been swimming and treading Mr Way's gelding and claimed '*They must've misunderstood what I've said...*'

The Stewards decided to charge Mr Greig under their powers in Australian Rule of Racing 8(e) which reads:

'To assist in the control of racing, Stewards shall be appointed according to the Rules of the respective Principal Clubs with the following powers: (e) To punish any person committing a breach of the Rules or refusing to obey or failing to obey any proper direction of any Official, or whose conduct or negligence has led, or could have led, to a breach of the Rules.'

In laying the charge the Stewards stated:

'You are charged under that rule, Mr. Greig, in that by your conduct you have breached Australian Rule of Racing 182(1)(b) in that you have permitted a "warned-off" person to attend your training establishment.'

Mr Greig pleaded not guilty to this charge. In addition he was charged under Australian Racing Rule 175(a) in the following terms:

'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. You're charged under that rule with an improper practice, the improper practice being in the opinion of the Stewards you (1) permitted a "warned-off" person to stable his horses on your training complex, (2) permitted a "warned-off" person to visit your training complex, and (3) have assisted in the training of the standardbred horse, namely FRANCO HIGH STYLE.'

Mr Greig also pleaded not guilty to the second charge. The inquiry on the 27 April was adjourned to allow Mr Greig to call witnesses. At the resumed hearing on the 30 April, the Stewards looked at a video which was taken at the time of the stables inspection. Mr Way was called to give evidence. Mr Way attended and read out to the inquiry a statutory declaration he had made. After completing the inquiry the Stewards concluded that the charges were as made out and found Mr Greig guilty of both of them. The Stewards then considered the penalty and adjourned the proceedings. When the Stewards reconvened the Chairman of the inquiry made the following announcement:

'Take a seat please Mr. Greig. Mr. Greig, in regards to the penalty on the charge under Australian Rule of Racing 8(e), we believe that this is a most serious offence. A "warned-off" person is judged to be unfit to participate in the industry and any involvement in the industry severely damages the

image and integrity of racing. A "warned-off" person suffers severe disabilities under ARR.182(1)(b). The Stewards believe that you have a responsibility to ensure that the rules of racing are obeyed. We have considered your personal circumstances and all that you have placed before us. We have also considered the provisions of ARR.196 and believe a disqualification of two years to be appropriate. Further, in regards to a penalty for the improper practice charge under ARR.175(a), the Stewards believe that you have acted improperly in allowing a "warned-off" to stable his horses and visit your stable. Further, your assistance in preparing a standardbred is totally unacceptable to the Stewards. As stated previously, a "warned-off" person has been judged unfit to participate in the industry. A "warned-off" person's involvement severely damages the image and perception of racing. Again we have considered your personal circumstances and all that you have placed before us. We have also considered the provisions of ARR.196 and believe a disqualification of two years to be appropriate in this matter. These penalties are to be served concurrently.'

Mr Greig appeals against the determination on the basis that he was not guilty, the convictions were against the weight of the evidence and the penalties were manifestly excessive. At the outset of the appeal hearing leave was granted for an additional ground to be added, namely that of denial of procedural fairness. In support of that ground the following particulars were supplied by Mr Maumill:

1. *Mr Greig's witnesses were approached by Mr Fin Powrie (Chief Steward) regarding matters that were subject of the inquiry.*
2. *Details of evidence given by those witnesses Mrs Julie Clements and Mr Wally Mitchell were not presented to the inquiry.*
3. *By approaching witnesses after the inquiry had begun, to discuss matters under inquiry or related to the inquiry Mr Powrie assumed the role of participant and information he may have gathered should have been presented.'*

At the appeal hearing leave was granted for Wally John Mitchell (a licensed trainer), Julie Clements (a licensed trainer) and Ron Harken (the owner of Mr Greig's stables) to give evidence. Nothing that the first 2 witnesses said assisted Mr Greig's case. As to the evidence from Mr Harken, it confirmed that Mr Greig in fact leased the whole property.

The evidence which was available to the Stewards clearly justified the laying of the charges and the findings of guilt. There was nothing procedurally unfair about the Stewards' inquiry process. Nothing was presented during the course of the appeal which indicated that Mr Powrie's role, acting as he was quite

independently of the Stewards' inquiry, was anything but proper and in keeping with his duties as Chief Steward. The Stewards' inquiry was in no way tainted as a consequence.

The 2 offences are both serious. Mr Greig was given a licence to train subject to restrictions and had been expressly told on numerous occasions about his '*... responsibilities not to have disqualified persons on your (his) property...*'. By ignoring the Stewart's direction Mr Greig clearly conducted himself in a manner which led to a breach of the Rules. Equally the Stewards were entitled to conclude that it was improper of Mr Greig to allow Mr Way to stable horses in Mr Greig's complex, to allow him to visit the complex and for Mr Greig to assist in the training of Mr Way's horses.

Nothing of substance was presented to the Tribunal to demonstrate why the 2 year penalties imposed for these serious offences were inappropriate. Mr Maumill argued that because it was Mr Way who happened to be involved that a tougher than otherwise attitude was adopted by the Stewards. This was strenuously refuted by senior counsel who stressed firstly the fact that there was a repeated course of conduct involved and secondly that Mr Greig had assisted and was not just passively implicated by Mr Way. Mr Way's continued course of conduct took place in full view of and with at the least the acquiescence of Mr Greig. Senior counsel also submitted that it was important for the penalties to send the appropriate message to others in the racing community not to be involved with Mr Way.

The Tribunal agrees with all of the propositions put to it by senior counsel. The Tribunal is satisfied that the penalties, which are to be served concurrently, are not outside the proper discretionary range. They are appropriate for these 2 offences. At the same time they should send the appropriate message to all licensed persons of the implications of becoming involved with a person who has been warned off or disqualified.



DAN MOSSENSON, CHAIRPERSON

