

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF  
MR J PRIOR (MEMBER)

APPELLANT:

TRAVIS WILLIAM BULL

APPLICATION NO'S:

A30/08/539 & A30/08/540

PANEL:

MR P HOGAN (PRESIDING MEMBER)  
MR J PRIOR (MEMBER)  
MR W CHESNUTT (MEMBER)

DATE OF HEARING:

5 DECEMBER 2001

DATE OF DETERMINATION:

23 JANUARY 2002

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IN THE MATTER OF two appeals by Travis William Bull against the determinations made by the Stewards of the Western Australian Trotting Association on 24 July 2001 imposing 6 months disqualification for breach of Rule 231 and 12 months disqualification for breach of Rule 243 of the Rules of Harness Racing, both periods to be served concurrently.

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Mr L A Margaretic appeared for the appellant.

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

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As a result of a letter received from Mr W D Powell, a Registered Stablehand and Ms S R Roberts, a Registered Trainer/Driver the Stewards opened an inquiry on 24 July 2001 into incidents alleged to have occurred during the Geraldton Pacing Club 2000/01 racing season.

That letter is reproduced here.

*“William Dennis Powell  
Susan Rae Roberts  
205 Bayview Dr  
LITTLEGROVE ALBANY*

*To Chief Stipendary Steward  
Mr M Skipper*

Dear Sir,

We have both been staying on course at Geraldton this season whilst racing our horses and have seen several instances that we found to be quite disturbing to us and detrimental to the trotting industry.

Between us we have seen Travis Bull & Glenn Richards using stock whips on pacers in their care on many occasions.

We saw Travis Bull using a stockwhip on LEROYS MAGIC on Tuesday 6<sup>th</sup> June at 11am on the main trotting track while galloping the horse in the spider in short bursts up the home straight, again on the dirt track whilst in the jog cart on Friday 15<sup>th</sup> at 2.30pm. Also on Friday 22<sup>nd</sup> June the horse was tied up to the hitching rail while fully geared up cart, hobbles, boots etc (no rug). Mr Bull was standing behind the seat of the spider and gave LEROYS MAGIC 4 blows from the stock whip, 2 down both sides of the belly.

On 22<sup>nd</sup> June MOUNT ZION while galloping in jog cart on the dirt track, the stock whip was used twice on two occasions in same workout.

22<sup>nd</sup> June RIGHT RABBIT was galloped on the dirt track in two separate heats with Mr Bull cracking the whip all about the horse like the "Man From Snowy River", thus causing the 2yo that Bill was working to bolt twice for a short distance.

29<sup>th</sup> June at about 11.30 we saw RIGHT RABBIT tied up to the farrier's shed whilst in the cart and struck 3 times along the belly with the stock whip whilst Mr Bull was standing on the ground.

THE MIPSTER was punished on two occasions with the stock whip on the dirt track on 28<sup>th</sup> June.

TULLY'S JAKE WHITBY on Tuesday 22<sup>nd</sup> June was galloped in the spider up the straight, on the main trotting track while on three occasions each time the stock whip was used.

We also observed Glenn Richards doing similar things to two horses in his care.

LENTARA Friday 15<sup>th</sup> June 1.15pm on the dirt track giving his horse two separate gallops whilst using stock whip on both occasions.

On race day on 17<sup>th</sup> June at 9.00am while horse was in his yard with a rogues hood on, removable plugs and rug he was struck with the stock whip as the plugs were pulled. The same horse also received the same treatment the following week on race day, Sunday 24<sup>th</sup> June.

After Steward Mr Oliver visited Geraldton with the "video camera", Mr Bull was under the false impression we were the ones that "dobbed him in". After many verbal attacks on us things became worse. On race day Sunday 8<sup>th</sup> July prior to Race 3 Mr Bull quite loudly instructed his friend and driver Mr Richards to get Sue Roberts during the race and make her squeal. Mr Richards drove RUSTY NAILEM and caused interference to Miss Roberts drive HADDASAH. The Stewards noticed this race incident and HADDASAH sustained injuries and was unable to start the following week and Mr Richards was suspended, and then again prior to Race 5 Mr Bull very loudly instructed Mr Richards to "fix up" that Sue Roberts don't worry about the money just get her, he said. Mr Richards drive THE MIPSTER caused interference to Miss Roberts drive WIPE THE PENALTY, Mr Richards was suspended a further 3 weeks to be served concurrently with the 3 weeks he received earlier. Back at the stalls straight after the race Mr Bull told Bill he was going to get both his f'n legs broken next.

Whilst attending Geraldton trials last Tuesday 17<sup>th</sup> July Bill had cause to return to our stabling compound where he caught Mr Bull in our complex going through our hay shed (after undoing the chain) circled our stables, tested the back gate (wired up) then went to the locked roller door on our feed & harness room where he appeared to be searching for the key. After being challenged by Bill Mr Bull ended up assaulting him, struck him in the back of the neck and knocked him to the ground.

*We informed the President of the Geraldton Club Mr McCaskil of this and notified the Perth Stewards the next morning as we were unable to reach them that night. If you wish further discussion on these events we would be happy to oblige.*

Regards                      *signed W Powell*  
                                      *signed Susan Roberts*

In addition to the authors of the letter the following witnesses were called to the inquiry:

Mr M J Plozza	Registered Trainer/Driver
Mr G D Richards	Registered Trainer/Driver
Mr R J Oliver	WATA Stipendiary Steward

At the conclusion of the hearing the Stewards charged Mr Bull with breaches of Rules 231 and 243 of the Rules of Harness Racing.

Rule 231 states:

***“Assault and interference***

*A person shall not assault, abuse or otherwise interfere improperly with anyone employed, engaged or participating in the harness racing industry or otherwise having a connection with it.”*

The particulars of the charge were:

*“...that on the 17<sup>th</sup> of July 2001 you did assault Mr W.D. Powell in the stabling compound of Ms Roberts, by striking him.”*

Rule 243 states:

***“Behaviour detrimental to the Industry***

*A person employed, engaged or participating in the harness racing industry shall not behave in a way which is detrimental to the industry.”*

The particulars of the charge were:

*“...that using unapproved equipment in the training of your horses, namely, a “stock” whip and a modified “swish” whip as I said was unapproved, which most probably inflicted suffering to those horses, and it certainly caused great concern to onlookers in an area attended and used by licensed or other persons and/or other persons. You did behave in a way which is detrimental to the industry.”*

The appellant acknowledged that he understood both charges.

The following exchange then took place in relation to the pleas to the two charges:

**CHAIRMAN:** *In relation to the charge for assault, do you wish to put any evidence in defence of the charge?*

**BULL:** *Yes, Mr Skipper.*

**CHAIRMAN:** *Go ahead.*

**BULL:** *I did not assault Mr Powell. On that occasion there was trials on and there was people around and to this day I did not assault Mr Powell. I was falsely accused. And I believe that I am innocent of that charge.*

**CHAIRMAN:** *In relation to the other charge, is there any evidence you wish to put in defence of the charge? That is acting in a – or behaving in a way which is detrimental to the industry.*

**BULL:** *Yes, Mr Skipper. I've been involved in harness racing for a number of years now and the Stewards themselves have actually been to my premises and have done random checks there. They have not once found any such thing as a "stock" whip or "swish" whip. That "swish" whip was found at Geraldton Trotting Club track. My record I believe is, you know, I don't think I done a lot wrong. I believe that these "swish" whips are quite commonly known in the Trotting Industry and that there are other trainers out there who have had them or have got them in their possession. This was not mine and I'd just like you to take into account my record and that I plead for leniency on this charge. As you know that my horses were in good condition when they were produced on that day and they were not found to have marks on them. They were not mistreated in any such form.*

**CHAIRMAN:** *Alright anything else?*

**BULL:** *I just plead for leniency Mr Skipper.*

After considering the evidence the Chairman announced guilty findings in respect of both charges in these terms:

*"Mr Bull in deciding the matter of guilt the Stewards have given you the opportunity to put your case and cross-examine the witnesses.*

*We've taken into account the evidence before us. Both from the other witnesses and yourself and in carefully considering all the evidence we have to say we have found you to be a somewhat an implausible witness.*

*We prefer the evidence of Mr Oliver, Mr Plozza, Mr Powell and Ms Roberts. In our minds there is no reason for us to believe that their evidence is not truthful and an accurate recollection of the events as they transpired. And their evidence in relation to the use of the "stock" whip and the modified "swish" whip has corroborated each other.*

*Therefore, we find you guilty of both charges."*

After further deliberations the Stewards announced sentence as follows:

*"Mr Bull your record shows that you have not previously you've (sic) been dealt with in similar circumstances. However the nature of the offences are viewed most seriously by the Stewards.*

*It's, in our view, simply not appropriate that you use the methods described in training your horses or that you resort to physical means in any circumstances. So in our minds the penalty must not only deter you it must be seen as a deterrent to others.*

*In relation to the charge under Rule 243, the methods you used in training your horses with a "stock" whip and a modified "swish" whip was over a prolonged period of time, not*

*simply a one off incident. Therefore, we are imposing a 12 months – a period of 12 months disqualification on you for that offence.*

*In relation to the assault offence, you put yourself in an area, which you had no business being and when discovered, resorted to striking Mr Powell, who is a slightly built fifty three years old and certainly be no match for yourself. We are applying a 6 months disqualification for that offence.”*

Mr Bull lodged a Notice of Appeal on 7 August 2001 and did not seek the suspension of operation of either penalty.

The grounds of appeal pursuant to the Notice of Appeal and maintained at the hearing are:

- The Stewards erred in concluding the Appellant was guilty based on the evidence presented at the Inquiry.
- The suspension imposed was manifestly excessive when considering the Appellant’s record and the nature of the charge.

The video of Mr Bull driving on 6 July 2001 taken by the Steward Mr R J Oliver was shown at the appeal hearing and tendered as an exhibit. Also a number of statements and character references were received as exhibits on the basis they were relevant to the appeal against penalty only.

#### **APPEAL 539 – 6 MONTHS DISQUALIFICATION – RULE 231**

At the commencement of the appeal hearing Mr Margaretic for the appellant abandoned the appeal against penalty on the basis that most of the penalty had already been served. No submissions were put to the Tribunal by counsel for the appellant in respect of the conviction.

The transcript of the Stewards’ inquiry reveals that the alleged assault was not canvassed for any great length. After the letter from Mr Powell and Ms Roberts was read at the commencement of the Stewards’ inquiry, Mr Bull was invited to respond. He stated: *“These allegations are false Mr Skipper. On these occasions these things didn’t happen...”*

It is clear that there had been words between the appellant and Mr Powell. Mr Bull admitted that he had threatened Mr Powell but only after Mr Powell had first threatened him. The Stewards preferred the evidence contained in the letter from Mr Powell and Ms Roberts and their evidence at the Stewards’ inquiry.

Nothing has been put to the Tribunal to indicate that the Stewards were not entitled to find the charge proved or came into error in such finding.

I would dismiss the appeal against conviction.

#### **APPEAL 540 – 12 MONTHS DISQUALIFICATION – RULE 243**

##### **Appeal as to Conviction**

At the hearing of this appeal counsel for the appellant raised two main arguments in respect of this appeal, namely:

1. Whether Rule 243 could be breached if there was no clear evidence that a horse had been struck with an unapproved whip or whether possession and use of such a whip was sufficient to breach Rule 243; and



2. That there was no physical evidence that the horses trained by Mr Bull had been struck with the unapproved whips.

The charge relates to the use of two unapproved whips in the training of Mr Bull's pacers. For the purposes of these reasons I propose to deal with the two whips (a stock whip and a modified swish whip) separately.

#### Stock Whip

The Stewards relied on the evidence of Mr Powell, Ms Roberts and Mr Plozza in coming to the opinion that Mr Bull used a stock whip while training horses in his care in track work. Mr Bull denies ever being in possession of a stock whip.

The Stewards had the benefit of hearing first hand accounts from Mr Bull and the three witnesses referred to above. Ultimately, they preferred the evidence of the three witnesses, Powell, Roberts and Plozza. Nothing has been demonstrated by the appellant that suggests the Stewards' credibility finding was in error.

#### Modified Swish Whip

Mr R Oliver, a Stipendiary Steward employed by the Western Australian Trotting Association, gave evidence at the inquiry as follows:

*"Several times when I had gone to Geraldton to conduct a race meeting various trainers and drivers have come up to me over a period of time and said there had been a few things going on with Mr Bull and the manner in which he was training his horses. There have been a couple of allegations of him using a "stock" whip and so forth. There was an allegation of him taking a horse into the swab stall while the Stewards were out on the track observing a race, and hitting it with the whip, and generally his conduct over the period that he's been up there with the sort of "stand over" tactics with several other people, members of the fraternity up there.*

*On the 6<sup>th</sup> of July I was up at Geraldton to observe track work. I arrived at the track at 9.30. I positioned myself in the photo finish tower, overlooking the main track. I had a video with me at the time. I observed several other registered trainers working their horses on the track and just prior to eleven o'clock Mr Bull came out onto the track driving a horse. I observed he had no helmet on and no vest. He done three or four laps with his horse just jogging him around the main track. He then – as he started to leave the back straight on probably the fifth or sixth lap, fifth lap it probably was, he's then pulled the whip out – a whip which had brush cutter cord on the end with a knot tied in it. He's then started whooping and hollering at the horse and he started to run up to the finish.*

*I the saw Mr Bull come back out on the track a few minutes later after he finished working this horse in a jog cart. He still had the same whip with him. I decided it was time to go down to the stables to have a look around the stables area. That was approximately 11.30 – 11.35. I went down to the stable area, had a quick look around. Mr Bull was then coming off the track with the horse in the jog cart. He's driven into a lean-to like a carport where he gears his horses. Dropped the whip on the ground and him and a young lady proceeded to ungear the horse.*

*I approached Mr Bull. He seemed a little bit surprised to see me there. I had a look through his gear and so forth and explained to him it was a stable search and I picked up the whip. I told him I was confiscating the whip. Mr Bull denied in fact that the whip was his. I told then him – actually I said to him that whoever the owner is, tell him that I've got the whip. He*

*denied it again and I said "Well Mr Bull I've been standing up there in the tower and I videoed you using the whip."*

Mr Oliver also stated that searches of Mr Bull's feed stall, vehicle, gear bags and cupboards disclosed nothing untoward.

The film both without and with audio was shown at the Stewards' inquiry. Having been caught "red handed" Mr Bull maintained he had picked the whip up off the track and claimed that he was hitting the shafts and the wheel on the cart. He denied ever hitting the horse with the whip. Mr Bull conceded that his whip action would not be permitted under the Rules of Harness Racing.

Mr M Plozza, a Registered Trainer/Driver gave evidence that he had observed Mr Bull applying the modified swish whip to horses during track work.

The modified swish whip confiscated by Steward Oliver on 8 July 2001 was entered into this appeal hearing as an exhibit, as was a sample stock whip.

Counsel for the appellant relies on the fact that there was no evidence to support the contention that any of Mr Bull's horses had been struck with either of the unapproved whips. There was a proposition put forward by counsel for the Stewards that welts resulting from the use of the whips in question would only be visible on the day after being struck and would then disappear. The proposition also included the possibility of the stock whip removing chunks of flesh or an ear if used around the head. There was no expert evidence before the Stewards as to what injuries, if any, would occur if horses were struck with whips of this nature.

This evidence was not before the Stewards' inquiry and I do not propose to be influenced by it. In any event, the examination by the veterinary surgeon of the horse was some two days after 8 July 2001 when the horse was struck.

Mr Denney, a Stipendiary Steward employed by the Western Australian Trotting Association, gave evidence that Mr Bull's horses were examined by the course veterinarian prior to the race meeting on 8 July 2001. Other than the veterinarian stating that a lump found on the nearside rump of one of the horses may have been an insect bite, there was no sign of any welts.

Mr Powell, Ms Roberts, Mr Plozza and Mr Oliver all gave evidence at the inquiry that they had observed Mr Bull striking his horses with either one or both of the unapproved whips.

The video taken by Steward Oliver was not of a great quality. This is understandable given the nature of Steward Oliver's covert operation. What is certainly evident is the vigorous whipping action of Mr Bull. It is doubtful that the 40cm cord extensions would not have come into contact with the horse. The various noises detected do not assist in determining whether the whip struck the horse.

I do not agree with the proposition put forward by Mr Margaretic, counsel for the appellant, that a charge under Rule 243 could not be sustained where there is no physical evidence of any of the horses being struck with the unapproved whips. The use of unapproved whips is, in my opinion, an act detrimental to harness racing. The type of whip approved and the manner in which it can be used is clearly set out in the Rules. Any departure from those standards is at the peril of the offender. Evidence of physical harm to a horse would, in my opinion, impact on any penalty meted out. In any event the particulars of the Stewards' charge focuses on the use of the whips. There is merely a suggestion that such use caused suffering (and not injury) to the horses in question.

Having read the transcript, heard the submissions from both counsel and viewed the video, I am of the opinion that the charge can be sustained and nothing has been shown by the appellant that the Stewards erred in coming to the conclusion the charge had been proved.

For these reasons I would dismiss the appeal against conviction.

### Appeal as to Penalty

At the appeal hearing testimonials were provided in support of Mr Bull. Also provided was a Race Book showing Mr Bull as the leading trainer in Geraldton for the 2000/01 season.

As stated previously, this Tribunal will only interfere with penalty where it can be shown that the Stewards have erred in the sentencing exercise.

Fortunately, this Tribunal has not been required to deal with many appeals relating to the use unapproved equipment capable of causing harm to an animal. As a result there is no established tariff for an offence of this nature.

Counsel for the Stewards did refer to a previous matter in 1990 where Mr G Harper was disqualified for 12 months, which was reduced on appeal to 6 months disqualification. That related to the maltreatment of a horse at Gloucester Park following track work. The Chairman of Stewards has subsequently notified the Registrar that Mr Harper was disqualified for 6 months. An appeal to the Appeal Body was dismissed.

The penalty imposed by the Stewards reflects the gravity of the conduct by Mr Bull. The training of horses by "fear" methods cannot be condoned or tolerated. Penalties which provide general deterrence are therefore required. The testimonials presented are not of much assistance in that the antecedents of an offender for this type of offence must be weighed against the serious facts of this offence. The fact that Mr Bull was the leading Geraldton Trainer also is not of much assistance given that the training methods employed may have given him the edge over other participants. The appellant has shown no remorse and relies on the fact that other trainers found in possession of swish whips have not been charged with any offence. There can be no discount in the penalty for remorse as the appellant pleaded not guilty.

These incidents occurred over an extended period of time. However, in mitigation of penalty, no injuries or signs of maltreatment to the horses came to light in the evidence. Had that been the case, it is likely that the Stewards would have imposed a more severe penalty.

The reasons given by the Stewards are not particularly helpful in weighing up what is an appropriate penalty.

I am satisfied however that a penalty of disqualification is warranted in all the circumstances of this case. I consider the length of the disqualification of 12 months was appropriate in the circumstances of this case. Nothing has been demonstrated by the appellant to persuade me that such penalty was manifestly excessive in the circumstances.

For these reasons I would dismiss the appeal against sentence.

*John Prior*



JOHN PRIOR, MEMBER



THE RACING PENALTIES APPEAL TRIBUNAL

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MR P HOGAN (PRESIDING MEMBER)

APPELLANT: TRAVIS WILLIAM BULL

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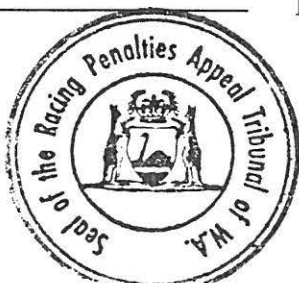
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I have read the drafts of Mr J Prior, Member.

I agree with those reasons and conclusions and have nothing to add.



PATRICK HOGAN, PRESIDING MEMBER



THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF  
MR W CHESNUTT (MEMBER)

APPELLANT:

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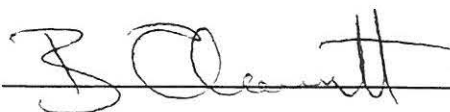
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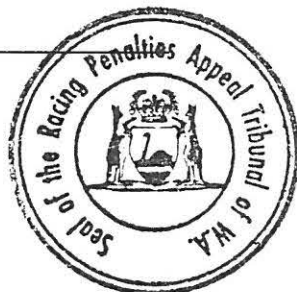
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WILLIAM CHESNUTT, MEMBER

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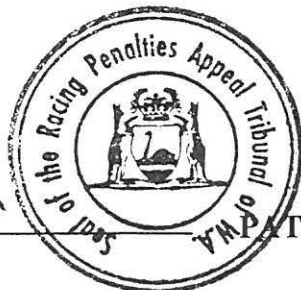
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This is a unanimous decision of the Tribunal.

For the reasons published:

1. the appeal against the penalty of 6 months disqualification for breach of Rule 231 is dismissed, and
2. the appeal against conviction and the penalty of 12 months disqualification for breach of Rule 243 is dismissed.

*R J Hooper*



PATRICK HOGAN, PRESIDING MEMBER