

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF
MS A BRADDOCK SC (MEMBER)

APPELLANT: LYNN EMMETT

APPLICATION NO: A30/08/548

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR P HOGAN (MEMBER)
MS A BRADDOCK SC (MEMBER)

DATE OF HEARING: 27 AUGUST 2002

DATE OF DETERMINATION: 27 AUGUST 2002

IN THE MATTER OF an appeal by Mr L Emmett against the determination made by the Stewards of the Western Australian Trotting Association on 12 September 2001 imposing 12 months disqualification for breach of Rule 231 of the Rules of Harness Racing.

Mr G Winston was granted leave to represent the appellant.

Mr R Oliver appeared for the Stewards of the Western Australian Trotting Association.

This is an appeal against conviction and severity of penalty.

Background

Following receipt of a complaint from a Mr Cono Condipodero into an alleged incident at the Golden Mile Trotting Club on 15 August 2001, the Stewards opened an inquiry on 12 September 2001.

The basis of the complaint was that Mr Condipodero was assaulted by Mr Lynn Emmett following morning trackwork. Both gentlemen are licensed trainers and Mr Emmett was the course curator. Briefly, the alleged incident occurred following a verbal altercation on the track. Mr Condipodero was upset that Mr Emmett was jogging two horses tied to a utility, causing Mr Condipodero's horse to shy. Mr Emmett subsequently approached Mr Condipodero in the stabling area. There was a verbal exchange between them and

a physical confrontation. As a result, Mr Condipodero suffered a bloodied face, swelling and bruising. Mr Emmett alleged that he himself sustained a grazed cheek in the incident.

After hearing evidence from both Mr Condipodero and Mr Emmett and from three witnesses to the incident, the Stewards charged Mr Condipodero with a breach of Rule 243, which states:

“Any person employed or participating in the harness racing industry shall not behave in a way which is detrimental to the industry.”

He was found guilty and fined \$1,000. \$500 of the fine was suspended for twelve months.

Mr Emmett was charged under Rule 231, which states:

“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 specifics of the charge were:

“Now Stewards believe you should be charged under that rule, the charge being one of assault, the charge being that you Mr Emmett assaulted Mr Cono Condipodero at the Golden Mile Trotting Track on the 15th August 2001.”

Mr Emmett was not asked to enter a formal plea to the charge. He however disputed responsibility for what occurred. He was found guilty and disqualified for twelve months.

On 20 September 2001 Mr Emmett was advised by the Chief Executive of the Western Australian Trotting Association (“the WATA”) that the Committee of the WATA had resolved to grant a stay of proceedings and would consider a review of his case. The Chief Executive also advised Mr Emmett that it may be in his best interests to lodge an appeal with the Tribunal.

Mr Emmett lodged a Notice of Appeal on 27 September 2001 and applied for a stay of proceedings. The appeal was against the severity of penalty only. The application for a stay of proceedings was not dealt with in light of the WATA Committee’s resolution.

The Committee of the WATA reviewed Mr Emmett’s case on 14 November 2001. The Stewards declined to take part in the proceedings. The Committee reserved its decision. On 16 November 2001 Mr Emmett sought leave of the Tribunal to withdraw his appeal. The Stewards objected on basis that the Committee had not handed down its reserved decision and it was the intention of the Stewards to lodge an appeal with the Tribunal against the Committee’s decision in any event.

On 21 November 2001 the Committee resolved to amend the penalty to a fine of \$1,000, \$500 of which was suspended for twelve months. The Stewards lodged a Notice of Appeal with the Tribunal against that decision on 3 December 2001.

Senior Counsel for the WATA Committee conceded that appeal (Appeal 551) on 5 February 2002. The Tribunal refused the application for a stay of proceedings.

On 19 June 2002 Mr Emmett faced a police charge of assaulting Mr Condipodero, arising out of the same circumstances on 15 August 2001. That charge was dismissed in the Court of Petty Sessions (Kalgoorlie).

On 26 June 2002 Mr Emmett, through his advocate, sought to amend his grounds of appeal to include an appeal against conviction. He also sought a stay of proceedings. The Tribunal granted Mr Emmett a stay of proceedings on 28 June 2002.

By letter dated 25 July 2002 the Chairman of Stewards advised the Registrar that:

“The Stewards do not wish to make any oral submissions to the Tribunal in relation to Mr Emmett’s appeal. However, we are available at the Tribunal’s pleasure.”

Appeal Hearing

This matter finally came on for hearing on 27 August 2002. At the outset Mr Oliver, on behalf of the Stewards, confirmed that the Stewards would not be making any submissions in the proceedings. At the conclusion of the hearing, the Tribunal determined that the appeal would be allowed, the conviction quashed and penalty set aside, for reasons to be later published. These are my reasons.

On behalf of the appellant, Mr Winston made a number of submissions. He contended that the evidence had not been weighed fairly and that the appellant should have been charged under the same rule as Mr Condipodero. As to the incident, Mr Winston submitted that both parties were involved in the incident. That it was uncontested that the appellant approached Mr Condipodero to apologise and that all the abuse had come from Mr Condipodero. There followed a “scuffle, wrestle and blows”. He also made a number of complaints in relation to the manner in which the Chairman had conducted the inquiry.

The Tribunal has to consider the appeal upon the evidence. It is not bound by any conclusion reached by the Kalgoorlie Court of Petty Sessions. The matter came before that court on a criminal charge.

Having reviewed the evidence from the enquiry, it emerges that the appellant by all accounts did approach Mr Condipodero in order to apologise. The latter said as much in his written statement and Mr Kyle Condipodero confirmed this to the Stewards. Further, the appellant claimed that Mr Condipodero was abusive to him and threatened him, which was again confirmed by Kyle Condipodero and Mr Matthew Saw, in that Mr Condipodero said “don’t come here unless you have got two mates (because you will need them).” Kyle Condipodero confirmed that there was “pushing and shoving” and that “Uncle Cono” was the first to abuse the appellant.

For various reasons, none of the witnesses saw the entirety of the exchange. However Mr Saw said in his statement that after the verbal exchange, Mr Condipodero swung around *“with his two arms raised and they grabbed hold of each other and they wrestled alongside of the horse. I saw Cono pushing Lyn’s head up against the upright of the stalls and I saw punches being thrown..”* Before the Stewards, he said that it looked to him like Cono was “shaping up” when he turned round.

There was photographic evidence of Mr Condipodero’s injuries. He no doubt sustained a number of blows resulting in extensive bruising.

Upon the Stewards indicating the charge to be preferred [page 26], the appellant’s response was:

“Assaulted him? No self defence or nothing”

and the appellant went on to say he did not deny fighting but denied that he started it.

On this evidence, it is clear to me that the appellant denied responsibility, and effectively claimed that he was acting in self defence. This was a claim able to be

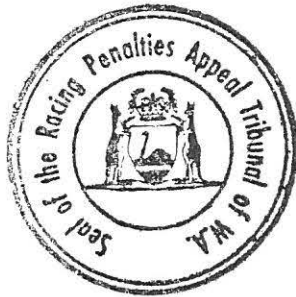
supported by the evidence of the witnesses, other than Mr Condipodero and the appellant. The appellant's approach was to apologise and was met with abuse. At close quarters, Mr Condipodero turned around in an aggressive manner, according to Mr Saw. To make out a case of assault, the possibility of self defence, once raised, must be excluded to the relevant standard.

In this case, there is no indication that the Stewards properly considered this aspect of the matter. However, there was much more considered during the inquiry which might have tended to obscure this essential consideration, such as the part played by the Chairman in the taking of witness statements.

In my view therefore, the Stewards erred in convicting the appellant. Both parties to the incident gave differing versions, but the evidence of the witnesses Saw and Kyle Condipodero made it impossible to exclude reasonable self defence on the balance of probabilities.

Gillian Braddock

GILLIAN BRADDOCK SC, MEMBER



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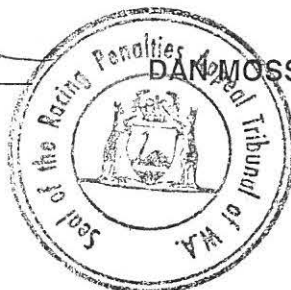
Mr G Winston was granted leave to represent the appellant.

Mr R Oliver appeared for the Stewards of the Western Australian Trotting Association.

I have read the draft reasons of Ms A Braddock SC, Member.

I agree with those reasons and have nothing to add.

Dan Mossenson



DAN MOSSENSON, CHAIRPERSON

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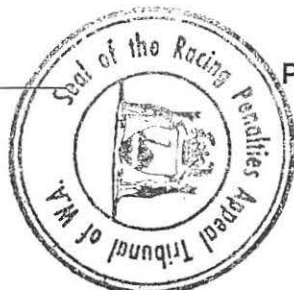
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P. J. Hogan



PATRICK HOGAN, MEMBER