APPEAL NO. 770

THE RACING PENALTIES APPEAL TRIBUNAL

DETERMINATION

APPELLANT:	**SHANE ALLEN EDWARDS**
APPLICATION NO:	**A30/08/770**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)** **MR R NASH** **MR W CHESNUTT**
DATES OF HEARING:	**26 AUGUST AND 21 OCTOBER 2014**
DATE OF DETERMINATION:	**30 JUNE 2015**

IN THE MATTER OF an appeal by SHANE ALLEN EDWARDS against the determination made by Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 7 July 2014 imposing disqualifications of three years for breaching Australian Rule of Racing ('AR') 175A, six months for breaching AR 175(gg), three years for breaching AR 175(g) and a fine of $1,500 for breaching AR 175(a).

Mr T F Percy QC, instructed by Michael Tudori and Associates, represented Mr Shane Allen Edwards.

Mr R J Davies QC represented the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

By a unanimous decision of the members of the Tribunal:

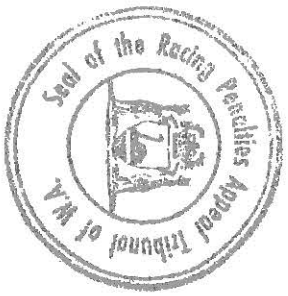
1. the appeal against the penalty of three years disqualification for breach of AR 175A is dismissed;

2. the appeal against the penalty of six months for breach of AR 175(gg) is dismissed;

3. the appeal against the penalty of three years disqualification for breach of AR 175(g) is dismissed; and

4. the appeal against the fine of $1,500 for breach of AR 175(a) is dismissed.

DAN MOSSENSON, CHAIRPERSON



APPEAL NO. 770

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REASONS FOR DETERMINATION OF MR D MOSSENSON (CHAIRPERSON)

APPELLANT:	**SHANE ALLEN EDWARDS**
APPLICATION NO:	**A30/08/770**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)** **MR R NASH** **MR W CHESNUTT**
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Mr T F Percy QC, instructed by Michael Tudori and Associates, represented Mr S A Edwards.

Mr R J Davies QC represented the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

INTRODUCTION

1. This appeal involves a number of unique and somewhat complex issues which have not come before this Tribunal previously. Its determination requires an examination of aspects of the role of licensed thoroughbred trainers and an evaluation of the conduct and extent of the responsibilities of one such trainer. The appeal is made by a locally

licensed trainer who currently operates overseas. The trainer had arranged for the export of a number of horses whilst he was licensed and training in Western Australia. The exported horses were all sent to and trained by one particular overseas trainer who was licensed in South-East Asia.

2. The locally licensed trainer's conduct was the subject of extensive investigation and reporting before the matter came before a lengthy Stewards' inquiry.

3. Had the issues only concerned the personal obligations of this trainer and duties owed to a significant number of his immediate owners, the matter probably would not have progressed very far. However, such was the nature of the trainer's conduct, which resulted in the breakdown of his relationships with these owners, that the question as to whether it impacted adversely on the overall racing industry required careful consideration. According to the Stewards' assessment, these private affairs of the parties extended beyond the immediacy of their relationships and did have damaging public implications for the overall racing industry.

4. The giving of misleading and false answers by the same trainer during the investigation and subsequent inquiry into the matters are also involved in the appeal. Finally, the novel issue of the implication of nominating a horse to race with no intention on the part of the nominator for it to run needs review.

5. In other words a range of different issues relating to the control of racing, including the honesty and integrity of an industry participant, require consideration.

6. The trainer under review was convicted of four charges. The Stewards meted out relatively heavy penalties as a result. Each conviction as well as the severity of the resultant penalties are challenged in the appeal.

COMPLAINTS

7. The conduct complained of and the official processing of matters which then unfolded extended over a prolonged period. On 13 August 2012 a complaint was received by

the Racing and Wagering Western Australia (**RWWA**) Chief Steward of Thoroughbred Racing from Mr David Edwards, a thoroughbred horse owner and former senior Western Australian trainer. The complaint was directed against Mr Edwards' own son Shane Allen Edwards (**the appellant**). Mr Edwards Snr reported that various race horses which he and others owned had been exported between 2008 and 2013 to Singapore to race. The problem was that no monies had been returned both from the sale of the animals to new Singapore clients and the prize monies earned whilst they competed in Singapore. Concerns were expressed that the local owners had lost all control over and indeed ownership of their horses once they left Perth.

8. Complaints were also made against the appellant by other Western Australian horse owners whose horses were trained by the appellant. The common grievance was that the appellant had not included the owners in relation to any decisions made in respect of their horses once they were out of the country. This raised suspicions that the actions of the appellant were questionable. The complainants felt they had been treated unprofessionally by the appellant. The owners had entrusted the appellant with authority to train their horses while in Western Australia as well as to evaluate their performances and direct their future racing programs whether in Australia or overseas.

INVESTIGATION

9. As a consequence of the complaints, a lengthy investigation was commenced by the Stewards. On 10 January 2013, the RWWA principal racing investigator, Mr Phil O'Reilly, interviewed the Singapore-based trainer who was involved in every case, Mr Desmond Koh. Mr Koh reported to the investigator that he only dealt with the appellant who had given him authority to handle the horses sent overseas from Perth as he felt appropriate. Further, Mr Koh believed it was the appellant's responsibility to maintain contact with the overseas owners of the horses in question. The horse selection in Western Australia and all travel arrangements were made by the appellant. Payment of money from Mr Koh to all Western Australian owners was

made through the bank account of the appellant or appellant's wife. Mr Koh believed his reporting duty was to the appellant alone. Mr Koh in his interview stated he understood $120,000 was paid for SPLITSVILLE. SIMPLY BUSINESS went to Singapore and raced under the name LADY LUCK. Although this horse ran a couple of races and had a win, no money was forthcoming to the owners from the appellant.

10. On 23 January 2013 the appellant was notified in writing of the investigation and his obligation to participate in an interview. That interview took place in Kuala Lumpur on 22 February 2013. In the course of his interview the appellant claimed he had executed his duties properly. The appellant asserted that upon arrival of the horses in Singapore and delivery to their new trainer, it was Mr Koh's responsibility to keep the owners informed as to how their horses were performing and what future each horse had. The appellant said he too was a part-owner in several of these horses and was disappointed by the lack of communication from Mr Koh in respect of the horses racing in Singapore.

11. Mr O'Reilly further reported that nine horses owned by David Edwards, Max Trott, James Ch'ng, and Edwards Racing Pty Ltd left Western Australia for Singapore between 2008 and 2010. Mr Trott and Mr Ch'ng confirmed in their interviews that they agreed to send their horses to Singapore. However, both believed that they still owned their horses throughout as no authority had been given to the appellant or Mr Koh to sell their horses. The terms of the arrangement with the appellant were equally clear to them both as well as the other owners involved. None of the Western Australian owners would be liable for expenses for the export of their horses to Singapore or the training overseas but once in Singapore, Mr Koh would be free to lease the horses to local Singaporeans. When the horses raced, any prize money would be shared equally between the local Singaporeans and Western Australian owners. In the event of a sale of any horse in Singapore, the proceeds would be shared between the Western Australian owners.

12. On all occasions the appellant telephoned Mr Koh to advise him of the horses he had available which he believed would race well in Singapore. Each time Mr Koh responded that he personally would be liable for any export fees and associated costs and once the horses arrived they would race in their own names or he would lease them out to the local Singapore owners. Mr Koh told the investigator that once the horses arrived, he trained and raced them. However, should a horse lack ability to be competitive he so advised the appellant and the horse would be given away. Mr Koh said he only sold two horses from the nine he received, these being FIRE BOUGG and EAGLE CLAW. The $110,000 proceeds for the two were paid into the account of Julie Eales, the appellant's wife, for distribution to the Western Australian owners.

13. Mr Koh explained to Mr O'Reilly he did not advise anyone other than the appellant of the removal of a non-performing horse from his stables as he only dealt with the appellant directly. Mr Koh expected the appellant to undertake any notification of owners in this State.

14. As to SPLITSVILLE, Mr Peter Eathorne told the investigator he was only made aware of the scratching and sale of the horse to Singapore when he heard it announced on Racing Radio. Mr Eathorne had every intention of watching the horse race at Ascot on that same day. Donelle Kennedy purchased her 25% share from Mr Eathorne also believing she was going to see her horse race at Ascot the following day. Mr Eathorne stated that he did not know the horse had been sold. When he rang the appellant he was told the horse was sold to Singapore for $98,000. Mr Koh in his interview said he believed he had paid more than that amount for the horse. Mr Eathorne received no monies from the appellant for the sale. The appellant stated Mr Eathorne had a large financial debt to him for training fees in respect of eleven horses and the sale proceeds due to be paid to Mr Eathorne were kept by him as payment of those fees.

15. Both Ken Smith and Nat Brazzalotto owned shares in SIMPLY BUSINESS. The appellant organised for this horse to go to Singapore on the same basis as referred to earlier in relation to other horses. Mr Koh raced SIMPLY BUSINESS under the name

LADY LUCK. Despite it running places and enjoying a win, neither part-owner received any proceeds even after pressing the appellant for payment. Mr Smith eventually resorted to court for relief. Mr Brazzalotto received no response from the appellant initially and unsatisfactory replies eventually. The investigator was told Mr Brazzalotto was *"... very disillusioned with racing after his experience with Shane Edwards and he has commenced legal proceedings against him to recover monies owed to him"*.

16. The next horse which was addressed by the investigation raced as MR MAHERAJA in Australia and as TASER GUN in Singapore under its new owners' names. Mr Paul Spackman explained to Mr O'Reilly that he had sold a majority share in the horse to the appellant. Mr Spackman agreed for the appellant to send this horse to Singapore on the understanding that he would receive in return 50% of any prize money. Mr Spackman was disappointed to learn his horse had a name change and was racing under the new owners' names. Mr Koh advised the investigator he had paid $120,000 for MR MAHERAJA and believed he was the outright owner, save for a minor shareholder remaining in the horse. To complicate matters Jamie Watson, told the investigator that he purchased a quarter share in MR MAHERAJA in June 2010 for $32,000, but thereafter had difficulty in making contact with the appellant. According to Mr O'Reilly's report, upon being advised during the interview that the horse had three owners, Mr Koh *"...was visibly shocked"*. Further, the signature which purportedly was that of Mr Koh on the Western Australian registration papers only showed that he was a 50% shareholder. Mr Koh confirmed he believed he had paid full price and that he was a 100% owner but for a small percentage.

17 Mr Spackman was also involved in relation to another of his horses ZENTINA. Mr Spackman had full ownership of that horse which was exported to Singapore under the same arrangement that he had with his other horses. ZENTINA had been *"deleted"* from Mr Koh's stables and given away to another trainer in Singapore without Mr Spackman's permission. Although Mr Koh initially admitted at a meeting

with Mr Spackman that he agreed to pay him $15,000 upon returning to Singapore, his legal advice was that he should pay no monies. The reason was that his agreement with all horses was with the appellant. As the appellant was aware when this horse was *"deleted"*, it then became the appellant's responsibility to advise the Western Australian owners.

18. FAIRY KING DANE was part owned by Mr Edwards Snr. The Singapore Turf Club records showed FAIRY KING DANE earned total prize money of $73,486. Mr Edwards Snr told Mr O'Reilly he received no monies from the appellant even though the prize money had been placed in the appellant's bank account.

19. The investigation delved into yet another horse SISTER PHENOMENON. This revealed a conflict between Mr Koh's version of his ownership rights in this horse and the amounts paid and the West Australian records of registration and ownership. At this stage in the report Mr O'Reilly states:

> *"The investigation to this point highlighted the fact that horses that are exported from Western Australia to Singapore can be exported without the written consent of the registered owner in Australia. Once the horses arrive in Singapore they must be registered with the Malaysian Racing Association. However this registration does not necessarily require the WA owners to be named. Should a WA owner request their name to be registered this attracts a fee".*

The Western Australian owners claimed they neither knew nor were asked by the appellant whether they wanted their names to be included in the Singapore registrations.

20. One of the final exported horses involved was STRALETA which was owned by Mr Bob Fisher. The report on this subject is brief and to the effect that after the appellant agreed to buy Mr Fisher's share in the horse, Mr Fisher had difficulty contacting Mr Edwards and *"...has been soured off racing directly due to the poor treatment by Mr Edwards"*. As a consequence of the unhappy relationship and treatment they received

from the appellant, Mr and Mrs Fisher, the owners of DANCE ACROSS, were suffering from *"the disappointment, disillusionment and anger experienced in the dealings direct with Shane Edwards -- they want out of all horses -- and they want out of the WA racing industry"*.

21. The studmaster involved with DANCE ACROSS, Mark Arrowsmith of Entry Park in Victoria, was also interviewed by Mr O'Reilly. Mr Arrowsmith had made a formal complaint to the Victorian stewards regarding an outstanding debt of approximately $150,000 owed to him by the appellant for agistment of horses and related expenses.

22. The final person interviewed during the investigation was Mr Chris Calthorpe, a long time close friend and business partner of the appellant. But for the appellant's lack of honesty and misrepresentation, Mr Calthorpe said, their joint racing business could have been wound down properly and the financial hardship suffered as a consequence could have been avoided.

23. The report of Mr O'Reilly on these matters is dated 17 July 2013 (ex 7).

STEWARDS' INQUIRY

24. By letter dated 29 April 2013 (ex 2), notice of the convening of a Stewards' inquiry into the appellant's conduct was issued to the appellant by the Stewards. The appellant was informed in the letter that he had been stood down pursuant to Local Rule 10 of the RWWA Rules of Thoroughbred Racing (**Rules**).

25. The Stewards' inquiry commenced on 17 July 2013. It continued the following day after which it was adjourned. The appellant failed to appear at the next scheduled hearing date being 21 August 2013. Consequently, the Stewards disqualified him until such time as he appeared before them. An appeal against the disqualification was heard by this Tribunal and determined on 4 September 2013. The Tribunal dismissed the appeal.

26. The Stewards' inquiry into the various matters the subject of Mr O'Reilly's investigation and report proceeded on 18 September and 20 November 2013, 6 January, 14 February, 19 and 20 March and 30 June 2014.

27. Mr Percy QC who had sought and was granted leave to be present in the inquiry on the appellant's behalf, attended each day of the hearing to assist the appellant. In view of the nature of the Stewards' proceedings and in order to assist, a running transcript of the hearing was supplied by the Stewards to the appellant.

CHARGES

28. The appellant was charged with breaches of four Rules by letter dated 21 January 2014 (ex 29). The Rules in Western Australia comprise the Australian Rules of Racing (**AR**) together with the Local Rules of Racing (**LR**). The appellant pleaded not guilty to each charge.

29. The first charge alleges a breach of AR175A. That Rule states:

> *"...Any person bound by these Rules who either within a racecourse or elsewhere in the opinion of the Committee of any Club or the Stewards has been guilty of conduct prejudicial to the image, or interests, or welfare of racing may be penalised."*

The particulars which were provided in respect of this charge were:

> *"that you, Mr Shane Edwards, being a licensed trainer in the period of time outlined by the following, engaged in conduct prejudicial to the image and interests of racing in your dealings with clients and others and failed to act honestly and openly in relation to financial and other aspects of those dealings."*

As the Stewards explained in their covering letter, due to the wide ranging nature of this matter, *"... details beyond what is usually given by way of particulars ..."* were being provided. The letter went on to explain the motivation for this approach was to make clear the aspects which were under consideration and were considered to be needed to be determined. The Stewards also foreshadowed that they had taken the

view the conduct which they described in the charge letter may be capable of being made out by the evidence taken both singularly and collectively. In the same correspondence the Stewards took the further unusual step of elaborating by going on to assert that, if established, the conduct would constitute conduct which was prejudicial to the image and interests of racing for the following reasons:

(a) *Having organised and facilitated arrangements with respect to the horses listed within being transported to Singapore to race,*

(i) *failed to adequately discharge your fiduciary responsibility to ensure the interests of the owners of AFRICAN ACTION, ALL ANIMAL, FAIRY KING DANE, MR MAHARAJA, REGAL RASCAL, RORY'S STAR and ZENTINA were properly protected.*

(ii) *failed to adequately and meaningfully ensure that the owners of the above named horses were kept suitably informed as to their horses' progress and status in Singapore.*

(iii) *failed to adequately monitor the actions of Mr Desmond Koh with respect to the transfers of ownership and deletion of horses owned by West Australian interests.*

(iv) *failed to meaningfully or at all ensure that the West Australian owners were informed of the deletion and subsequent fate of the horses in a timely and appropriate manner.*

(b) *Authorised the transfer of BORN GENIUS, REGAL RASCAL and STAR BORONIA to new interests other than those of the West Australian registered owners without notifying or advising those persons of these transfers.*

(c) *Failed to take any appropriate and adequate action at the relevant time when you became aware that Mr Koh was not complying with his agreement with you with respect to the remit of prizemoney in relation to SIMPLY BUSINESS (LADY LUCK).*

(d) *Withheld the proceeds of sale of SPLITSVILLE from registered owner Mr Peter Eathorne, without obtaining his express or implied consent or other proper authority.*

(e) *Withheld the prizemoney payable to Mr David Edwards in relation to the horse FAIRY KING DANE without obtaining his express or implied consent or other proper authority.*

(f) *Failed to maintain any or proper records with respect to the horses in question in relation to the arrangements or agreements said to have been entered into.*

(g) *Misled Ms Donnelle Kennedy in relation to her receiving her share from the proceeds of sale in relation to SPLITSVILLE from you once you were in receipt of those funds.*

(h) *Failed to pay Mr Robert Fisher the sum of $6,500 as agreed being for the purchase of STRALETA with payment not being made until on or around September 2013 and only after the complaint of Mr Fisher was heard by Stewards in July 2013.*

(i) *Failed to adequately inform Mr Fisher of the stallion to serve his mare DANCE ACROSS when she was put into foal by RUWI on the second occasion, which was contrary to the terms of the agreement you had with him.*

(j) *Failed to adequately inform Mr Fisher as to matters concerning his mare DANCE ACROSS and her progeny with respect to the accumulation of debt owing to Aintree Lodge in relation to these horses, which led to Mr Fisher relinquishing his interests in these horses to settle debts accumulated by you, trading as Edwards Racing.*

30. The second charge relates to AR175. The relevant part of that rule states:

The Committee of any Club or the Stewards may penalise;

... ...

"(gg) Any person who makes any false or misleading statement or declaration in respect of any matter in connection with the administration or control of racing."

Under the subheading "Particulars", the letter went on to state:

"The specifics of the charge are that during the interview conducted by RWWA Principal Investigator Mr Phil O'Reilly on 22 February 2013 you denied knowledge of the other shareholder in SPLITSVILLE, namely Ms D. Kennedy which was a misleading statement in respect of a matter in connection with the control of racing."

31. The third charge was in relation to another AR175 provision which states:

"The Committee of any Club or the Stewards may penalise;

... ...

(g) any person who gives at any inquiry or appeal any evidence which in their opinion is false or misleading in any particular."

Again, under the subheading "Particulars" the letter elaborated by stating:

"The specifics of the charge are that during the Stewards' inquiry conducted on 20 November 2013 you did in the opinion of the Stewards, give evidence that was misleading by denying any knowledge, consent or issue of authority for the transfers of BORN GENIUS (ALL ANIMAL), REGAL RASCAL, STAR BORONIA (RORY'S STAR)" [Exhibits 18, 21, 22].

32. The final charge relates to AR175(a) which states:

"AR175. The Committee of any Club or the Stewards may penalise;

(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."

The final accompanying "Particulars" supplied are:

> *"The specifics of the charge are that you did nominate SPLITSVILLE for the race meeting on 17 November 2007 and on 24 November 2007 with no intention for it to start, with such action being for the purposes of ensuring there were sufficient numbers in order for the race to proceed to the benefit of VALENTINE MISS which in the Stewards' opinion is an improper practice in connection with racing."*

STEWARDS' DETERMINATION

33. On 15 May 2014 the Stewards wrote to the appellant's lawyers advising of the outcome of their deliberations accompanied by exceptionally detailed reasons for their determination of the charges. The Stewards convicted the appellant on all four charges.

34. On 30 June 2014, the Stewards heard the submissions in regards to the penalties. This was followed by letter dated 7 July 2014, in which the Stewards set out their detailed reasons for imposing disqualifications of three years in relation to the first and third charge, a disqualification of six months in relation to the second and a fine of $1,500 in respect of the final charge. All penalties were ordered to take effect immediately and the disqualifications were to be served concurrently.

35. As mentioned in the introduction, the appellant appealed to the Tribunal against all convictions and penalties. At the same time the appellant applied for a suspension of operation of the penalties. After receipt of written submissions from both parties I refused the stay application.

GROUNDS OF APPEAL

36. The appellant appeals as follows:

A. CHARGE ONE

1. Charge One was bad for duplicity and the conviction should be set aside.

2. *In the event that charge one was not bad for duplicity, the Stewards erred in convicting the Appellant of an offence under AR 175A by failing to properly consider the elements of an offence under that rule and importing into their consideration of the charge various improper and irrelevant considerations.*

PARTICULARS

(1) *The Stewards wrongly imported into the rule a requirement to keep owners fully informed of the horse's progress once he was no longer its registered trainer.*

(2) *The Stewards wrongly held that there was an onus on the Appellant to monitor the new trainer of the horses and keep the owners of the horses fully advised in that regard.*

(3) *The Stewards wrongly held that there was effectively a fiduciary duty on the Appellant to ensure that the owners were paid by the new trainer of the horses.*

(4) *The Stewards wrongly held that the Appellant was not entitled to set off monies received by him on behalf of an owner an amount owed to him by that owner.*

(5) *The Stewards wrongly held that there was an onus on a trainer to keep proper management records in respect of a horse or horses that he no longer trained.*

(6) *The Stewards wrongly held that the Appellant owed a duty to the witness Donelle Kennedy to ensure she was paid the proceeds of the sale of the horse Splitsville.*

(7) *The Stewards wrongly held that there was a duty on the Appellant to pay his contractual obligations to the witness Fisher promptly.*

(8) *The Stewards wrongly held that there was a duty on the Appellant to keep the witness Fisher fully advised of the stud arrangements concerning the mare Dance Across and her progeny.*

(9) *The foregoing matters were essentially civil matters and related to the contractual arrangements between the various parties inter se and not governed by the Rules of Racing.*

(10) *The foregoing matters did not in themselves constitute breaches of any Rule of Racing and were not separately or conjunctively capable of being a breach of AR 175A.*

B. CHARGE TWO

3. *The Stewards erred in finding as a matter of fact and law that the statement made in relation to the witness Donelle Kennedy was a misleading statement.*

PARTICULARS

(1) *The question asked of the Appellant was ambiguous and non specific.*

(2) *The witness Kennedy was never at any relevant time a registered "shareholder" in the horse SPLITSVILLE for the purposes of the Rules.*

(3) *Whether Kennedy had ever obtained any legal or equitable interest in the horse, or had become a "shareholder" for the purposes of the Rules was not something that was known with any certainty by the Appellant.*

(4) *There was nothing false or misleading in the answer give (sic) by the Appellant.*

C. CHARGE THREE

4. *The finding by the Stewards that the answers given by the Appellant in relation to the transfer of the horses were false and misleading was:*

(i) *contrary to the weight of the evidence, and*

(ii) *failed to have regard that the requirement of the rule which is that any answer which was in fact incorrect needed to be intentionally false at the time it was made.*

D. ***CHARGE FOUR***

5. *The Stewards erred in finding that the actions of the Appellant were improper for the purposes of AR 175(a).*

E. ***PENALTY***

6. *The penalties imposed by the Stewards were individually and collectively manifestly excessive in all the circumstances of the case.*

7. *The Stewards erred in not allowing the appellant any credit for the time spent by him subject to the disabilities of Local Rule 10.*

RULES

37. In order to put the diverse issues involved in this appeal into some perspective, both in the context of the role and wide authority of the Stewards and the proper regulation and control of horse racing, it is helpful to identify various provisions of the Rules which have some bearing on the matter.

38. The head body which runs racing in Western Australia is RWWA. The "Principal Racing Authority" referred to in the Rules is RWWA in this State. The Rules define a Principal Racing Authority as being the body which has "*the control and general supervision of racing within a State...*" (AR 1). The powers and responsibilities of RWWA are defined in the Act which established that body, namely the *Racing and Wagering Western Australia Act 2003.*

39. RWWA adopted the AR and also made various local rules. As mentioned earlier the Rules are a combination of the AR and the LR (LR 6). By LR6, the two sets of rules are to be interpreted and construed together. By AR2 and LR2(2), any person who

takes part in any matter coming within the Rules is held bound by that participation to agree to be bound by them.

40. RWWA has power to license trainers and at any time to suspend, vary or revoke any such licence without giving any reason therefore (AR 7(b)). In addition, RWWA is empowered to inquire into and deal with any matter relating to racing and to refer for hearing and determination or delegate matters to stewards or others for investigation (AR 7(c)).

41. The Stewards are the persons appointed in accordance with the LRs of RWWA (AR 1). The Stewards are given various specified functions and are charged with many duties and responsibilities which are all directed to helping ensure the racing industry in its various facets operates properly. The Stewards have expert knowledge of specific aspects such as riding and racing as well as issues to do with the overall affairs of the industry generally. With their experience and training they are in a paramount position to manage and ensure control of this complicated competitive sport. To enable them to do so effectively, they are given wide powers under the Rules. For example, the Stewards may:

41.1 Arrange for the conduct of race meetings (AR 8(a)).

41.2 Inquire into and adjudicate upon the conduct of all licensed persons (AR 8(d)).

41.3 Punish any person committing a breach of the Rules (AR 8(e)).

41.4 Suspend a licence pending the outcome of the inquiry investigation or objection or where a person has been charged with an offence (LR 10(d)).

41.5 Penalise anyone who, in their opinion, has been guilty of any dishonest, corrupt, fraudulent, improper or dishonourable action or practice in connection with racing (AR 175(a)).

41.6 Penalise anyone who gives at any inquiry any evidence which in their opinion is false or misleading in any particular (AR 175(g)).

42. No horse in Australia may be entered for or run in any race or official trial unless it has been registered with the Registrar of race horses (AR 14).

43. AR 22 addresses the question of transferring a registered horse to a new owner. The transferee must apply for registration of the transfer on the prescribed form. This rule has no application to this case in relation to the transfers which occurred overseas.

44. AR 48(b) requires all entries for all races to be made in the name of the owner or if leased, the lessee, and to be in writing, signed by the owner, or lessee or trainer (AR 48(b)).

45. All nominations and entries are subject to approval (AR50).

46. Trainers are obliged within 48 hours of a horse entering or leaving a stable to lodge a stable return containing such information as is required by RWWA (AR 54(1)).

47. LR 56 requires stable returns for horses to be lodged with RWWA within 24 hours of every horse entering or leaving a trainer's care or stable and the Stewards may penalise any person who fails to lodge such returns.

48. AR 68A prohibits entering or causing to be entered a horse in a race with the primary purpose of affecting the weight to be allocated between other horses entered in such race.

49. Anyone who makes a false or misleading statement or declaration in respect of any matter in connection with the administration or control of racing may be penalised (AR 175(gg)).

50. Anyone may be punished who, in the opinion of the Stewards, is guilty of any misconduct, improper conduct or unseemly behavior (AR 175(q)).

51. It is worth repeating in this section AR 175A which specifies that "*Any person bound by these rules who either within a racecourse or elsewhere in the opinion of the ... Stewards has been guilty of conduct prejudicial to the image, or interest, or welfare of racing may be penalised*".

52. AR 196 sets out the wide discretionary range of penalties which may be imposed. They may be a disqualification, suspension, reprimand or fine not exceeding $75,000. Further, a fine may be imposed in addition to a disqualification or suspension. The Rule further prescribes that disqualifications or suspensions are served cumulatively to any other penalty or suspension or disqualification unless otherwise ordered (AR 196(3)).

53. The impact of disqualification is specified in AR 182. The effect of disqualification is not only for the licence to cease and determine, requiring a fresh application to be made to be relicensed (AR 195A), but also to exclude the disqualified person from any involvement whatsoever, directly or indirectly, in racing. The implications of a suspension are specified in AR 183.

54. AR 199B specifies that a person attending an inquiry or hearing conducted by the Stewards shall not be entitled to be represented by any other person, whether a member of the legal profession or otherwise. Relevantly, as is apparent from what was stated earlier, the Stewards in this matter did not enforce this Rule and in fact allowed the appellant to be represented throughout by eminent counsel.

55. Having identified these various rules it is worth observing that the Rules do not contain any comprehensive or definitive provisions which specify the nature of the relationship and the obligations and duties owed by trainers to the owners of the horses which they train. This omission is all the more noteworthy in view of the fact the Rules do go into considerable detail as to many aspects relating to how the sport must be run. This situation may partly explain the significance of the wording of AR 175A and the relevance of that rather broad provision in the present case.

56. LR 200 entitles a person who is aggrieved by a determination or finding of the Stewards to appeal to the Tribunal and to make an application for a suspension of operation of the penalty. The right to appeal is further addressed in the provisions of the *Racing Penalties (Appeals) Act 1990* (**RPA Act**) which established the Tribunal.

57. The Tribunal is a domestic tribunal which must *"act according to equity, good conscience to the substantial merits of the case"* (RPA Act s 11(1)(b)) and hear and determine appeals based on the evidence of the original hearing, but may allow other evidence to be admitted (RPA Act s 11(3)(c)).

58. A person aggrieved by a Stewards' determination imposing a suspension, disqualification or fine may appeal to the Tribunal (RPA Act s 13(1)).

59. The nature of the appeal process was considered in *Danagher v Racing Penalties Appeal Tribunal* (1995) 13 WAR 531 at 552 where Murray J stated:

> *"... the jurisdiction of the Tribunal is to conduct an appeal by way of re-hearing 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 an appellate tribunal to supplement those materials as may seem proper. It is not a case, I think, such as is often found where an "appeal" is provided from an administrative body, that 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 a new determination which that body was called upon to make.*
>
> *In other words, in this case the Tribunal was not required to inquire anew into the question whether the horse had been brought to the race course having had administered to it a prohibited substance and whether, if so, in the exercise of the discretion of the Tribunal the horse was to be disqualified. I have particular regard to the fact that under s 17(7) the original determination and order will remain in*

operation pending the determination of the appeal, unless it is ordered to be suspended, and s 17(9) makes it clear in my opinion, that the Tribunal is not simply required to make the determination of the body from which the appeal is brought. That that is so is made clear not only by s 17(9)(c) in my opinion, but also by the provisions of par (b) whereby the matter in question may be referred by the Tribunal to the body from which the appeal was brought for rehearing and by par (d) whereby the Tribunal may recommend or require to the appropriate body, further action in relation to any person. Those provisions would seem to emphasise that the primary obligation of fact-finding and decision-making continues to rest with the body from which the appeal is brought."

60. The Tribunal is empowered amongst other things to "*confirm, vary or set aside the determination appealed against or any order or penalty imposed to which it relates*" (RPA Act s 17(9)(c)).

61. The appeal hearing before the Tribunal began on 26 August 2014 and continued on 21 October 2014. Prior to reaching any determination, at the invitation of the Tribunal, the parties submitted some additional evidence relating to the appellant's personal circumstances.

FACTS

62. In light of what Murray J stated in *Danagher* (supra) and as I explain below, there is no need to go to the trouble of comprehensively reconsidering all of the evidence which was before the Stewards, reviewing each of the factual findings of the Stewards or questioning any facts surrounding any of the complaints. Some of the relevant facts have been referred to already under the headings INTRODUCTION and INVESTIGATION. Despite the large number of relevant facts, the overall factual situation in the matter is clear. During the course of the extensive inquiry which the Stewards undertook, they delved comprehensively into the trainer's actions, his role and relationship with respect to each owner and horse involved and the circumstances surrounding each issue. This ultimately led to the four separate charges which in turn

led to the convictions and penalties being imposed. The Stewards were diligent in getting to the bottom of matters in their pursuit of the truth. The conduct of this undertaking was more complex and exacting than most other inquiries. It was necessary to both conduct investigations and interviews offshore as well as locally and to weigh up conflicting testimony. There were serious issues of credibility to be addressed. The complaints of many owners needed to be explored and acted upon. The appellant was not cooperative nor always forthright in his answers as his self interest obscured some of the truth. It was only after diligent inquiry and when the appellant was faced with incontrovertible evidence that the true picture emerged and the untruths were exposed and admitted.

63. Having eventually arrived at the truth, the Stewards reported their factual findings, the consequences that flowed and the outcomes with considerable care, clarity and detail. The Stewards' reasons for convicting, which are to be found in their letter dated 15 May 2014, comprise some 68 pages and provide an unambiguous and comprehensive picture of the overall prolonged saga. The written submissions for the appellant concede:

> *"the facts relating to the various matters were comprehensively canvassed at the various hearings before the Stewards and set out substantively in the reasons dated 15 May"* (para 2).

Senior Counsel for the Stewards stated without challenge from the other side:

> ...
>
> *"there is not one aspect of the stewards' reasons that is not entirely supported by the evidence.... Coupled with that is the fact there was no suggestion ... from Mr Percy that they had misquoted or misused any of the evidence which they heard before them, or indeed the evidence which was in the form of interviews of witnesses, conducted by Mr O'Riley (sic)" (T2 of Tribunal 21.10.14 hearing at 37).*

64. There is no doubt the Stewards exposed all of the relevant background facts and surrounding circumstances in relation to the conduct of the applicant. There is no dispute that the Stewards' reported findings of fact do provide a fair and reasonable statement of the relevant evidence. Mr Percy was not critical of any aspect of the Stewards' findings but rather only of the way the evidence was applied and the conclusions drawn.

65. In view of these comments regarding the facts and bearing in mind the references to the evidence stated previously, I see no need to go into any further detail regarding the evidence before the Stewards. It is worth, however, simply listing those pages in the Stewards' reasons where, according to Mr Davies, the Stewards specifically deal with each aspect of all four charges. Senior counsel for the Stewards provided a helpful document which listed this information as follows:

Charge 1: *(a) 12 – 17; (b) 18 – 21; (c) 21 – 25; (d) 25 – 26; (e) 36 – 37; (f) 37 – 42; (g) 42 – 47; (h) 47 – 50; (i) 50 – 51; (j) 51 – 56.*

Charge 2: *56 – 59.*

Charge 3: *60 – 64.*

Charge 4: *64 – 68.*

GROUND ONE

Appellant's Argument

66. At the outset, senior counsel for the appellant argued in relation to appeal ground 1 that each of the several discrete allegations which comprised the charge needed separate treatment and should not have been lumped together and dealt with in combination. It was submitted that each of the multiple allegations potentially constituted a separate offence. Specifically on this point Mr Percy asserted:

"...in relation to charge 1 which effectively contained multiple allegations. Indeed charge 1A contained within itself four separate allegations relating to the horses that were sent overseas. 1B was relating to transfers without notifying the owners. This is all part of the one charge. 1C was failing to monitor the Singaporean trainer when he failed to remit prize money promptly in relation to a particular horse called SIMPLY BUSINESS. D related to a set-off of the sale of a horse in satisfaction of training fees. E was a set-off of prize money against training fees in relation to his father. F was a generic charge of failing to keep proper records in relation to the horses. G, finally, was in relation to some representations he made to someone who'd purportedly purchased an interest in one of the horses that she would get paid." (T3 at 33). (Unless otherwise hereafter stated, T with a number following it refers to the transcript page number of the Tribunal hearing on 26/8/14)."

"These matters could easily, and should easily, have been separate counts. Count 1A should have been four different charges. 1B should have been a separate charge; C a separate charge and so on, so that each could receive proper and individual consideration by the stewards to see whether the various elements of that charge had been satisfied. This rule is common to all the jurisdictions across Australia and in recent years there has evolved, other than appears in Western Australia, an approach to the rule which we call the test in Waterhouse, that is Robert Waterhouse" (T4 at 20).

67. In the detailed submissions that followed, Mr Percy advanced many propositions to support his arguments regarding the **duplicity** issue, including the following:

67.1 That it was erroneous for the Stewards to say at paragraph 17 of the conviction that they must look broadly at the matters before them and not just consider each aspect in isolation (T8 at 5).

67.2 The charge contained several discrete allegations, all of which occurred at different times, different places and involving different persons. Each one

needed to be considered separately in accordance with the proper test (T8 at 15).

67.3 The Stewards' failure to consider these issues in relation to each sub-particular charged was wrong (T11 at 22).

67.4 If the charge was not bad for duplicity there should have been separate penalties for each aspect (T59 at 41).

68. As to the **role and responsibility** of a trainer, senior counsel argued:

68.1 The finding of the Stewards at para 57 that the appellant was under some continuing duty once the horses left the country was a non-existent obligation and erroneous under the Rules (T24 at 45).

68.2 Effectively there was no fiduciary duty on the local trainer once the horses went overseas and they went with their owners' blessing. It was up to the owners to chase the trainer if they thought he was remiss in any duty towards them (T26 at 12).

68.3 There is no duty on a trainer to keep proper books of account (T32 at 40).

69. As to what the **owners** had **agreed to and authorised**, it was argued:

69.1 "*No-one was deprived of their horses improperly at any level at any stage and I don't think the stewards ever said that*" (T13 at 31).

69.2 Every horse went with the permission of the owner and the problem simply was that the trainer did not keep the owners adequately informed when the horses were out of the State (T16 at 35).

69.3 "*Not once anywhere in the reason (sic) is there any suggestion that a horse went anywhere without its owner's permission or blessing. The only problem is that when they got over there, he was a bit lax in monitoring what*

happened and the stewards that imported to him a duty that he had to do it as their former trainer or agent and the point of information, he should have done more" (T17 at 5).

70. It was further asserted the **appellant** did not act as a trainer but rather was **like an agent** in dealing with the Singapore connection (T26 at 36). The Stewards' finding (at para 62) that there was no clear transfer of responsibility was rejected (T27 at 39). When the horses arrived in Singapore, Mr Koh basically assumed full control as he was their trainer (T28 at 2).

71. As to whether the **image of racing** was adversely affected, many propositions were advanced as to what was the proper test. Further, it was strongly argued that the conduct fell short of adversely impacting on racing's image. Included in the supporting contentions were the following arguments:

71.1 None of the matters came into question for several years and only with the assistance of the Stewards which is testament to the fact that none of them were ever in the public domain in their own right. (T19 at 31).

71.2 Although the appellant's behaviour made him look like a "cowboy", it did not affect the image of racing (T15 at 9). Further, *"They would have walked away thinking Edwards was a cowboy ..., that his approach to them was cavalier in the extreme. They'd never send a horse to be trained by him again. But other than the Fishers, no-one said they were out of the industry"* (T21 at 12).

71.3 Nothing in these allegations caused injury to the wider industry or struck at the heart or the integrity of racing (T24 at 5 and 16).

71.4 The allegations needed to be considered on the basis of the three tier "Waterhouse" test, namely:

- whether the appellant was blameworthy;

- there being an element of public knowledge; and
- the sport being injured rather than just the appellant's reputation (T6 at 45).

72. The appellant's counsel submitted it was not greatly relevant in this type of case that the Rule in question contained the phrase *"in the opinion of the Stewards"*. Unlike a riding offence where the **opinion of the Stewards** is almost absolute as that is just a question of degree, in the present case, the opinion simply *"...wasn't open to them..."* (T15 at 22-30).

73. As to the question of the Issues being nothing more than **civil issues and unrelated to the Rules**, Mr Percy argued amongst other things that:

73.1 At all stages there were only civil disputes as there was no case of anything other than private misbehaviour on the part of the appellant (T17 at 11 and 27).

73.2 Although the Stewards have acknowledged it is not their role to make findings regarding matters of alleged debts between parties (T22 at 30) they acted outside their own guidelines (T23 at 20).

73.3 As to the issue with Mr Eathorne, this was about setting off a debt (T32 at 25). Similarly, as to charge 1E, the question of money owing to Mr Edwards Snr was a family matter only (T32 at 26).

MY REASONS

74. In evaluating all of the appellant's arguments in relation to the first charge, I have borne in mind a number of general factors which I refer to by way of introduction. The first is the distinctive nature of Stewards' inquiries. Stewards' disciplinary proceedings are somewhat unusual. Unlike judges and magistrates, the Stewards do not preside over the conduct of matters which are equivalent to trials or court cases where the parties are automatically entitled to legal representation. The proceedings before Stewards under the Rules are quite different to judicial proceedings. Stewards

perform a variety of ever changing roles through the course of processing their matters. Stewards' proceedings are usually initiated by them, are conducted by them and invariably ultimately determined by them. By necessity Stewards do wear several hats as they undertake their duties and navigate the journey of addressing suspected misconduct. The start of the potentially diverse journey into matters of racing misbehaviour often, as in this case, occurs with the initiation of an investigation by the Stewards. Depending on what is revealed, the investigation may lead to the convening of a formal inquiry. During such an inquiry the Stewards usually summons the relevant parties to attend as witnesses. The Stewards may call for the production of documentary evidence and the giving of oral testimony. In some situations Stewards may well enter the arena and themselves present some of the evidence. The Stewards invariably question the witnesses. Having distilled the facts to a sufficient extent, they may reach the point of deciding to lay charges. If and when those charges are laid for breaches of the Rules, the Stewards must then give the accused the opportunity to be heard. This stage in the proceeding normally leads to a determination by them of guilt or innocence. If a guilty verdict is reached, the Stewards then address the question of penalty. This dissection of the process reveals the fact that, in effect, the Stewards usually are required to and do perform a combination of changing, unfolding roles. At different times during the exercise their actions are equivalent to that of an investigator or policeman, witness, counsel, complainant, jury and sentencing judge.

75. The second factor to highlight is that it is the Stewards rather than the Tribunal who are best equipped and well trained to perform these multifaceted roles, arrive at a determination of guilt or innocence and set any penalty that may then become necessary. The Stewards enjoy specialist knowledge and much experience of the practical application of the Rules and the ongoing requirements of their industry. They are charged with the duty to set penalties. It is not the role of the Tribunal to make a fresh determination to replace that of the Stewards simply because the Tribunal may have arrived at a different outcome had it dealt with the matter in the first instance.

The Tribunal should only interfere in a case of demonstrated error on the part of the Stewards. Such an error may include acting on a wrong principle, taking into account irrelevant matters, making a factual mistake and acting unreasonably or unjustly (*Australian Coal & Shale Employees Federation v Commonwealth* (1953) 94 CLR612 at 627).

76. The next feature to be mentioned is the nature of the racing industry and its role in the community. Numerous special factors and aspects are relevant in this context. There are important issues of safety of riders and welfare of animals to be considered. There are large investments in infrastructure and stock. Substantial prize monies for owners are at stake. Training fees are involved. The betting public invests in the outcome of races and is concerned to be rewarded on those outcomes. Races must be conducted fairly and entirely on merit. The confidence of the betting public in the integrity of the industry must be carefully considered. Government revenue derived as a consequence of the activity is at stake. The sport of thoroughbred racing, like the other racing codes, depends on the placing of bets by members of the public and monies being generated from the TAB. The sport is very sensitive and readily adversely affected by evidence or suspicion of malpractice and breaches of the Rules. The racing industry competes with many other gambling and gaming activities for the limited amount of community financial support which is available. There has always been much temptation for deviant behavior at many levels in the industry. This can and unfortunately does cause some participants to indulge in inappropriate practices at times. A significant number of people in the community are directly or indirectly dependent on the industry for their livelihoods and the pursuit of their careers. The combination of all these and other interconnecting factors necessitates that the racing industry be subjected to particularly close vigilance and unstinting scrutiny. In cases of proven malpractice, firm discipline usually is required both as a direct punishment of any wrongdoer and as a salutary lesson to others. It is the Stewards who are charged with the responsibility of preserving the welfare of the industry and, as already

explained, Stewards perform their duties by exercising their powers under the Rules to investigate, enquire and penalise proven cases of wrongdoing.

77. The fourth introductory aspect is the fact that all of the people whose livelihoods Stewards adjudicate on in the course of their inquiries may only enjoy their privileges to work in and earn a living from the racing industry after first having been approved and licensed. All licensees are obliged to agree to and must conform to the Rules if they desire to participate in the industry. Once approved they are issued a licence which they may only exercise provided they comply with the Rules.

78. Finally, it is the Stewards who constantly overview all activities associated with racing. In so doing, they interpret and apply those Rules and undertake discretionary judgments. It is not surprising that there is a strong presumption in favour of such judgments (*Australian Coal & Shale Employees Federation v Commonwealth supra*).

Ground One

79. The Stewards in the present case were clearly in the best position to resolve issues of credibility in relation to witnesses who appeared before them. The Stewards, unlike the Tribunal, had the advantage of observing, hearing, questioning and testing the witnesses as they gave their evidence.

80. The Rule relevant to the first charge and ground of appeal 1 contains the phrase "*in the opinion of the Stewards*". In regard to the significance of this wording, I do not accept the proposition made on behalf of the appellant which is referred to earlier that, in the context of this matter, as distinct from say a riding offence, such wording does not have considerable relevance. The inclusion of the phrase in AR 175A highlights the fact that the assessment of the Stewards as to the quality of behaviour and any culpability of suspected offenders is paramount. It is appropriate for this to be the case. As indicated earlier, the Stewards are the appointed undisputed industry experts on whose skill and judgment maintaining the integrity of the industry relies. Consequently, particularly on an appeal from a Rule so expressed, the Tribunal should

not readily apply its own interpretation to the facts and substitute its own opinion. As has been stated many times before in other appeals in dealing with rules couched *"in the opinion of the Stewards"*, the Tribunal should only interfere where it has been shown the Stewards have been so unreasonable in their approach and decision as to have fallen into error. This involves reaching the conclusion that no reasonable body of Stewards, armed with all of the relevant information, would have so decided the matter in the same way as the Stewards in question have done.

81. Further, it is the Stewards who are ideally placed to determine whether conduct does or does not prejudice the image, interests or welfare of racing. The Stewards are a key and integral part of the industry. Provided the adjudicating Stewards have come to the conclusion that certain conduct has actually tarnished or has the potential to tarnish racing based on a fair and reasonable assessment of the situation and it cannot be shown that the Stewards have erred along the lines referred to in the *Australian Coal & Shale* case referred to earlier, then it is not proper for this Tribunal simply to substitute its own opinion of the matter for that of the Stewards.

82. I believe the Stewards properly applied the evidence and drew appropriate conclusions which were all open to them on the facts of the matter. The Stewards were entitled to conclude the appellant was not authorised in relation to the question of the ownership of the various exported horses. I also am of the opinion that the Stewards correctly concluded the appellant was not simply performing the role of an agent in his dealings with these various unhappy owners.

83. In addition, I am satisfied that the misdeeds committed by the appellant collectively go well beyond simply domestic or private types of disputes. The misbehaviour which affected so many horses and their respective owners does not just impact privately on this trainer and those owners only. It is important to bear in mind the appellant's position of authority and the trust placed in him by so many owners. The relatively large numbers of horses involved and the fact so many owners lost their rights of ownership overseas amongst other entitlements are all highly relevant factors. The

repeated acts of blatant disregard for the owners' rights are important aspects. There was some local publicity which ensued in the press. Some of the innocent victims felt compelled to resort to legal action and such motivation was not confined to Western Australia. I do not believe it can exonerate the appellant simply by virtue of the fact that at the Stewards' inquiry some elements of the public had been present. Many owners were more than unhappy and disillusioned with the shabby treatment meted out to them and word of their disenchantment would have no doubt disseminated. Indeed, as just mentioned, some resorted to legal action and others walked away from the industry. I believe this sorry combination of unsatisfactory factors extended beyond the direct parties involved and had an impact on the racing industry as a whole. Further, the time frame involved and the appellant's total indifference to respond adequately or at all to any of the numerous requests made of him would in my opinion be likely to lead any reasonable Stewards, armed with all the facts, to arrive at the same conclusion which these Stewards did. I consider the Stewards were entitled to form the opinion that for a trainer to treat these nine owners with such contempt, ordinary reasonable members of the public would be likely to conclude that an important element in the racing industry was unsavoury, out of control and could not be trusted by owners with whom he dealt. As Mr Davies asserted, this *"... very sorry saga for racing went on for quite a period. It disillusioned a large number of people, it separate (sic) father and mother from son ..."*, it caused people to quit having an involvement in the industry (T2 of 21/10/14 hearing at 30). Put in other words, I consider such was the extent and nature of the misconduct which involved betrayal of trust and abuse of position, the Stewards were entitled to conclude the appellant's behaviour adversely affected racing's image, its interests and its welfare.

84. I am satisfied that the Stewards were not in error in the way the first charge was framed, bearing in mind all of the diverse elements of the conduct involved and the contractual nature of and the special relationship that exists between a trainer and the owners of horses entrusted to his care. In relation to each element which the Stewards made clear was under consideration, the serious question of the breakdown

of the relationships of this trainer with the respective owners was involved. The appellant betrayed each relationship of trust and reliance bestowed on him by many industry participants over an extended period. He did so with cold indifference and blatant breach of their rights. The Stewards made each supporting detail of the charge clearly known to the appellant. Mr Percy acknowledged *"where an allegation is not particularised, obviously on the face of it will be bad for duplicity. In this case they were particularised and fully particularised. We were in no doubt as to the charge that we were going to meet"* (T7 at 26). Further, as Mr Davies put it, the Stewards made sure and left no stone unturned so that the person investigated was aware of each and every area under consideration (T70 at 17).

85. The Stewards are not obliged to formulate charges with the same precision as required in a criminal court in relation to criminal prosecution proceedings. Despite that, many of the details enumerated in the first charge were designed to assist the appellant to fully appreciate and understand precisely the nature of the charge and its various issues. As Mr Davies submitted, and I agree with his argument, the first charge in essence was the failure to deal appropriately with clients and others. The rules as to duplicity which would apply in criminal matters are relaxed in the case of domestic tribunals. The case of *Jacobsen v The Nurses Tribunal* SC NSW 3 October 1997 No 30103/96 establishes duplicity really has no place in domestic tribunals. Importantly, it is clear and not disputed, the appellant knew exactly what the Stewards were examining and precisely what he was being called upon to answer in relation to the first charge. There cannot be said to have been any injustice or prejudice to the appellant due to the overall wording of the lengthy charge and the fact that the various misdeeds were separately identified. In that context it is worth clearly acknowledging I believe the Stewards acted more than helpfully and fairly, firstly by making all of the distinct aspects of the conduct under consideration clear and, secondly, in allowing legal representation throughout the hearing. The appellant was represented by senior counsel who raised the same issues and concerns as to duplicity before the Stewards. The Stewards however, had left no doubt as what case had to be met. I am not

persuaded by the argument advanced that each aspect could only be treated discretely to be the subject of its own separate penalty.

86. I am satisfied that on the facts before them, the Stewards were entitled to come to the conclusion that each component of the three tier test, which Mr Percy pressed, was satisfied.

87. For the racing industry to function properly and have the potential to prosper there must at all times be a relationship of trust and integrity between owners and trainers of race horses. Without horses bred and trained to race there can be no ongoing viable industry. Owners place valuable racing animals which are expensive to acquire and costly to maintain in the hands of their selected and duly appointed licensed trainers. In consideration of that, they pay training fees. The trust bestowed on trainers needs to be respected and the responsibilities properly discharged in accordance with the Rules. The training fees need to be earned. Trainers must act with integrity at all times in relation to dealing with the horses under their care or control. They must do their reasonable best to look after the welfare of the animals in their charge. Further, they must at all times advance the interests of the owners who deserve to maximise on their dealings with their trainers. As Mr Davies asserted, owners are the lifeblood of the industry. Such are the roles and responsibilities of trainers that there are certain express obligations placed on them, for example, to ensure horses are presented to race free of prohibited substances (AR 177A and AR 178). Hence strict liability provisions make trainers culpable even when not personally, directly or even indirectly responsible for a Rule breach.

88. The privilege to train someone else's racing animal clearly does not authorise and cannot in any way justify a trainer passing ownership to another without first obtaining express authority from the client to do so. Racing is and constantly needs to be highly regulated and properly controlled in all aspects to avoid it descending into chaos. Complete disorder would quickly result should participants' proprietary and other rights be trampled on and go unchecked.

89. Clearly all trainers must perform their roles with diligence and in accordance with their owners' instructions. Race horses are placed in the care and possession of trainers to be fed, sheltered and trained to, at the very least, a reasonable standard in order to make them fit to race to their potential. Where trainers are not under strict instructions to take particular action, they must ensure they do not betray their owners' trust nor take steps which deprive owners of their lawful rights in relation to their horses. The relationships that are forged between owners and trainers will vary depending on many factors including their respective personalities, expectations, levels of communication and what has been agreed or is implicit between them. The Rules do not go into any detail or spell out the terms and conditions of such relationships. Normal basic rules of conduct applicable to contracts for service should apply. In this case, the Stewards were entitled to conclude that the appellant's multiple failures justified a conviction. The appellant acted well beyond the scope of his authority. The facts clearly prove he failed to protect legal interests as to ownership and agisting of the horses and did not account for proceeds which numerous owners were entitled to.

90. The trainer under review was clearly authorised to export the horses in question. Simply because that arrangement was agreed to by the respective owners and the animals were subsequently sent out of the jurisdiction by the appellant, did not justify the appellant allowing the ongoing rights of ownership of the animals to change. Some of the horses once abroad were registered under different local racing names. This occurred without the knowledge and authority of their Australian owners. Monies received from Mr Koh for winnings and proceeds of unauthorised sales were given to the appellant. But these monies and proceeds were not accounted for nor paid to the lawful recipients within a reasonable time or at all in some cases. Such conduct went beyond the bounds of propriety and amounted to serious misconduct. The nature and extent of the misconduct had wide adverse industry implications. The evidence established there was industry knowledge of what had happened.

91. To reiterate, contrary to what was asserted on behalf of the appellant, the appellant clearly acted without various owners' knowledge and authority in making the horses available for a third party to divest to others and in one case to acquire himself. Further, there can be no question such conduct breaches the trust vested in a trainer. It is completely inappropriate for a trainer to be involved in the parting of ownership of an animal placed in his care without the owner's knowledge and approval. The same conclusion applies in relation to the failure to handle arrangements for breeding as instructed.

92. In light of these comments no error has been demonstrated on the part of the Stewards in my assessment. In the peculiar circumstances of this case it is worth amplifying this conclusion by stating I believe it has not been shown the Stewards erred by having concluded this particular trainer was obliged to:

92.1 Keep his owners informed of the progress of their overseas race horses.

92.2 Properly account to the owners in a reasonable time frame.

92.3 Keep management records.

92.4 Honour stud arrangements.

92.5 Protect ownership rights in respect of horses.

92.6 Obtain authority before setting off debts from proceeds received on behalf of others.

This whole unhappy spectacle was clearly not a normal or usual situation where horses routinely leave one local trainer to go to another local trainer. As Mr Davies argued, the appellant was in a privileged position in relation to the disaffected owners, being both the trainer and the person who conceived, promoted and arranged the export of the animals. The appellant set up a scheme in respect of which he benefited. He negotiated with the owners to agree to the exporting arrangements. The

appellant was the only contact person for the horses which were overseas. Mr Davies described it as having allowed *"their rights to fall away"* (T11 at 28 of 21 October 2014 hearing). These circumstances placed the appellant in a different position of trust and responsibility as the trainer than is normally the case.

93. As explained, the implications and seriousness of the overall misconduct took it beyond the private realm and into the public realm. I am satisfied the failures to act honestly and openly were so severe and widespread that compendiously, they impacted adversely both on the image and interests of the industry. The appellant must be held accountable for his actions. For these various reasons I would dismiss the first ground of appeal.

Grounds Two and Three

94. These two grounds concern the second and third charges respectively. The nature of the offences are essentially the same as both involve the giving of a misleading statement. Ground 2 concerns misleading the principal investigator and ground 3 misleading the Stewards. The Stewards' reasons at paragraphs 212 to 226 address the first and at 227 to 250 they have addressed ground three. The relevant surrounding facts of each are clearly documented in these sections of their reasons and need no repeating.

95. In order for racing to be properly controlled and the behaviour of its participants appropriately regulated, licensed persons are obliged to cooperate and assist by responding truthfully to questions asked of them in relation to racing and not misguide or give any false information to a duly authorised person.

96. I am satisfied on the evidence it was open to the Stewards to conclude that the appellant had misled both the principal investigator and the Stewards as charged and that there is no merit in grounds 2 and 3. I would dismiss both of these grounds.

Ground Four

97. I agree with Mr Davies on this aspect that, in view of the unashamed admission by the appellant to the Stewards that the nominations of SPLITSVILLE to race were made by the appellant without any intention to have the horse actually participate in the race, the Stewards were duty bound to act. This is despite the fact that this type of situation apparently has not been addressed previously and consequently has not been punished before. It would be derelict of the Stewards to ignore this conduct in view of its consequences and the blatant manner in which it was discussed and admitted to by the appellant. I would dismiss this ground as well.

PENALTIES

98. Mr Davies made the following introductory remarks, which I agree with, on the subject of the penalties:

> *"The stewards have set out, in relation to generally, their role generally, the role that penalties play, discussed the types of penalties and then, in relation to each of the charges, carefully set out the reasons for arriving at the conclusion that they did. Again, they adopted the very sensible practice of hearing the submissions on penalty, having provided in writing the reasons for decision on conviction, and then conveying the penalties and the reasons for them in writing.*
>
> *In their opinion, the way the owners were treated, putting all those paragraphs together, in particular, was abominable. It was a unique situation which, in the ordinary context, wouldn't arise, but where you had a person in a privileged position, the only one who could have realistically protected their interests, to whom they looked for protection, who simply not only flouted their interests, been actively involved in thwarting their ownership, but given them the run around over their entitlements and destroyed Mr Fisher's involvement and his love of his horse and mare.*

They addressed the question of the fact that he'd been stood down for a period under rule 10, and said that does not – and this is a matter that was debated last time we were here, Mr Chairman and Members – that is nothing like suffering the disabilities of actual disqualification, where almost inevitably these days the time is allowed in full. You were still, for a large part of that time, actively involved in training up in Malaysia. Certainly, you may have been under the disbelief that you couldn't go to Dubai, but back (sic) luck.

It's not as if the stewards, in the exercise of the discretion, overlooked that. They took it into account in arriving at the penalties" (T 26-27 of 21 October 2014 hearing at 28).

99. I am not persuaded that it has been shown the Stewards were in error in failing to validate the commencement of the disqualifications and give the appellant credit for the time spent by him when he was subject to the disability imposed pursuant to LR 10.

100. Subsequent to the appeal hearing the Tribunal sought and obtained some written submissions from the parties regarding the appellant's personal circumstances. I agree with the conclusion of Mr Davies in his submissions dated 15 March 2015 that the Stewards were aware of the impact on the appellant's circumstances of disqualifying him and that the seriousness of the misconduct struck at the heart of racing and consequently *"...outweighed the effect on the **then current** personal and commercial situation of the appellant"* (para 14).

101. As previously stated the Rules do provide for a wide discretionary range of penalties which may be imposed. The first three offences are particularly serious ones requiring severe personal punishments which at the same time send a clear message to the industry.

102. I am not persuaded the Stewards were in error in arriving at any of the four penalties which they imposed. The punishments all fall within the discretionary ranges which I

believe were open to the Stewards to impose in each case. I would therefore dismiss the appeal as to each of the penalties.

DAN MOSSENSON, CHAIRPERSON

APPEAL NO. 770

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR R NASH (MEMBER)

APPELLANT:	**SHANE ALLEN EDWARDS**
APPLICATION NO:	**A30/08/770**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)** **MR R NASH (MEMBER)** **MR B CHESNUTT (MEMBER)**
DATES OF HEARING:	**26 AUGUST AND 21 OCTOBER 2014**
DATE OF DETERMINATION:	**30 JUNE 2015**

IN THE MATTER OF an appeal by SHANE ALLEN EDWARDS against the determination made by Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 7 July 2014 imposing disqualifications of three years for breaching Australian Rule of Racing ('AR') 175A, six months for breaching AR 175(gg), three years for breaching AR 175(g) and a fine of $1,500 for breaching AR 175(a).

Mr T F Percy QC, instructed by Michael Tudori and Associates, represented Mr S A Edwards.

Mr R J Davies QC represented the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

I have had the opportunity of reading a draft of the determination of the learned Chairperson of the Tribunal, Mr Mossenson. Save to the extent that my following observations diverge from the Chairperson's reasons, I am in substantial agreement with what he has said and I also agree that the each of the appeal grounds should be dismissed and the appeal against penalty should be dismissed.

APPEAL GROUNDS A (1) AND (2) – CHARGE ONE

The first charge against the appellant was a charge under AR 175A.

AR 175A provides:

"Any person bound by these Rules who either within a racecourse or elsewhere in the opinion of the Committee of any Club or the Stewards has been guilty of conduct prejudicial to the image, or interests, or welfare of racing may be penalised."

The particulars which were provided in respect of this charge were:

> *"[the appellant], being a licensed trainer in the period of time outlined by the following, engaged in conduct prejudicial to the image and interests of racing in [his] dealings with clients and others and failed to act honestly and openly in relation to financial and other aspects of those dealings."*

The particulars of the relevant prejudicial conduct given by the Stewards can be summarised as follows:

(a) failing to ensure the interests of certain owners of various horses were protected;

(b) failing to keep certain owners suitably informed as to their horses progress and status;

(c) failing to monitor the actions of a third party, to whom the appellant had entrusted the horses on behalf of the owners, where that third party had transferred the horses to new owners and "deleted" horses;

(d) failing to inform the owners of the fate of their horses;

(e) wrongfully authorised the transfer of horses to new interests without notice or advice to the horses' owners;

(f) failing to ensure prize money was remitted to the owner of SIMPLY BUSINESS (LADY LUCK);

(g) withheld proceeds of sale in respect of the horse SPLITSVILLE without authority;

(h) withheld prize money in respect of the horses SPLITSVILLE and FAIRY KING DANE;

(i) failed to maintain any or proper records in respect of the horses entrusted to him to take to Singapore;

(j) misled one owner as to her share of proceeds of sale of the horse SPLITSVILLE;

(k) failed to pay the purchase price for the horse STRALETA until a complaint was made by the owner to the Stewards;

(l) failed to inform Mr Fisher of the stallion to serve his mare DANCE CROSS contrary to the agreement he had with Mr Fisher; and

(m) failed to keep Mr Fisher informed of matters concerning DANCE CROSS and its progeny leading to the accumulation of a debt by Mr Fisher to Aintree Lodge and resulted in Mr Fisher relinquishing his interest in those horses.

The evidence before the Stewards overwhelmingly demonstrated that the appellant repeatedly adopted a delinquent course of conduct in his commercial relationships with a number of horse owners which came about by virtue of his being a licensed trainer. He caused loss and significant disillusionment to a number of people involved in the Racing Industry. As Mr Percy QC, counsel for the appellant, acknowledged his behaviour was poor and in many cases reprehensible.

In dealing with the charge under AR 175A, the Stewards were considering whether the appellant's conduct, as they found it to be, was prejudicial to the image or interests of the racing industry.

APPROACH OF THIS TRIBUNAL IN REVIEWING THE DECISION

It was submitted by the Stewards, that this Tribunal can only set aside a decision of the Stewards under AR 175A if it is satisfied that no reasonable Stewards could reasonably have formed the opinion that they did. That is an articulation of the test espoused in *Associated Provincial Picture House v Wednesbury Corporation [1948] 1 KB 223.* The "Wednesbury test" is a test which has been applied to judicial review of administrative decisions where it is necessary to show an error of law or jurisdictional error. There is considerable debate whether the Wednesbury test remains applicable in cases of judicial review of administrative decisions or has been supplanted by recent High Court authority.

Section 11 (1)(b) of the *Racing Penalties (Appeals) Act 1990*, requires that this Tribunal in dealing with appeals is to act according to equity, good conscience and the substantial merits of the case.

The approach that this Tribunal is to take in reviewing discretionary judgments of the Stewards was the subject of analysis by Murray J in *Danagher v Racing Penalties Appeals Tribunal (1995) 13 WAR 531 at 554.* In that case, Murray J said that the Tribunal should approach the matter in the same way as an appellate court would review a discretionary judgment of a lower court where the appeal is by way of rehearing. In this respect he referred to the decision in *Australian Coal and Shale Employees Federation v Commonwealth (1953) 94 CLR 612 at 627*, where Kitto J said:

> *"the manner in which appellate jurisdiction is exercised in respect of decisions involving discretionary judgment is that there is a strong presumption in favour of the correctness of the decision appealed from, and that that decision should therefore be affirmed unless the court of appeal is satisfied that it is clearly wrong. A degree of satisfaction sufficient to overcome the strength of the presumption may exist where there has been an error which consists in acting upon a wrong principle, or giving weight to extraneous or irrelevant matters, or failing to give weight or sufficient weight to relevant considerations, or making a mistake as to the facts. Again, the nature of the error may not be discoverable, but even so it is sufficient that the result is so unreasonable or plainly unjust that the appellate court may infer that there has been a failure properly to exercise the discretion which the law reposes in the court of first instance"*

Therefore, whether or not it is strictly correct for this Tribunal to adopt the test as formulated in Wednesbury when considering appeals against discretionary judgments made by the Stewards, there is a strong presumption in favour of the correctness of the opinion reached by the Stewards, which this Tribunal will be slow to interfere with. Due and proper respect will be accorded to the Stewards' judgments and opinions about matters affecting the Racing industry, which they are in a unique position to make highly informed and experienced judgments about.

DUPLICITY ARGUMENT – GROUND A (1)

The appellant contends that Charge One was bad for duplicity. It was contended the rule against duplicity which applies in criminal cases has application in cases of this kind before a domestic disciplinary tribunal and that each particularised act of the appellant's prejudicial conduct should have been subject to a separate charge under Rule 175A.

The obligation of the Stewards was to ensure that the charges were adequately particularised so as to accord the appellant procedural fairness.

In my view, the way in which the charge was formulated and presented did not present any potential for unfairness of a kind that would lead to the appellant being denied procedural fairness. Therefore, the argument that the charge was bad for duplicity fails in my opinion. In this respect I refer to the commentary in *Woods v Legal Ombudsman [2004] VSCA 247* at [37] to [48]; and in *Jacobsen v Nurses Tribunal & Anor, Supreme Court of NSW, BC9705032* at pp 16 and 17.

IMPROPER CONSIDERATION OF THE ELEMENTS OF THE CHARGE AND HAVING REGARD TO VARIOUS IMPROPER AND IRRELEVANT CONSIDERATIONS – GROUND A (2)

I agree with the Chairperson's determination that this ground of appeal should fail and there is no basis for this Tribunal to set aside the Stewards' determination in respect of Charge One.

In addition to the matters referred to by the Chairperson, it seems to me that the reference to the 'interests' of racing (in Rule 175A) expresses something which is wider than merely assessing the scope of its public image. One can envisage many forms of conduct that could prejudice the 'interests' of racing but which might not be shown to have damaged the public image of racing. In this respect the Stewards made observations at paragraphs 15 and 16 of their reasons which were pertinent in this respect. The appellant was noted by the Stewards to be a high profile trainer as an open class winner and winner of Perth Cups, and the matter had attracted considerable interest both within the Industry itself and in the public media.

Repeated delinquent behaviour in dealing with owners by a person with a significant reputation for success as a trainer (which reputation he has gained through the privilege of being granted his licence as a trainer), is something one can well understand would cause a Steward to reach the opinion that the individual's behaviour was prejudicial to the 'interests' of the Industry at the very least, and most probably also prejudicial to the 'image' of racing generally.

The Appellant referred to the decision in *Waterhouse v Racing Appeals Tribunal [2002] NSWSC 1143*. In that case Young CJ described the gravamen of the charge he was concerned with to be one of conduct that was alleged to be prejudicial to the 'image' of racing. It was not alleged in that case that the conduct was also prejudicial to the 'interests' of racing, contrary to what was said in the matter of *Smeardon; Decision of the Racing*

Appeals and Disciplinary Tribunal Board of Victoria dated 7 February 2013. Waterhouse provides some assistance in identifying the approach to be taken in assessing whether conduct can be regarded as prejudicial to the image of racing. However, the case was not concerned with an analysis of when the 'interests', in contradistinction to the 'image', of racing may be prejudiced.

GROUND B 3 - CHARGE 2

Charge 2 was a charge pursuant to AR 175(gg) which provides that the Stewards may penalise ..."any person who makes any false or misleading statement or declaration in respect of any matter in connection with the administration or control of racing."

Charge 2 alleged that during an interview conducted by RWWA Principal Investigator Mr P O'Reilly on 22 February 2013, the appellant denied knowledge of the other shareholder in SPLITSVILLE, namely Ms D Kennedy, which was a misleading statement in respect of a matter in connection with the control of racing.

The Stewards found that the appellant was aware that Ms Kennedy had acquired an interest in the horse.

The appellant argued that the Stewards knew of the purported sale of an interest in the horse to Ms Kennedy and therefore the appellant's answer could not mislead Mr O'Reilly when he asked the question. In my view, that argument cannot succeed because the charge was not concerned with whether the Stewards were misled as to the ownership status of the horse, but rather whether the statement was misleading as to the state of knowledge of the appellant about that matter.

The appellant also contends that the answer to the specific question, whether the appellant was aware that Ms Kennedy was a shareholder in the horse, was not misleading because the appellant did not know if Ms Kennedy had been registered as a shareholder in it. It was emphasised that the appellant was never asked if he was aware of Ms Kennedy having "an interest in the horse".

The Stewards consideration of this issue is set out at paragraphs 212 to 226 of the Stewards Reasons for decision which accompanied their letter of 15 May 2014 ('Reasons for Decision').

A statement can be misleading even if literally true: *Construction Industry Long Service Leave Board v Odco Pty Ltd, (1988) 81 ALR 590, per Jenkinson J.* The answer and its capacity to mislead must be considered in the overall context of the questioning. As the

Stewards explained in the Reasons for Decision, the questioning by Mr O'Reilly of the appellant about this matter was in the context of questioning about the horses which had been relocated to Singapore and the acrimony surrounding the non-accountability for the sale proceeds and prize money to a number of owners of the horses. In that context the appellant was asked if he knew if Ms Kennedy was a shareholder in SPLITSVILLE. The question, in context, had to be seen as one where Mr O'Reilly was seeking to ascertain whether the appellant knew that Ms Kennedy had an ownership interest in the horse.

The appellant didn't need to have an understanding of the precise legal or equitable interest held by Ms Kennedy. He clearly had been informed that she had acquired an interest in the horse.

I can find no fault in the approach of the Stewards in their deliberations on this issue or their reasoning in reaching their conclusion that the appellant, by his answer, had deliberately misled the Stewards as to his state of knowledge. For these reasons I agree with the Chairperson that this ground of appeal should be dismissed.

GROUND C (4) - CHARGE 3

Charge 3 was under AR 175 (g), which relevantly provides that the Stewards may penalise any person who gives at any inquiry evidence which in the opinion of the Stewards is false or misleading in any particular. The particulars of the charge were that the appellant gave misleading evidence by denying any knowledge of, or having given consent or authority for, the transfers of BORN GENIUS, REGAL RASCAL or STAR BARONIA.

The Stewards found the appellant guilty of the charge. Their detailed reasons are set out at paragraphs 227 to 250 of the Reasons for Decision.

The Stewards in particular quoted from and observed that the appellant's denials were given in a clear and emphatic way in the face of fairly persistent questioning. The Stewards rightly observed the significance of these denials in the context of the allegations being made against the appellant.

When the Malaysian Racing Authority became aware of the matter, from what I understand to be media reports, it provided to the Stewards a copy of a document, which became Exhibit 27, in which the appellant clearly confirmed the sale of "Shane Edward's share" in those horses and confirming his signature on the form and giving Mr Koh authority to sign on his behalf. The Stewards specifically observed the appellant's demeanour once that evidence was put to him as being the demeanour of somebody who "had been caught out" and "reflected a person who had been discovered as being untruthful".

The appellant contends that there was no evidence that he deliberately lied or was deliberately untruthful. In my view that was not necessary in order for the Stewards to reach the conclusion that the appellant had given evidence which was in their opinion false or misleading.

In my view it is sufficient for the false or misleading evidence to have been given in a manner that was not inadvertent or based on a genuine endeavour to recall and impart the truth. A reckless or even carelessness attitude to the truth, which turns out to be false or misleading, is sufficient. In my view there was ample evidence for the Stewards to form an opinion that the appellant's evidence was false and misleading contrary to AR 175(g).

GROUND C (5) - CHARGE 4

Charge 4 was a charge under AR 175(a) which provides that the Stewards may penalise "any person who in their opinion has been guilty of any dishonest, corrupt, fraudulent, improper or dishonourable action or practice in connection with racing". Specifically the appellant was charged with nominating the horse SPLITSVILLE on 17 November 2007 and again on 24 November 2007, for a coming race with no intention for it to start in the race it was nominated for, but with the intention of ensuring that there were sufficient numbers of horses nominated so as to ensure the race to proceeded for the benefit of another nominated horse, namely VALENTINE MISS. The Stewards were of the opinion that such a practice was "improper" and accordingly contravened rule 175(a).

The appellant very candidly admitted before the Stewards that the horse was nominated with no intention to race it at all. He said it was common practice and there was no rule that prohibited the practice.

It is noted that after a trainer has nominated a horse, the nomination may be later withdrawn if for example the horse becomes unfit, is allocated a weight by the handicapper which is considered disadvantageous, if the track condition becomes unsuitable for the horse, or for any number of other reasons.

The nomination of a horse for a race is, however, clearly a representation by the trainer to the Race Club that he has a genuine intention to have the horse start in the nominated race albeit it does not constitute a commitment to have the horse start if circumstances are such that lead the trainer to subsequently decide otherwise. The nomination of a horse for a race necessarily requires that it be treated and acted upon by the Race Club as an expression of genuine intent on the part of the trainer. At para 254 of the Reasons for Decision, the Stewards stated:

"It is relatively easy to see that such a practice, were it to be considered to be acceptable, would result in virtual chaos were everyone to do the same. The nomination system would be clogged with non-genuine nominations with the Racing Department left with no real concept of the true level of ready to race horses for the race they have programmed. That could impact decisions with respect to the race in question, future programming of races, other nominations and generally the true reflection of what horses are actually nominating for that race."

In my view there was no demonstrable error in the Stewards reaching the opinion that such a practice was improper. Given the scope and purpose of AR 175, it is not necessary, in my view, for there to be a specific rule which prevents a practice which by its nature is intended to mislead the Racing Department.

The fact that such a practice may be a common practice in the Industry does not alter its fundamentally improper character or justify its' condonation.

GROUNDS E (6) AND (7) PENALTY

I respectfully agree with the Chairperson's reasons for dismissing the appeal against penalty and add the following further specific observations.

Whether penalty should be backdated

The appellant argued that disqualifications imposed should have been back dated to the time the appellant came under the disability of Local Rule 10 which had the effect of suspending him from training in WA.

In my view there would be force to that argument if the appellant had in fact suffered any significant vocational or financial hardship by virtue of the operation of LR 10, but he hasn't since he has been able to train and race horses in Malaysia without any impediment from the time that the suspension came into effect.

No authority was cited by the appellant for the proposition that there was an error of principle in the Stewards adopting the approach that they did. In fact, contrary to the appellant's submission, it is clear from decisions such as *Narkle v Hamilton [2008] WASCA 31*, that even where there is a statutory entitlement to back dating of sentences, the Courts retain a discretion whether in all the circumstances it is appropriate to do so.

The principle in Pearce v R

The appellant argued that the Stewards should have separately imposed a penalty for each of the particularised allegations making up Charge 1. The appellant, in his submissions,

referred to the decision of *Pearce v R (1998) 194 CLR 610*. That case was concerned with penalties imposed in respect of more than one offence where elements of each offence overlapped. The majority of the High Court noted that it would be wrong to punish an offender twice in respect of the same conduct which is the subject of separate offences.

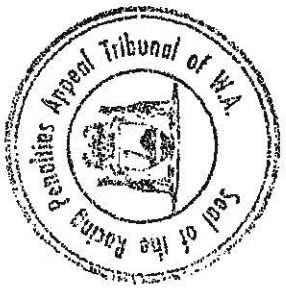
Given that this Tribunal has concluded that Charge 1 was not duplicitous and was properly the subject of one charge, it is difficult to see how the principle that an offender should not be punished twice for the same conduct, which is the subject of separate offences, has any application in a case such as this.

In considering the punishment imposed it was necessary that the Stewards considered the totality of the conduct that was particularised as being the conduct which was prejudicial to the image and interests of racing, since it was the totality of the particularised conduct that had the effect of being prejudicial. In my view, it was not appropriate in a case such as this, to break down the process of determination of penalty by imposing separate discrete penalties in respect of each particular.

PENALTY IMPOSED FOR CHARGE 4

It is significant that this charge essentially arose out of the appellant's volunteered admission as to his conduct and that he did not consider there was anything wrong with the practice which he stated had been common practice in the Industry for many years. Further, the incident occurred some 7 years earlier. In the given circumstances it warranted only a modest penalty to satisfy the obvious need for general deterrence of such conduct, especially where the evidence on the part of the appellant was that is was a commonly accepted practice in the Industry which he had assumed the Stewards knew about. In my view, a $1500 fine for that offence was not so excessive that it would justify this Tribunal interfering with it.

ROBERT NASH, MEMBER



APPEAL NO. 770

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR W CHESNUTT (MEMBER)

APPELLANT:	**SHANE ALLEN EDWARDS**
APPLICATION NO:	**A30/08/770**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)** **MR R NASH** **MR W CHESNUTT**
DATES OF HEARING:	**26 AUGUST AND 21 OCTOBER 2014**
DATE OF DETERMINATION:	**30 JUNE 2015**

IN THE MATTER OF an appeal by SHANE ALLEN EDWARDS against the determination made by Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 7 July 2014 imposing disqualifications of three years for breaching Australian Rule of Racing ('AR') 175A, six months for breaching AR 175(gg), three years for breaching AR 175(g) and a fine of $1,500 for breaching AR 175(a).

I have read the draft reasons of Mr D Mossenson, Chairperson.

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

WILLIAM CHESNUTT, MEMBER

Seal of the Racing Penalties Appeal Tribunal of W.A.

APPEAL NO. 770

THE RACING PENALTIES APPEAL TRIBUNAL

DETERMINATION

APPELLANT:	**SHANE ALLEN EDWARDS**
APPLICATION NO:	**A30/08/770**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)** **MR R NASH (MEMBER)** **MR W CHESNUTT (MEMBER)**
DATE OF HEARING REGARDING ORDERS:	**21 SEPTEMBER 2015**
DATE OF DETERMINATION OF ORDERS:	**26 NOVEMBER 2015**

IN THE MATTER OF the orders sought by Racing and Wagering Western Australia Stewards of Thoroughbred Racing following dismissal of the appeal by SHANE ALLEN EDWARDS against the determination made on 7 July 2014 imposing disqualifications of three years for breaching Australian Rule of Racing ('AR') 175A, six months for breaching AR 175(gg), three years for breaching AR 175(g) and a fine of $1,500 for breaching AR 175(a).

Mr T F Percy QC, instructed by Michael Tudori and Associates, represented Mr S A Edwards.

Mr R J Davies QC represented the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

By a majority decision of this Tribunal, Chairman, Mr D Mossenson dissenting, the application to vary the disqualification period to commence at the conclusion of this appeal is refused.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

Seal of the Racing Penalties Appeal Tribunal of W.A.

APPEAL NO. 770

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR D MOSSENSON (CHAIRPERSON)

APPELLANT:	**SHANE ALLEN EDWARDS**
APPLICATION NO:	**A30/08/770**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)** **MR R NASH (MEMBER)** **MR W CHESNUTT (MEMBER)**
DATE OF HEARING REGARDING ORDERS:	**21 SEPTEMBER 2015**
DATE OF DETERMINATION OF ORDERS:	**26 NOVEMBER 2015**

IN THE MATTER OF the orders sought by Racing and Wagering Western Australia Stewards of Thoroughbred Racing following dismissal of the appeal by SHANE ALLEN EDWARDS against the determination made on 7 July 2014 imposing disqualifications of three years for breaching Australian Rule of Racing ('AR') 175A, six months for breaching AR 175(gg), three years for breaching AR 175(g) and a fine of $1,500 for breaching AR 175(a).

Mr T F Percy QC, instructed by Michael Tudori and Associates, represented Mr S A Edwards.

Mr R J Davies QC represented the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

INTRODUCTION

1. Following the dismissal of the appeal by Shane Allen Edwards (**Appeal 770**) on 30 June 2015, the Racing and Wagering Western Australia Stewards of Thoroughbred Racing (**'RWWA'**) Stewards sought an order that the two three year periods of disqualification which were imposed by the Stewards and confirmed on appeal by the Tribunal, should exclude the time during which Mr Edwards was allowed to continue training in Malaysia. The Malaysian training in question was permitted to take place for approximately nine and a half months by virtue of a stay which was granted to Mr Edwards by the Malaysian Racing Authority. The Stewards' application for this unusual order was heard on 24 September 2015. The application was strongly opposed.

2. The facts most relevant to determining this matter are summarised as follows:

   2.1 The last recorded date when Mr Edwards trained in Western Australia was 10 November 2012.

   2.2 On 29 April 2013, notice of a Steward's inquiry was issued by the Stewards to Mr Edwards who was then stood down from training pursuant to Rule of Racing Local Rule 10.

   2.3 On 21 August 2013, because Mr Edwards had failed to appear at the scheduled resumption of the Stewards' hearing, Mr Edwards was disqualified until such time as he did appear before the Stewards.

   2.4 On 26 September 2013, Mr Edwards was issued a licence to train in Singapore. Pursuant to this licence Mr Edwards did train horses overseas. At the same time as training was being undertaken, the Stewards were dealing with their complicated and prolonged hearing in relation to aspects of Mr Edwards' behaviour whilst he was licensed to train in Western Australia. The conduct under review was largely associated with the export of horses to Singapore between 2008 and 2013. Once the horses arrived in Singapore, they were required to be registered with the Malaysian Racing Authority.

   2.5 Mr Edwards was convicted of four offences. Subsequently, on 7 July 2014, the Stewards published their reasons as to the penalties. Mr Edwards was disqualified for three years in respect of his breaches of Australian Rules of Racing AR 175A and 175(g) to be served concurrently.

   2.6 On 8 July 2014, an appeal was lodged with this Tribunal against all four convictions and the respective penalties which were imposed. At the same time Mr Edwards applied for a stay of proceedings.

2.7 After receiving written submissions from both parties, I refused the stay application on 10 July 2014.

2.8 As a consequence of the imposition of disqualification, Mr Edwards was disqualified from training in Malaysia from 8 July 2014.

2.9 The Malaysian disqualification was terminated some 70 days later on 15 September 2014, when Mr Edwards was granted an interim stay by the Malaysian Racing Authority pending the outcome of the appeal before the Tribunal. The RWWA Chief Steward Thoroughbreds advised the Tribunal Registrar of this Malaysian development by email dated 26 September 2014, and foreshadowed the likelihood of the Stewards raising the matter *"...when the appeal is reconvened"*.

2.10 With the exception of the refusal to be permitted to race horses in Dubai the effects of Mr Edwards' disqualification were avoided in Malaysia during the period from 15 September 2014, until 30 June 2015. It was on 30 June 2015, that the Tribunal, by unanimous decision, dismissed Mr Edwards' appeal.

OVERVIEW

3. As I stated in my reasons delivered on 30 June 2015, *"this appeal involves a number of unique and* somewhat *complex issues which have not come before this Tribunal previously"*. Such a description applies equally to the Stewards' current application which is the remaining matter for determination.

4. Mr Davies QC for the Stewards argued that if Mr Edwards' penalty were to operate from 15 September 2014, rather than 30 June 2015, then it would be unfair, lacking in common sense and would have the effect of damaging RWWA's penalty regime. Senior counsel submitted the integrity of the three year period which was imposed needed to be protected. Further, by not acceding to the Stewards' application, it would emasculate the Tribunal's determination which was intended to prevent the trainer from exercising the privileges of his licence to train horses for three years. The Tribunal in effect was invited to treat the matter the same as it would have done had a stay been granted by the Tribunal, although it was acknowledged that the circumstances were not quite the same.

5. Mr Percy QC responded on the basis that the disqualification did in fact continue in Western Australia pursuant to RWWA Stewards' order, but the training in Malaysia

was a consequence of the grant of a stay in Malaysia. Further, the Tribunal does not have the power to make the order and become involved in domestic Malaysian law. It was conceded that had a stay been granted locally, then the Stewards would have been entitled to take the effect of it into account. However, Mr Percy argued, that as nothing was proven to be wrong with respect to the penalty which was imposed, the Tribunal's power to interfere had not been enlivened. No party was aggrieved. It would amount to a unilateral appeal situation and the remedy is with Parliament.

6. Mr Davies replied by submitting it was not a case of amending the penalty, but rather ensuring the viability of carrying out the penalty which had been imposed. The Stewards were seeking to give efficacy in relation to the carrying out what the Tribunal had already approved. What was being sought was an order which would fulfil the imposition of the same penalty as had been imposed by the Stewards and endorsed by the Tribunal.

REASONING

7. The application is one of those rare cases which involves the consideration of the hearing powers of the Tribunal coupled with the further question as to which Tribunal member or members should decide the matter. As to this latter aspect, the issue is whether I should decide the issue alone, as Chairperson, or whether in addition, the two Members who sat with me at the appeal and on the application, should participate in the adjudication.

8. The Tribunal is constituted by virtue of the Racing Penalties (Appeals) Act (1990). Section 10 of the Act specifies, in effect, when exercising jurisdiction, the Tribunal shall be constituted by the member presiding, being the Chairperson, and up to two other members appointed by the Chairperson.

9. Section 11(3) of the Act states:

"At any proceedings:

(a) The member presiding shall determine any question relating to:

(i) the jurisdiction of the Tribunal;

(ii) the admissibility of evidence; and

(iii) law or procedure."

Mr Percy suggested that all three members should decide the matter.

10. Member Nash, Member Chesnutt and I did hear and determine the substantive appeal. The three of us did sit to hear the submissions which were presented on behalf of both parties as to the orders which are now sought as a consequence of our unanimous determination.

11. I am satisfied in the circumstances of this particular case out of the ordinary case that it is not inappropriate for the outcome of the Stewards' application to be decided by all three members.

12. Section 17 of the Act sets out the Tribunal's hearing powers. Subsection 9 reads:

> *"Upon the determination of an appeal the Tribunal may -*
>
> *(a) order the refund or repayment of any stakes paid in respect of a race to which the appeal relates;*
>
> *(b) refer the matter to RWWA or the appropriate racing club, committee or stewards for rehearing;*
>
> *(c) confirm, vary or set aside the determination or finding appealed against or any order or penalty imposed to which it relates;*
>
> *(d) recommend, or require, that RWWA or the appropriate racing club, committee or stewards take further action in relation to any person;*
>
> *(e) make such other order as the member presiding may think proper including an order for the total or partial refund of any fee paid or, subject to subsection (10), an order that all or any of the costs and expenses of the Tribunal or any party to the appeal shall be paid by a specified person; and*
>
> *(f) where the payment of costs or expenses is ordered, fix the amount to be paid."*

13. It is clear that section 17(9)(c) of the Act authorizes three possible outcomes. The first possibility is to endorse or approve a Stewards' determination, by virtue of the word "confirm". The Tribunal has already unanimously confirmed in this case that the disqualification was the appropriate type of punishment, and further, that the length of the two penalties in question should both be three years to be served concurrently.

14. The second possible outcome based on the wording of the sub-rule is to change or alter the Stewards' determination, by virtue of the word "vary". "Vary" is defined in Collins Australian Dictionary (Seventh Australian edition) to mean inter alia "to undergo or cause to undergo change, alteration or modification in appearance, character, form, attribute etc". This application by the Stewards in effect seeks such an outcome by

requesting enlarging the disqualification period to include the time whilst Mr Edwards enjoyed the benefit of the Malaysian stay and continued to train.

15. The third possibility under the provision is to quash the determination, by virtue of the word "set aside". This Tribunal has already unanimously determined to reject this route.

16. As quoted in full above, section 17(9)(e) also empowers the making of "...such other order as the member presiding may think proper...". In my opinion, I see nothing wrong with this provision being read in conjunction with the variation power. A situation may potentially arise in a rare and most unusual case, for it to be necessary to have to decide whether a more severe or different penalty than that imposed by the Stewards should be imposed following an appeal.

17. I have already referred to the fact that it has been acknowledged that had a stay been granted by this Tribunal then the period of the operation of the stay could be taken into account in determining the period during which the disqualification applies and consequently when it would end. Such a situation would not result in a longer term of disqualification but would amount to a varying of the Stewards' order with the extension of the date of completion of the disqualification. Bearing in mind the odd factual circumstances of this case, it could be said there is no material difference between the situation of the grant of the Malaysian stay and what would have been the case had a stay allowing training to continue been approved in Western Australia pending an appeal. By granting the stay, the overseas racing authority allowed training to continue overseas pending determination of the appeal locally in circumstances where Mr Edwards had in fact totally moved his operation overseas. Mr Edwards was, as a consequence of a stay, able to continue his training operation and maintain his participation in the horse racing industry despite the stated intention and resolution of the local Stewards following their lengthy inquiry, that he should not be prevented from doing so everywhere.

18. The Tribunal unanimously endorsed the Stewards' findings and upheld the convictions and penalties. In deciding this application it is important to give close attention to the Stewards' explanation of the intended consequences of the penalties they imposed. In their reasons on penalty, the Stewards stated:

"Final Comments

In issuing the penalties that we have, the Stewards have also applied the principles of totality that apply when multiple penalties are issued. In this respect it is evident that all penalties ought to be served concurrently. We have also considered all of the modes of penalty available when assessing each charge and given consideration to the imposition of alternate penalties from those issued. Where disqualification was preferred, this was determined only after excluding the other forms of penalty due to the seriousness of the matters before us. We recognise that disqualification has far reaching implications and serves to remove a person entirely from the industry of racing world wide. It is not a penalty to be imposed lightly. The matters to which disqualification has been imposed are considered in all of the circumstances to be sufficiently serious for all the reasons discussed both in our comments for conviction and penalty, that disqualification is left as the only suitable method of penalty.

As alluded to at the outset we have also carefully considered the submissions in relation the (sic) effects of the order made pursuant to Local Rule 10 and its impact upon you. The penalties arrived at are the penalties that the Stewards believe are appropriate in all of the circumstances. As it would only be a live question for the Stewards if disqualification was decided upon, having made that initial decision, further consideration was given with regard to the manner of imposition. More specifically whether it is appropriate and suitable to backdate the commencement of the disqualification to some other period of time than when the decision is given.

AR196 deals in part with matters of deferment of penalty as it relates to disqualification, which strongly suggests that disqualifications apply at the time of issue unless otherwise deferred pursuant to that rule. It is evident that the restrictions of disqualification as prescribed within the rules have not fully or to any great extent been visited upon you. You had left Australia before the commencement of this inquiry and were operating in another jurisdiction where in the absence of their reciprocation of our order pursuant to LR10 you have been largely free to continue to do so.

Whilst there have been some impediments to you, these have been significantly less than the full extent of what would ordinarily have applied had you remained in WA. Further some of these impediments as described have been at specific points in time, for example when you wanted to take horses to Dubai, as opposed to a continuing complete restriction of your ability to enjoy the privileges of licence

within your current home jurisdiction. We recognise the impediments, as we do the extra-curial penalties that this whole matter has caused for you, however believe they serve only as a degree of mitigation to the quantum of penalty itself which we have taken into account and factored into each penalty and does not justify an order that the commencement of penalty be backdated to the date of imposition of LR10 or some backdated time.

Accordingly all penalties will apply effective the date of this letter."

19. It was clear that the Stewards had expected that international racing authorities would reciprocate the local disqualification ruling. By choosing to disqualify, the Stewards obviously intended Mr Edwards would no longer be able to participate or be involved or associated with the racing industry anywhere for the full three year concurrent terms which they had imposed on him. This intention was frustrated as Mr Edwards clearly did not suffer the full consequences of the disqualification orders.

20. Australian Racing Rule 182(1) is clear in its ambit of embargoes. A disqualified person is usually prevented from, amongst other things, entering licensed premises, being employed or engaged in any capacity in any racing stable, riding or nominating any racehorse, racing or training any racehorse and sharing in winnings of any horse. During part of the period when the Stewards' order would ordinarily have prevented Mr Edwards from undertaking any of these activities, the stay application accompanying the appeal having been denied, Mr Edwards did in fact continue to enjoy the right to exercise the privileges of a licensed thoroughbred trainer. This situation only came about due to the stay which was granted by the Malaysian Authority.

21. The Rule spelling out the consequences of disqualification also states in sub-rule 3:

> *"(3) Unless otherwise determined by the Principal Racing Authority that imposed or adopted the penalty, the period of disqualification of any person who contravenes any of the provisions of subrule (1) of this rule, shall automatically recommence as from the most recent date of such contravention, and the person may also be subject to further penalty."*

22. Clearly, by being able to train and in fact having continued to train in Malaysia, Mr Edwards has not been visited with the consequences and burdens of anything like the full scope of the penalty which the Stewards' intended should apply. If it were decided not to uphold the Stewards' contentions to extend the operation of the penalty, then

the punishment meted out would amount to something substantially less severe and the punishment would be much less effective than what was intended.

CONCLUSION

23. In resolving the matter, on the basis of *"...equity, good conscience and the substantial merits of the case"* (s 11(1)(b) of the Act), I am satisfied that in this unusual case, the Stewards' application should succeed.

24. Consequently, subject to the qualification below, I would accede to the Stewards' arguments and order the two three year periods of disqualification should be served concurrently starting from the date when the appeal was dismissed, namely 30 June 2015. The effect of so deciding would mean that the period covered by the interim Malaysian stay would be ignored. However, as 70 days of disqualification have already been served, that length of time should be deducted from the three year periods which would otherwise end on 29 June 2018.

Seal of the Racing Penalties Appeal Tribunal of W.A.

DAN MOSSENSON, CHAIRPERSON

APPEAL NO. 770

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR R NASH (MEMBER)

APPELLANT:	**SHANE ALLEN EDWARDS**
APPLICATION NO:	**A30/08/770**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)** **MR R NASH (MEMBER)** **MR W CHESNUTT (MEMBER)**
DATE OF HEARING REGARDING ORDERS:	**21 SEPTEMBER 2015**
DATE OF DETERMINATION OF ORDERS:	**26 NOVEMBER 2015**

IN THE MATTER OF the orders sought by Racing and Wagering Western Australia Stewards of Thoroughbred Racing following dismissal of the appeal by SHANE ALLEN EDWARDS against the determination made on 7 July 2014 imposing disqualifications of three years for breaching Australian Rule of Racing ('AR') 175A, six months for breaching AR 175(gg), three years for breaching AR 175(g) and a fine of $1,500 for breaching AR 175(a).

Mr T F Percy QC, instructed by Michael Tudori and Associates, represented Mr S A Edwards.

Mr R J Davies QC represented the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

INTRODUCTION

1. The Appellant is serving a 3 year disqualification as a licensed trainer. The disqualification was imposed by the RWWA Stewards after convicting the Appellant of a number of breaches of the Rules of Thoroughbred Racing and commenced on 9 July 2013.

2. An application to this Tribunal to suspend the operation of that disqualification pending the determination of the Appeal in this matter was made by the Appellant, but that application was refused.

3. The Appellant's appeal against conviction and penalty were dismissed by this Tribunal on 30 June 2015. The result is that the Appellant has remained disqualified from being a licensed trainer in WA since 9 July 2013 with all the attendant consequences such a disqualification brings with it.

4. There is a convention among most of the racing authorities that regulate thoroughbred racing around the world, that they will recognise and reciprocate disqualifications that are imposed on trainers by other racing authorities so as to prevent trainers avoiding or mitigating the consequences of a disqualification by moving jurisdictions.

5. The RWWA Stewards have drawn to the Tribunal's attention the fact that for a period of approximately 11 months, during the period that the Appeal in this matter was on foot, the Appellant was able to continue to train horses in Malaysia.

6. On the Appellant's application, the Malaysian Racing Authority ("MRA") agreed to suspend the operation of the Appellant's disqualification from racing in Malaysia on the basis that the Appellant was appealing the decision of the RWWA Stewards to this Tribunal. Despite the MRA being informed that the Appellant's application for a suspension of the operation of the disqualification in this jurisdiction had been refused by this Tribunal, the MRA did not lift the suspension it had granted the Appellant until this Tribunal dismissed the Appeal.

7. The Stewards point to the fact that the Appellant's licence to train in Malaysia was granted on the basis of his WA trainers licence. Mr Davies QC, on behalf of the Stewards, submitted that the MRA effectively 'thumbed its nose' at the refusal to grant a stay by this Tribunal.

8. The Stewards contend that this Tribunal should, accordingly, vary the period of the disqualification so as to extend it for the same period that the Appellant was able to

train horses in Malaysia whilst the MRA had suspended the operation of the disqualification. It is contended that will preserve the integrity and efficacy of the penalty that was originally imposed by the Stewards. Mr Davies QC submitted that the penalty imposed has been "emasculated" by what has occurred and rhetorically asked "Does this Tribunal allow this rort to continue?"

9. Mr Percy QC, on behalf of the Appellant, submitted that the penalty was always operating. He submitted that the MRA was operating according to its own set of principles and observed that some other jurisdictions will not always fully reciprocate the enforcement of penalties imposed by the RWWA Stewards. He argued that it was not appropriate for this Tribunal to retrospectively look behind a penalty that has been imposed and see what teeth it has had, and then subsequently adjust the penalty on appeal. Further, Mr Percy contended that the Tribunal does not have jurisdiction to make an order increasing the length of the disqualification on the application of the Stewards.

POWER TO EXTEND THE PERIOD OF DISQUALIFICATION

10. The Tribunal is a creature of statute and its powers and jurisdiction are those conferred upon it by the Racing Penalties (Appeals) Act 1990 ("Act").

11. The Long Title to the Act is:

An Act to constitute the Racing Penalties Appeal Tribunal of Western Australia, to confer jurisdiction in respect of appeals against penalties imposed in disciplinary proceedings arising from, or in relation to, the conduct of greyhound racing, horse racing and harness racing, and for related purposes.

12. The Appeal in this case was brought under section 13(1) of the Act which provides that:

*A person (in this Part referred to as the **appellant**) who is aggrieved by a determination, or a finding comprised in or related to a determination, of RWWA, of a steward, of a racing club, or of a committee —*

(a) imposing any suspension or disqualification, whether of a runner or of a person; or

(b) imposing a fine; or

(c) which results, or may result, in the giving of a notice of the kind commonly referred to as a warning-off; or

(d) in relation to any other matter, where the Tribunal gives leave to appeal,

may, within 14 days after the making of the determination, or in the case of a notice of warning-off the giving of the notice, appeal to the Tribunal.

13. Section 17(7) of the Act empowers the Chairperson or a member presiding, upon or prior to hearing an appeal, to direct RWWA or a steward to suspend the operation of any order or penalty, until the appeal has been determined.

14. Section 17(9) of the Act provides:

(9) Upon the determination of an appeal the Tribunal may —

(a) order the refund or repayment of any stakes paid in respect of a race to which the appeal relates; and

(b) refer the matter to RWWA or the appropriate racing club, committee or stewards for rehearing; and

(c) confirm, vary or set aside the determination or finding appealed against or any order or penalty imposed to which it relates; and

(d) recommend, or require, that RWWA or the appropriate racing club, committee or stewards take further action in relation to any person; and

(e) make such other order as the member presiding may think proper including an order for the total or partial refund of any fee paid or, subject to subsection (10), an order that all or any of the costs and expenses of the Tribunal or any party to the appeal shall be paid by a specified person; and

(f) where the payment of costs or expenses is ordered, fix the amount to be paid.

15. It is noted that the powers of the Tribunal under section 17(9) include referring matters for rehearing, varying penalties imposed, and making recommendations to RWWA or the stewards to take further action in relation to any person. In addition, section 17(9) (e) confers on the member presiding the power to make such order that he may think proper.

16. Section 11 (1)(b) of the Act requires the Tribunal 'to act according to equity, good conscience and the substantial merits of the case'

17. The Stewards contend that the power of the Tribunal to make an order extending the period of the disqualification can be found in the Act, at:

    (a) Section 11(1)(b); and

    (b) Section 17 (9) (e).

18. The Appellant argues that none of the provisions of the Act empower the Tribunal to make an order of the kind being sought by the Stewards.

19. In my view the power to vary a determination under section 17(9)(c) upon determining any appeal, includes the power to make appropriate adjustments to any penalty imposed by the Stewards in order to preserve the integrity and efficacy of the original penalty. In particular, it is my view that such power could properly be exercised, if:

    (a) the Tribunal has concluded the original penalty imposed by the Stewards was correct; and

    (b) the process of the Appeal, initiated by the Appellant, has directly or indirectly resulted in the severity of the original penalty imposed by the Stewards being reduced or mitigated.

20. The above approach is consistent with the requirement that the Tribunal is to act to 'act according to equity, good conscience and the substantial merits of the case' and is consistent with the discharge of the fundamental underlying requirement to preserve and maintain the integrity of the Racing Industry.

SHOULD THE PERIOD OF DISQUALIFICATION BE EXTENDED

21. The next question is whether the Tribunal should accede to the Stewards' contention that the term of the disqualification should be extended by a further 11 months to take into account the fact that the Appellant has been able to train in Malaysia for that period despite being under disqualification here in WA.

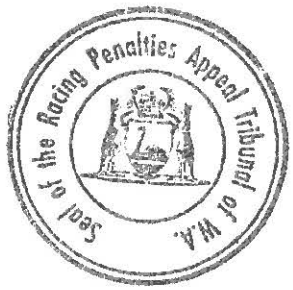
22. There is a lot of force to the arguments put forward by the Stewards, particularly when one has regard to the fact that the Appellant's application to the MRA for a suspension of the disqualification (which it was reciprocally enforcing) was based on the fact that the Appellant was appealing the decision of the Stewards to this Tribunal.

23. On the other hand, the Appellant has remained under disqualification here in WA ever since the penalty was originally imposed. That has had an impact on the Appellant in that it has prevented him from training here in WA where his family resides, and has also prevented him from training or participating in other racing jurisdictions to the extent that they apply the convention of reciprocating penalties. The fact that the MRA suspended reciprocating the disqualification in that jurisdiction until the Appeal was determined, despite the fact that this Tribunal did not grant a stay, was a matter for that Racing Club exercising its own jurisdiction for the purposes of governing and controlling its own racing industry.

24. In my view, the Stewards and this Tribunal should avoid becoming engaged in formulating penalties which are primarily designed to have extraterritorial penal consequences, rather than being focussed on penalties that are directed at the regulation and control of the local racing industry. It is a matter for foreign agencies, and their own judgment, as to what is the best approach for the maintenance and control of their industries, and to make their own assessments as to when and how they will act to reciprocate penalties imposed by the Stewards and the Tribunal in this jurisdiction.

25. If the length of the term of disqualification were to be extended by a further 11 months, it would result in the Appellant being disqualified in WA for 3 years and 11 months.

26. In my opinion, the Stewards' application to extend the period of the penalty should be refused.



ROBERT NASH, MEMBER

APPEAL NO. 770

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR W CHESNUTT (MEMBER)

APPELLANT:	**SHANE ALLEN EDWARDS**
APPLICATION NO:	**A30/08/770**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)** **MR R NASH (MEMBER)** **MR W CHESNUTT (MEMBER)**
DATE OF HEARING REGARDING ORDERS:	**21 SEPTEMBER 2015**
DATE OF DETERMINATION OF ORDERS:	**26 NOVEMBER 2015**

IN THE MATTER OF the orders sought by Racing and Wagering Western Australia Stewards of Thoroughbred Racing following dismissal of the appeal by SHANE ALLEN EDWARDS against the determination made on 7 July 2014 imposing disqualifications of three years for breaching Australian Rule of Racing ('AR') 175A, six months for breaching AR 175(gg), three years for breaching AR 175(g) and a fine of $1,500 for breaching AR 175(a).

Mr T F Percy QC, instructed by Michael Tudori and Associates, represented Mr S A Edwards.

Mr R J Davies QC represented the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

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1. I have read the draft reasons of both the Chairman and of Mr Nash.

2. I agree with the Chairman that this Tribunal has the power on this appeal to vary the order made by the Stewards so as to make the period of disqualification commence at the conclusion of this appeal. I agree with the reasoning of the Chairman as to why that is so.

3. However, I also agree with Mr Nash, for the reasons that he sets out, that it is not appropriate in this case to do so.

4. Accordingly, I would dismiss this application.

WILLIAM CHESNUTT, MEMBER

APPEAL NO. 770

THE RACING PENALTIES APPEAL TRIBUNAL

ERRATUM REASONS FOR DETERMINATION OF MR R NASH (MEMBER)

APPELLANT:	**SHANE ALLEN EDWARDS**
APPLICATION NO:	**A30/08/770**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)** **MR R NASH (MEMBER)** **MR W CHESNUTT (MEMBER)**
DATE OF HEARING REGARDING ORDERS:	**21 SEPTEMBER 2015**
DATE OF DETERMINATION OF ORDERS:	**26 NOVEMBER 2015**
DATE OF ERRATUM REASONS:	**1 DECEMBER 2015**

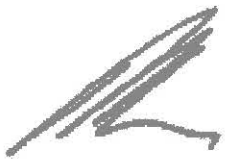
IN THE MATTER OF the orders sought by Racing and Wagering Western Australia Stewards of Thoroughbred Racing following dismissal of the appeal by SHANE ALLEN EDWARDS against the determination made on 7 July 2014 imposing disqualifications of three years for breaching Australian Rule of Racing ('AR') 175A, six months for breaching AR 175(gg), three years for breaching AR 175(g) and a fine of $1,500 for breaching AR 175(a).

Mr T F Percy QC, instructed by Michael Tudori and Associates, represented Mr S A Edwards.

Mr R J Davies QC represented the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

I refer to my reasons dated 26 November 2015 in relation to appeal number 770 by Mr Shane Allen Edwards.

At paragraphs 1 and 2 of that decision I refer to the date "9 July 2013" as the date of commencement of the penalty. The correct date for the commencement of penalty should read "7 July 2014".



ROBERT NASH, MEMBER