

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPLICANT : PETER GILES GRAHAM
APPLICATION NO. : A30/08/195
PANEL : MR D MOSSENSON (CHAIRPERSON)
DATE OF HEARING : 21 SEPTEMBER 1994

IN THE MATTER OF an application for leave to appeal to the Tribunal by Mr P G Graham under section 13(1)(d) of the Racing Penalties (Appeals) Act against the decision of the Western Australian Turf Club Committee on 12 April 1994 not to approve Mr Graham's application for a trainer's licence.

Mr T F Percy, instructed by T Kavenagh & Co, appeared for the applicant.

Mr R J Davies QC appeared for the WA Turf Club Committee.

Mr Graham seeks leave to appeal against the resolution of the Committee of the Western Australia Turf Club which was made on the 12 April 1994 " . . . that Mr Graham's trainer's licence application NOT BE APPROVED . . .". The decision was communicated to Mr Graham by letter dated 15 April 1994.

This application for leave to appeal is made pursuant to s13(1)(d) of the Racing Penalties (Appeals) Act 1990. In support of the application Mr Percy submits that the Tribunal is empowered to hear appeals relating to matters auxiliary to suspensions, disqualifications, fines and warnings off. Whilst Mr Percy does not suggest that the Tribunal has jurisdiction in relation to matters of licensing generally, he argues that it can adjudicate as to the fairness or appropriateness of a decision made by the controlling body in relation to a person's ability to ride or train.

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."

Mr Percy presses the point that the refusal to approve Mr Graham's trainer's licence is "a related purpose" and therefore is the type of matter where the Tribunal should give leave to appeal. The appeal of Edward Montgomery v. Western Australian Turf Club Committee (Appeal 130 heard 11 August 1993) is relied upon. In that appeal Mr Montgomery was granted leave to appeal against the determination by the Committee against the withdrawal of his trainer's licence pursuant to Local Rule 41. In that case, unlike in the present application, Mr Montgomery was not aware that the Committee was considering revoking his licence. He was not invited to attend or address the meeting when the Committee resolved to take that action and was only informed after the event. In view of the fact that the decision prevented Mr Montgomery from pursuing his livelihood the Tribunal found that the Committee was required to comply with the rules of natural justice. As Mr Montgomery was given no opportunity to be heard and to refute the adverse allegations which were made against him the Tribunal considered that this was an appropriate case to grant leave to appeal. The Tribunal upheld Mr Montgomery's appeal and declared the Committee's decision to be void.

No notice of application for leave to appeal has been filed by Mr Graham. However, the proposed Notice of Appeal which is dated the 20 April 1994 sets out the grounds on which an appeal will be based, namely that the decision is "... unreasonable, against the evidence, and constituted a breach of natural justice,".

In the supporting affidavit which was sworn on 18 September 1994 Mr Graham alleges that the Chairman of Stewards "instructed" him to "... hand in my Foreman's Licence and apply for a Trainer's Licence".

Mr Davies, on behalf of the Committee submits that as this application raises fundamental considerations in relation to the regulation of the industry I should not consider this leave application sitting alone. Whilst Mr Davies agrees that the Chairperson has jurisdiction to deal with the matter alone he considers that the full Tribunal should determine this question of leave as a preliminary matter because of the importance of it and the fact that it may set a precedent which would be more likely as a matter of consistency and clarity to be followed if determined by the full Tribunal.

Initially this approach had some appeal. Immediately following this application there was also listed before me, sitting alone, an application by Mr G D Harper for leave to appeal against another decision of the Turf Club Committee in relation to the refusal to issue a trainer's licence. In view of the fact that a ruling on Mr Davies' preliminary submission on Mr Graham's matter had the potential to affect the way I would deal with Mr Harper's application, Mr Graham's application was stood down briefly with a view to seeking the views of counsel for Mr Harper regarding the respondent's proposed approach.

After hearing further submissions from counsel and upon reflection I was not persuaded that it was desirable for the two applications to be referred to a full tribunal. Rather, I came to the conclusion that I could appropriately deal with these matters in the first instance. A full tribunal had already, over a year ago, determined that it did have jurisdiction to deal with these types of issues. That determination had not opened the floodgates to licensing appeals. In view of the fact that in recent times new regulations have been gazetted empowering the Chairperson specifically to sit alone to deal with additional matters it appeared to me all the more appropriate not to refer these particular applications to a full tribunal.

In resolving this matter it is relevant to refer to the fact that the Tribunal considered the scope of the provisions of s13(1)(d) in J Cooper and R Baker v. Western Australian Turf Club Stewards (Appeal 066 heard 6 May 1992) in relation to the upholding of a protest. In that application the Tribunal did enunciate the basis upon which it should exercise its discretion to grant leave to appeal. The Tribunal concluded that the discretion could only be exercised in favour of an applicant:

"...where it can be demonstrated that there are special or unusual circumstances. Examples of such circumstances are:-

- "(i) as in the case of Hammer which was cited by Counsel, where there is an appeal alleging and demonstrating a denial of natural justice.
- (ii) a case which may involve an assertion of bias against the Stewards, and
- (iii) where it can be shown that the Stewards' panel has in some way been improperly constituted.

Leave should not be granted in any run of the mill matter, or in a case where an aggrieved appellant disagrees with the view adopted by the Stewards and seeks to have his own perception or interpretation of an incident adopted by the Tribunal and substituted for that of the Stewards"

Although the Cooper & Baker appeal related to a decision of the Stewards, I am satisfied the approach to the exercise of the discretion enunciated in that matter applies equally to the present applications.

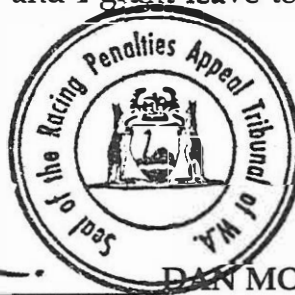
Mr Davies argues that leave should not be granted because it would open the doors for Committee decisions to be challenged before the Tribunal on a regular basis. The Act does not specifically provide for appeals to be made against committee decisions, but rather in broad terms gives a discretion in relation to "any other matters". Senior counsel submits that no procedural unfairness is involved and that a contractual matter was dealt with by the Committee on its merits.

I am satisfied that it is within the spirit and intention of the Act for an appeal to be heard by the Tribunal where the livelihood of an appellant has been adversely affected by a decision of the Committee in the circumstances of this matter where it is alleged that, amongst other things, a breach of natural justice has occurred. It would appear from the affidavit evidence that Mr Graham does have an arguable case in view of the indication by the Chief Steward that his application would be favourably considered should he hand in his foreman's licence and apply for a trainer's licence. The circumstances are sufficiently "special" to remove it from the "run of the mill" matters. The application does meet the test specified in the Cooper and Baker matter.

Accordingly, I am satisfied from the information that has been placed before me that this is an appropriate matter to be heard on appeal before the Tribunal. The subject matter involved clearly is contemplated by the Act to be "a related purpose", and like Mr Montgomery, Mr Graham is entitled to have this matter involving as it does a question relating to natural justice proceed to an appeal hearing. Although it has taken a long time for this matter to be listed the applicant did institute proceedings 8 days after the Committee's decision and five days after being notified of it.

For these reasons, the application succeeds and I grant leave to Mr Graham to appeal to the Tribunal.

Dan Mossenson



DAN MOSSENSON, CHAIRMAN