

REASONS FOR DETERMINATION OF MR D MOSSENSON

CHAIRPERSON OF THE RACING PENALTIES APPEAL TRIBUNAL

APPLICANT : PETER GILES GRAHAM

APPLICATION NO. : A30/08/195

DATE OF HEARING : 24 NOVEMBER 1994

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**IN THE MATTER OF an appeal by Mr P G Graham against the decision of the Western Australian Turf Club Committee on 12 April 1994 not to issue to him a trainer's licence.**

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

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

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Mr Graham appealed against the refusal by the Turf Club Committee to grant his application for a trainer's licence on the grounds that the decision was unreasonable and constituted a breach of natural justice.

In support of the ground dealing with unreasonableness it was submitted by Mr Percy that the appellant did not know of the recommendation which went to the Committee and that he was not notified of the Stewards' adverse attitude to the application. In other circumstances such an argument may well have been persuasive. However, on the facts of this matter as they ultimately emerged, following my questioning, the appellant in a letter addressed to the Chairman and Committee dated 14 February 1994 stated: "I have been advised that the Chairman of Stewards has recommended that my application for a trainer's licence be refused". The appellant clearly was aware of that recommendation and, as a consequence, wrote to the Committee setting out reasons why the licence application should be granted.

In the same letter, Mr Graham alleges that the Committee had already refused the application but sought a reconsideration of it in the light of the seven separate points which he states in the letter. Finally, in that letter the appellant offered to present himself for an interview.

This letter as it emerges, is, in a number of respects, a highly relevant link in the factual chain in this appeal. One aspect of the letter which was not explained in the course of the submissions and in testimony before the Tribunal is the allegation that the Committee had

already decided the matter. As this aspect was not pursued on behalf of the appellant I will not comment further on it as it does not alter my thinking in regard to the appropriate outcome of the appeal.

It was further submitted by Mr Percy that there was some error made by the Committee in failing to give Mr Graham reasons for the decision. Reasons were ultimately forthcoming and it cannot be said that the right to appeal was in any way prejudiced. In any event Local Rule 41 specifically authorises the Committee to refuse to grant a licence without giving any reasons therefore.

I am satisfied that the decision was not unreasonable and I would dismiss the first ground.

As to natural justice ground, on the surface it appears that the appellant may not have been treated completely fairly in view of the evidence before us as to the manner in which the Committee conducted the hearing on 12 April 1994. Mr Percy seeks an order allowing Mr Graham the opportunity to go back before the Committee to present evidence relating to his past drug record.

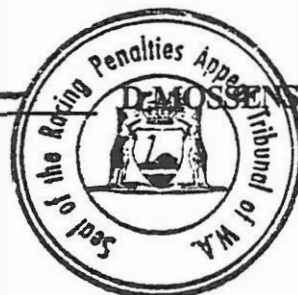
When looked at objectively, it is clear that Mr Graham knew that the drug issue was relevant. After all, his letter of 14 February 1994 specifically makes reference to his 1983 drug offence. Mr Graham was advised both orally and in writing by the Acting Chief Executive of the respondent that "The Committee resolved to ask you to address them at their next meeting" in regard to the application. Any reasonable person in Mr Graham's position should have appreciated that the opportunity was there to address the Committee on the question of his prior convictions and that those convictions were clearly relevant.

I do have some difficulty in the light of Mr Graham's letter of 14 February, of understanding how Mr Graham could tell the Tribunal from the witness box that it "never crossed my mind" that in addressing the Committee it would be relevant to deal with the drugs issue. I also have difficulty with Mr Graham's answer to the member's question as to the claim that the first time he saw the hand written note on the third page of the application form was recently in his solicitor's office. The affidavit sworn by Mr Graham on the 18 September 1994, annexing a copy of the application clearly shows the same note on page three.

I do agree with the submissions which were made by Mr Davies that to send this matter back to the Committee would serve no useful purpose in light of the evidence which was presented to the Tribunal as to that which Mr Graham wishes to tell the Committee.

For these reasons I would dismiss the second ground of appeal as well.

*Don Ross*



DEMOSSON, CHAIRPERSON

23 / 1 / 1995

**REASONS FOR DETERMINATION OF MR J SYME MEMBER OF  
THE RACING PENALTIES APPEAL TRIBUNAL**

**APPLICANT :** PETER GILES GRAHAM

**APPLICATION NO. :** A30/08/195

**DATE OF HEARING :** 24 NOVEMBER 1994

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**IN THE MATTER OF** an appeal by Mr P G Graham against the decision of the Western Australian Turf Club Committee on 12 April 1994 not to issue him a trainer's licence.

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

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

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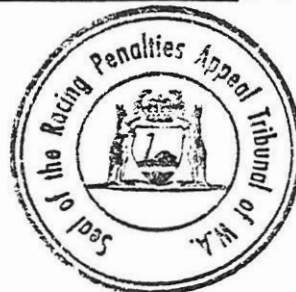
With respect to the first ground I agree with the Chairperson and the reasons which he gives.

With respect to the second ground, I observe having invited the appellant before it, the Committee should have explored all seven matters set out in Mr Graham's letter of 14 February. The only evidence as to the course of the hearing is that of the appellant, which may not be accurate. He fails to some extent in his credibility, in particular, the contrast between the affidavit annexure mentioned by the Chairperson, and his verbal evidence before us today. However, it is all we have. I think he should have the chance to put his case on his record of offences and the circumstances of the offences in the record. The appellant now claims that he was wrongly found guilty in two matters on the record and he would like to be able to tell the Committee so and I would refer the matter to the appropriate body for re-hearing.

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*J Syme*

J SYME, MEMBER



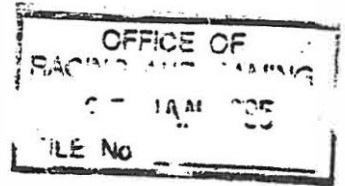
6 / 2 / 1995

REASONS FOR DETERMINATION OF MR J PRIOR MEMBER OF  
THE RACING PENALTIES APPEAL TRIBUNAL

APPLICANT : PETER GILES GRAHAM

APPLICATION NO. : A30/08/195

DATE OF HEARING : 24 NOVEMBER 1994



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**IN THE MATTER OF** an appeal by Mr P G Graham against the decision of the Western Australian Turf Club Committee on 12 April 1994 not to issue him a trainer's licence.

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

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

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With respect to ground 1 of this appeal I concur with the reasons delivered by the Chairperson.

With respect to ground 2 of this appeal, the claim by the appellant that he was denied natural justice in that the appellant submits that he was not given the proper opportunity to address the Committee as to the only matter that they were concerned with being his previous drug administration conviction record. I would allow the appeal and refer the matter back to the Committee for re-hearing.

By his letter of 14 February 1994, the appellant outlined a number of issues additional to his drug administration record which he considered may have been relevant considerations for the Committee.

Prior to the appellant's attendance before the Committee a recommendation was made that the appellant not be issued with a trainer's licence "due to his past drug related offences".

At his attendance before the Committee on the 12 April 1994, the appellant addressed the Committee on a number of matters but he was not specifically directed to address the Committee on his drug administration record only.

The appellant made no submissions to the Committee on his drug administration record. The appellant was therefore denied the right to specifically address the Committee in detail on the matter the Committee considered was the only relevant consideration at the time as to whether they should issue him a trainer's licence or not. The appellant was denied the opportunity to focus his case on the only specific matter which concerned the Committee and the fundamental reason for him being summonsed before the Committee.

As a result of the above, the hearing miscarried and was unfair to the appellant as he was denied natural justice.

I would allow the appeal on this ground only and refer the matter back to the Committee for review.

*John Prior*

J PRIOR, MEMBER

27/1/1995



**DETERMINATION OF THE RACING PENALTIES**

**APPEAL TRIBUNAL**

**APPLICANT :** PETER GILES GRAHAM

**APPLICATION NO. :** A30/08/195

**PANEL :** MR D MOSSENSON (CHAIRPERSON)  
MR J SYME (MEMBER)  
Mr J PRIOR (MEMBER)

**DATE OF HEARING :** 24 NOVEMBER 1994

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IN THE MATTER OF an appeal by Mr P G Graham against the decision of the Western Australian Turf Club Committee on 12 April 1994 not to issue to him a trainer's licence.

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

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For the reasons set out in the Reasons for Determination of the members Messrs, J Syme and J Prior, with the Chairperson Mr D Mossenson dissenting, the appeal is allowed and the matter is referred back to the Committee for re-hearing.

The fee paid on the lodgement of the appeal is refunded.

*D Mossenson*

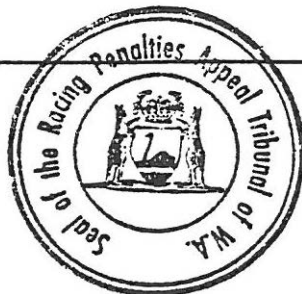
D MOSSENSON, CHAIRPERSON

*J Syme*

J SYME, MEMBER

*John Prior*

J PRIOR, MEMBER



6 / 2 / 1995