APPEAL 251

DETERMINATION AND REASONS FOR DETERMINATION OF

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT:	**RUSSELL STEWART**	
APPLICATION NO:	**A30/08/251**	
PANEL:	**MR D MOSSENSON**	**(CHAIRPERSON)**
	MR J PRIOR	**(MEMBER)**
	MR P HOGAN	**(MEMBER)**
DATE OF HEARING:	**19 OCTOBER 1995**	

IN THE MATTER OF an appeal by Mr Russell Stewart against the determination made by Western Australian Turf Club Stewards on 21 April 1995 imposing a disqualification of ten years under Rule 175(a).

Mr S J Browne, instructed by Stephen J Browne Solicitors, represented the appellant.
Mr R J Davies QC represented the West Australian Turf Club Stewards.

The appellant, a licensed jockey, was charged under Rule 175(a) of the Australian Rules of Racing

> *"that in the opinion of the Stewards, you met with warned off person Greg Dunn who had in his possession an improper contrivance, and (2) that you were a party and involved in the sale of an improper contrivance, namely an electric saddle pad."*

Australian Rule of Racing 175(a) states:

> *"The committee of any Club or the Stewards may punish any person, who, in their opinion, has been guilty of any dishonest, corrupt, fraudulent, improper or dishonourable action or practice in connection with racing."*

Mr Stewart pleaded not guilty but was convicted and was disqualified for a period of ten years. He appeals against both the conviction and the penalty.

The basis of the appellant's appeal against his conviction for breach of the Rule is that there was insufficient evidence to support such conviction. In the hearing of the appeal, in addition to the evidence that was available to the Stewards on 21 April 1995, which appears in the Transcript of the proceedings and relevant exhibits, a Mr S Barrett of Sydney, a producer of the "A Current Affair" television programme, gave extensive evidence by telephone link up. The admissibility of such evidence was not disputed by senior counsel for the Stewards although this Tribunal was invited to carefully consider the weight to be given to such evidence.

There was no dispute by any party at the Stewards' hearing that at the times and places where the alleged acts which gave rise to the conviction for breach of the rule took place, that Mr G Dunn was a disqualified person. Also, the appellant when questioned on 19 April 1995 by Mr R Goddard, the Racecourse Investigator did not take issue with Mr Dunn's disqualification.

Much of the evidence against the appellant came from the "A Current Affair" programme video surveillance at an Albany motel of a meeting between Mr Dunn, licensed trainer Yeates, Mr S Barrett and the appellant. There was also evidence of meetings at various locations in Albany which involved the appellant and some of the parties named above. It was the totality of this evidence, much of it circumstantial in nature, which allowed the Stewards to draw an inference that in their opinion the appellant was guilty of breaching the relevant Rule.

The evidence at the very least established the following facts either directly or indirectly:

1. That the warned off person Mr Dunn was well known to the appellant,

2. That the appellant had some responsibility in arranging a meeting between Mr Dunn and Mr Barrett,

3. The appellant was shown an electrical contrivance at a TAB in Albany,

4. The appellant led Mr Dunn and Mr Barrett to Mr Yeates' house. At the meeting which took place there Mr Yeates produced an improper contrivance to Mr Dunn and Mr Barrett. The appellant was in the immediate vicinity at the time when such meeting took place and the electrical contrivance was produced, and

5. The appellant was at a meeting in a motel room in Albany where Mr Yeates produced an electrical contrivance and sold it to Mr Barrett. The exchange of money took place whilst the appellant was in the relevant motel room and there is no evidence to suggest that he disassociated himself from such activity.

We are satisfied that the above evidence, together with all other additional evidence that was before the Stewards at the original hearing on 21 April 1995, are more than sufficient for the Stewards to come to the opinion that Rule 175(a) had been breached. For the Stewards to have formed an opinion otherwise would have required them to have been satisfied that the various meetings involving the appellant and the activities under scrutiny, were mere coincidence.

The standard of proof that is required for the Stewards to come to a conclusion that the charge has been proved is that set out in Briginshaw -v- Briginshaw (1938) 60 CLR 336. It is clear that the Steward's decision can be based on circumstantial and hearsay evidence (Re Pochi (1979) 26 ALR 247 and Nightingale -v- WATC Appeal No. 252, Delivered 28 August 1995).

We are satisfied that the particulars of the charge which the Stewards found to have been proven did not suggest that the appellant was an actual party to the sale of the improper contrivance by Mr Yeates to Mr Barrett. Rather, his role was more in the nature of an accessory before the fact being the initial conduit for such sale to take place.

The Tribunal is not satisfied that any material we have seen, or any evidence we have heard in the course of this appeal, is such that it indicates that the Stewards were in error in coming to their opinion that the appellant both associated with the warned off person Mr G Dunn, whilst Mr Dunn

had in his possession an improper contrivance and was party to and involved in the sale of an improper contrivance, namely an electric saddle pad.

For these reasons the appeal in relation to the conviction fails. This leaves remaining for the Tribunal to entertain submissions regarding the severity of the penalty.

DAN MOSSENSON, CHAIRPERSON

JOHN PRIOR, MEMBER

PATRICK HOGAN, MEMBER

22/12/95

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