

**DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL**

APPELLANT: GRANT ALEXANDER GIBBS

APPLICATION NO: A30/08/253

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR J PRIOR (MEMBER)
MR P HOGAN (MEMBER)

DATE OF HEARING: 14 NOVEMBER 1995

IN THE MATTER OF an appeal by Mr G A Gibbs against the determination made by Western Australian Turf Club Stewards on 21 April 1995 imposing a five year disqualification under Rule 175(a) and a six months disqualification under Rule 84.

Mr T F Percy assisted by Mr A Jenshel, instructed by Karp and Monaghan, represented the appellant..

Mr R J Davies QC represented the West Australian Turf Club Stewards.

The appellant is a licensed jockey. Following inquiries by the Stewards on 21 April 1995 the appellant was charged with breaches of Australian Rules of Racing 175(a) and 84 respectively as follows:

"in the opinion of the Stewards you were in possession of an improper contrivance, namely an electric saddle pad prior to the 24 March, 1995", and

"...by your own admission that you were the owner of the registered racehorse, the chestnut gelding TARRANT."

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."

Australian Rule of Racing 84 states:

"A licensed jockey or apprentice shall not own, take a lease of or have any interest in any racehorse, and if he does such jockey or apprentice shall be disqualified and any such person having an interest with him and the trainer of such horse may be punished."

Mr Gibbs pleaded not guilty but was convicted of both charges. He appeals to the Tribunal both as to the conviction under Rule 175(a) and as to the severity of the penalties under both convictions. This is the Tribunal's unanimous determination in relation to the Rule 175(a) conviction only.

The appellant's first ground of appeal is that the Stewards laid and considered the wrong charge. The appellant contends that a more appropriate charge on the evidence was under Rule 175(hh). Rule 175(hh) states that, "*the Stewards may punish any person who uses, or has in his possession any electric or electronic apparatus, or any improper contrivance capable of effecting the performance of a horse in a race or training gallop.*" The appellant also submits that there was insufficient evidence to allow the Stewards to convict the appellant of breach of Rule 175(a).

It was equally open to the Stewards to charge the appellant upon the evidence available to them, of either a breach of Rule 175(a) or Rule 175(hh). In any event, there is no specific difference between the penalties which the Stewards may apply upon a conviction of breach of either Rule.

The particulars of the charge were such that the Stewards charged and convicted the appellant of an improper practice under Rule 175(a). After hearing evidence concerning the matter the Chairman of the Stewards stated the charge as follows:

"Mr Gibbs, after considering the evidence, the Stewards have decided to charge you in terms of Australian Rule of Racing 175(a) with an improper practice. I will read you the particular Rule (the Rule was read). We charge you in terms of that Rule in the opinion of the Stewards you were in possession of an improper contrivance, namely an electric saddle pad, prior to 24 March".

The Tribunal is satisfied that this charge was available to the Stewards under Rule 175(a). In order for the Stewards to form such an opinion, proof of the simple possession of the relevant contrivance by the appellant was all that was required. Possession of an improper contrivance is sufficient to constitute an improper practice under Rule 175(a).

On the evidence available to the Stewards, in particular the statement that Mr Goddard the Racecourse Investigator obtained from Mr Franzinelli coupled with the "A Current Affair" programme videotape, there was sufficient evidence for the Stewards to form an opinion of breach of this Rule.

For these reasons, this ground fails.

The second ground of appeal challenges the use of hearsay evidence, in particular the use of the "A Current Affair" tapes by the Stewards in coming to their conclusion that the appellant was guilty of breach of Rule 175(a).

Hearsay evidence is admissible in a Stewards' hearing (Nightingale -v- WATC Appeal No. 252, Delivered 28 August 1995). Furthermore, we are not satisfied that the Tribunal Stewards by accepting such hearsay evidence, acted contrary to the rules of natural justice. In any event, the source of the hearsay material was clearly identified to the appellant at the Stewards' hearing and the appellant was therefore given the opportunity to make submissions on the relevance and weight to be given to such evidence. We consider the hearsay evidence relied upon by the Stewards was logically probative (Re Pochi (1979) 26ALR 247).

The hearsay evidence in this matter corroborated the circumstantial evidence the Stewards relied on in their inquiry. In particular, it corroborated the evidence concerning the appellant living with Mr Yeates, fishing with Mr Yeates, and having the contrivance in his possession.

The seriousness of the charge and the possible penalties do not affect the admissibility of the hearsay evidence. The hearsay evidence, coupled with the circumstantial evidence, was sufficient to meet the standard of proof referred to in Briginshaw -v- Briginshaw (1938) 60 CLR 336.

For these reasons, this ground fails.

The appellant's third ground alleges that there is no evidence of the essential elements of the charge being in possession of an improper contrivance and knowledge of the appellant that the saddle pad in question was an improper contrivance.

The Stewards were obliged to be satisfied on the evidence to the requisite standard that the appellant possessed the improper contrivance and had knowledge that it was an improper contrivance. For the reasons set out in relation to Ground 2, the Tribunal accepts that the Stewards were entitled to rely on hearsay evidence. There was sufficient evidence before the Stewards, both hearsay and circumstantial, for them to be of the opinion that the appellant knew he possessed an improper contrivance.

In particular, there was the evidence before the Stewards by way of the statement made by the jockey Franzinelli to the Racecourse Investigator Mr Goddard and the Chairman of Stipendiary Stewards, Mr Powrie. On page 7 of the Transcript, this exchange took place between those persons and Mr Franzinelli:

"I said "Did you see the electrical pad?" He said "Yes". Mr Powrie said "Who had it?" He said "Gibbo was holding it". Mr Powrie said "What colour was it?" He said "Dark colour, I think it had a yellow coloured edge around it". I said "How did you know it was an electrical pad?" He said "Gibbo showed me it". I said "Where was trainer Yeates?" He said "He was there with the horses". I said "Did you ride any of the horses with the electrical pad?" He said "No way". Mr Powrie said "Who rode the horse with the pad on it?" He said "I don't know, all I saw was Gibbo holding it". I said "How was he holding it?" He said "Over his arm."

The appellant gave no adequate explanation for the statement given by Mr Franzinelli to Mr Goddard and Mr Powrie.

The evidence by way of the "A Current Affair" programme videotape and relevant Transcript, was sufficient circumstantial evidence for the Stewards to draw an inference that the saddle in question was owned or possessed by the appellant.

For these reasons, this ground fails.

In ground four the appellant alleges that the Stewards erred in failing to give any, or any adequate reasons, for their decision to convict the appellant. It is submitted that this resulted in procedural unfairness.

There is no doubt that after the relevant evidence concerning the appellant, the decision was handed down to the appellant in very brief terms. The Chairman of the Stewards merely advised the appellant that "*we find you guilty as charged*".

The appellant was present throughout all the relevant evidence that was delivered at the Stewards' inquiry concerning his involvement in the matter. He was also present when the charge was read to him and was given clear particulars of the charge. The appellant knew clearly the nature of the evidence against him. It was clear to the appellant what the Stewards were acting on in the inquiry and the appellant has failed to satisfy the tribunal that the Stewards had no material to act upon in order to justify charging him with the offence and ultimately convicting him of the offence.

The appellant has been able to appeal the decision on a number of grounds and has specified relevant particulars relating to each ground. It is clear that the appellant was under no misunderstanding after he was convicted of the offence as to the reasons he was convicted of breach of the relevant Rule.

For these reasons, this ground fails.

DETERMINATION

As the appellant has not made out any of the grounds of appeal in relation to the Rule 175(a) conviction the appeal fails. This leaves remaining for the Tribunal to entertain submissions regarding the severity of the penalties.



DAN MOSSENSON, CHAIRPERSON



JOHN PRIOR, MEMBER



PATRICK HOGAN, MEMBER



22/12/95