APPEAL - 259

DETERMINATION AND REASONS FOR DETERMINATION OF

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT : **MICHAEL PETER HOPKINSON**

APPLICATION NO. : **A30/08/259**

PANEL : **JOHN PRIOR** **(PRESIDING MEMBER)**

DATE OF HEARING : **10 NOVEMBER 1995**

Mr M P Hopkinson represented himself.

Messrs D J Maclean and F J Powrie represented the WA Turf Club Stewards.

This is an appeal against a conviction for breach of Rule 84. The appellant was convicted of being a trainer of a racehorse by the name of TARRANT which at the time was owned by a licensed jockey, Mr Grant Gibbs.

Australian Rule of Racing 84 states:

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

At the Stewards' inquiry at Albany Racecourse on 21 April 1995, licensed jockey Grant Gibbs pleaded guilty to breaching Rule 84 by being the owner of a racehorse TARRANT. At the inquiry on 21 April 1995, a Mr J Askevold and his wife, Mrs L Askevold, were also present. The appellant, who was the trainer of the horse at the time in question, was not at the inquiry or was represented at such inquiry.

Subsequently, after two Stewards' inquiries at Port Hedland on 27 May 1995 and 17 June 1995 at which the appellant was present, the appellant was convicted of breaching Rule 84 and fined $1,000. The appellant pleaded not guilty to the charge. At both of the inquiries at Port Hedland, neither the licensed jockey who had owned the horse, Mr Gibbs, or the person who the appellant believed was the owner of the horse, Mr J Askevold, were present.

The grounds of the appellant's appeal may generally be described as submitting there was insufficient evidence before the Stewards to convict him of a breach of Rule 84 as there was no evidence to confirm he had knowledge at the time he was training the racehorse TARRANT that it was owned by licensed jockey Grant Gibbs.

There are primarily two pieces of evidence that the Stewards considered as evidence of the Appellant's knowledge of the licensed jockey's interest in the racehorse. Firstly, it appears from the three stewards' inquiries at Port Hedland and Albany, that there is a conflict in evidence as to what the alleged owner Mr Askevold told the appellant about what was to be done with the racehorse TARRANT when it was delivered to the appellant as a trainer in Port Hedland. Secondly, the appellant accepted that some of the stake money which was received in relation to the racing of the horse TARRANT was given to jockey Gibbs, who on most occasions rode the horse TARRANT at racing meetings in the Northwest of the State.

The appellant advised the stewards that the reason the stake money was given to the jockey Gibbs was so that it could be passed on to the person the appellant considered was the owner in Albany, Mr J Askevold, as Gibbs had ongoing contact with such a person.

The appellant has continually denied that that he had any knowledge of the questionable ownership of the horse until the matter first came to his attention after the Stewards' inquiry, at which he was not present, at Albany on 21 April 1995 when Mr Gibbs advised the stewards of his ownership of the horse. At that inquiry, Mr Gibbs advised the stewards when discussing his receipt of stake money given to him by the appellant or the appellant's representatives, as follows:

> "*Well when the stake cheque came through, he gave it to me. He probably wasn't certain whether I was sending the money back to John or keeping it myself.*"

The Chairman of the Stewards in response to some of the comments made by Mr Gibbs at the hearing, then made the following comment:

> "*Right and then it didn't, so Mr Hopkinson would pass them on to you and he could have assumed that they were going to Mr Askevold.*"

Mr Gibbs replied:

> "*He could have done, yes.*"

These comments by the Chairman of the Stewards and the licensed jockey Gibbs at the inquiry of which the appellant was not present at Albany on 21 April 1995, seem to confirm that on the arrangements made between the appellant and the person he believed was the owner, John Askevold, it was probable that the appellant was not aware of the licensed jockey's ownership by the mere passing of stake moneys by the appellant or his representatives to the licensed jockey Gibbs.

There was not direct evidence or admission on the Appellant's behalf that at any stage he did in fact know that the racehorse in question was owned by the licensed jockey Gibbs. The Stewards' conviction therefore is based on circumstantial evidence which gave rise to them drawing an inference that the appellant did have such knowledge or if he did not have such knowledge, he took such a reckless indifferent regard to the question of who owned the horse that in any event he has breached Rule 84.

Having considered all of the evidence before the Stewards at all three inquiries, I am not satisfied that the Stewards could have been satisfied to the requisite standard set out under *Briginshaw v Briginshaw (1938) 60 CLR 336* that the appellant had knowledge that the horse in question was owned by a licensed jockey or gave reckless indifference to the question of ownership.

I also consider that in any event, the material on which the Stewards relied on in coming to their decision that the appellant had breached Rule 84, offended the rules of natural justice. By in large, most of the evidence the Stewards relied on concerned evidence given by Mr J Askevold, his wife and the licensed jockey Gibbs at the inquiry before the Stewards in Albany on 21 April 1995. As previously mentioned, the appellant was not at the inquiry and therefore lost the opportunity to cross examine the witnesses on the evidence those persons gave to the Stewards. It was submitted by the Stewards that in any event that opportunity to call such witness was available at the inquiries of the Stewards at Port Hedland at which the appellant was present.

What needs to be recognised is that the appellant resides in Port Hedland and the other witness concerned when they gave evidence, gave such evidence in Albany at a time when the appellant was not aware that there was questions arising as to the legitimacy of the ownership of the horse TARRANT.

In any event, at the inquiry on 17 June 1995, it does not seem clear from the transcript that the appellant was aware that the opportunity could be taken by him to call witnesses who had previously given evidence to the Stewards, due to both time constraints and his geographical location. At pages 33 and 34 of the transcript of the hearing on 17 June 1995, the following discussion takes place between the Chairman and the appellant:

Chairman:	"*No, it is an offer. I am just, all I am doing is giving you an opportunity to call witnesses, call Mr Askevold if you see there is a problem with his evidence, and that is all the Stewards are offering.*"
Appellant:	"*I'd like to take you up on that if I can, if I could be flexible on that date that I'd have to appear in Perth.*"
Chairman:	"*This matter has to be concluded fairly shortly.*"
Appellant:	"*Can it wait two or three weeks?*"

Chairman: *"Well no I don't think it can.."*

Appellant: *"Then I'm ....."*

Chairman: *"But I can, that can be discussed."*

Appellant: *"Well, I have to be in Perth, I have to be in Perth shortly two or three weeks BHP is flying me down so I might be able to do it then."*

Chairman: *"Mr Hopkinson if there is any further witnesses or anything further you would like to place before us before we consider the evidence, is there anything further, any evidence you would like to place before us or any other witnesses?"*

Appellant: *"No I think that's it."*

Chairman: *"Alright. I would ask you to wait outside."*

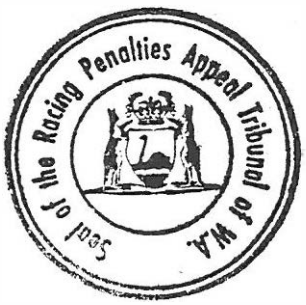
Immediately following this, the appellant returned to the room and the Stewards found him guilty of the breach of Rule 84.

In the circumstances, I am not satisfied that the appellant was aware that he was being given a real opportunity to challenge the evidence which was given at the Stewards' inquiry at Albany on 21 April 1995 of which the appellant was not present. The appellant was therefore unable to resolve the conflict of evidence between himself and Mr J Askevold as to his instructions from Mr Askevold upon delivery of the racehorse to him.

In view of the matters referred to above, I am of the view that there was an insufficiency of evidence for the Stewards to convict the appellant of the breach of Rule 84 and also the appellant was denied natural justice in the way the Stewards conducted the various inquiries. In the circumstances, I am persuaded that the Stewards were therefore in error in convicting the appellant of the breach of Rule 84.

Accordingly, I allow the appeal and set aside the conviction.

The fee paid on lodgement of this appeal is refunded.



John Prior

JOHN PRIOR, PRESIDING MEMBER

21/11/95