

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

APPELLANT: PETER MANCINI

APPLICATION NO: A30/08/306

PANEL: Mr D Mossenson (Chairperson)
Ms P Hogan (Member)
Mr T Mulligan (Member)

DATE OF HEARING: 13 JUNE 1996

IN THE MATTER OF an appeal by Mr P Mancini against the decision of the Western Australian Turf Club Committee on 16 April 1996 disqualifying him, in his capacity as an owner, for a period of 18 months.

Mr T F PERCY instructed by Fordhams appeared for the appellant.

Mr RJ Davies QC appeared for the Western Australian Turf Club Committee.

On the 25 March 1996 the Stewards of the Western Australian Turf Club conducted an inquiry "*...in relation to discrepancies between a verbal account supplied and tendered criminal record of owner Peter Mancini.*" In the course of that inquiry Mr Mancini was also questioned in relation to the validity of signatures and declarations on applications to register racehorses and associated transfers. Mr Mancini's behaviour during the inquiry deteriorated badly and he became abusive, offensive and threatening.

Following the inquiry and whilst being escorted through the premises by the racecourse investigator, Mr R Goddard, Mr Mancini abused and threatened Mr Goddard. In the light of this behaviour and Mr Mancini's conduct during the

inquiry Mr Goddard recommended that Mr Mancini be asked to appear before the Turf Club Committee to show cause why he should not be warned off under Local Rule 84A of the Rules of Racing.

The Chief Executive of the Turf Club wrote to Mancini by letter dated 1 April 1996 as follows:

"You are invited to appear before the Committee of the Western Australian Turf Club at 10.30am on Tuesday 16th April 1996. The reason for this attendance is that the Committee will consider a report from the Stewards concerning inquiries they held in relation to your application to register racehorses, transfers of ownership and matters pertaining to your Police clearance. Further, the Committee will consider a report from the Stewards concerning your conduct at one of those inquiries.

Any evidence or witnesses should be made available at this time."

On 16 April 1996 Mr Mancini attended a meeting of the Western Australian Turf Club Committee accompanied by his wife and also his solicitor, Mr Kevin Prunty of Fordhams. At the outset the Chairman of the Turf Club stated that:

"Mr Mancini, the Committee has invited you to appear before it today to show cause why in the light of your previous failure to properly disclose your criminal record on applications for the registration of race horses and further at an inquiry relating to this matter before the Stewards that this Committee should accept your nominations of race horses in the future and further why as a result of your behaviour during a Stewards Inquiry on the 25th March 1996 you should not be warned off. The other question I have for you is to ask you or your representative to confirm that you are in receipt of copies of the Stewards Report on this matter for the Committee, a copy of the Racecourse Investigators Report to the Committee, copies of transfers, registration applications relating to racehorses, a copy of your own police record and a copy of Extract of the Stewards Inquiry. Have you received all those documents?"

The transcript reveals that Mr Prunty responded on Mr Mancini's behalf and acknowledged that all these documents were in fact received. The Chairman of the Committee then stated "...that is the reason that the Committee has invited

you here and we would appreciate your comments on why we should not take the action I've referred to." Mr Prunty announced that *"...I've been instructed to speak on behalf of Mr Mancini"* and then proceeded to speak on behalf of Mr Mancini for the whole of the meeting.

Mr Mancini did not personally say anything during the course of the meeting. We agree with the proposition put by senior counsel for the Stewards that Mr Prunty's argument amounted to a fairly effective submission in mitigation. At the end of the meeting the Chairman indicated that the Committee would consider the explanation given and would advise Mr Mancini. Later that day a resolution was passed by the Committee in relation to the matter. The minutes of the meeting record that:

"Mr Mancini was invited to appear before Committee in relation to the Stewards report concerning his application to register horses, transfers and his police record. A report in relation to his conduct at an enquiry was noted. Mr Mancini's wife and solicitor attended the meeting. Mr Mancini's solicitor addressed Committee on Mr Mancini's behalf.

It WAS RESOLVED that Mr Mancini be disqualified for 18 months. Mr Hart was recorded as dissenting as he preferred a "warning off" penalty".

The Chief Executive wrote a letter to Mr Mancini's solicitor dated 17 April 1996 advising that Mr Mancini was disqualified for a period of 18 months effective from midnight on 16 April 1996. Mr Mancini appealed against this to the Tribunal. The amended grounds of appeal read:

- "1. The Committee erred in imposing a disqualification in that they failed to afford the Appellant natural justice and/or procedural fairness.*

PARTICULARS

- (i) The Appellant was not afforded any or any adequate notice of the nature of the proceedings before the Committee held on the 16th April 1996.*

- (ii) *The Appellant was not afforded any or any adequate notice or particulars of the possible consequences of the said proceedings.*
 - (iii) *The Appellant was not given sufficient particulars of the matters to be inquired into at the proceedings.*
 - (iv) *No charge was ever preferred against the Appellant.*
 - (v) *The Appellant was never advised of the preferring of any charge against him, or the particulars thereof.*
 - (vi) *The Appellant was never given the opportunity of answering any charge against him or calling any evidence in relation thereto.*
2. *The Committee erred in failing to give any or any adequate reasons for its decision to disqualify the Appellant.*

PARTICULARS

The notice of disqualification failed to provide sufficient reason as would enable the Appellant to appeal the decision.

3. *The penalty imposed by the Committee was excessive in all the circumstances of the case."*

The Tribunal is satisfied that Mr Mancini was given adequate notice of the nature of the proceedings before the Committee of the Turf Club. Not only did he have the benefit of the letter by the Chief Executive Officer advising him of the matter to be considered by the Committee but also the statement made by the Chairman at the outset did make the position abundantly clear to both Mr Mancini and to his solicitor.

The fact that Mr Prunty, a legal practitioner, represented Mr Mancini at the hearing and spoke on his behalf throughout clearly shows that Mr Mancini was aware of the possible adverse consequences to him of the outcome of the meeting. At no stage during the meeting was there any indication given by Mr

Prunty that he was in any way taken by surprise by any aspect of the proceedings. Further, the transcript reveals that the Committee afforded Mr Prunty every reasonable opportunity to react and respond to the matter and it appears that the Committee dealt with the explanation with an open mind. The outcome arrived at was not as severe as that contemplated in the recommendation to the Committee. In these circumstances the Tribunal is satisfied that ground 1 has not been made out.

In relation to the alleged failure to give reasons it is clear from some authorities that it is necessary to give reasons in appropriate cases as to the outcome of decisions. The Committee of the Turf Club, however, in relation to certain specific matters, is expressly not obliged under the terms of the Rules to give reasons. For example, Australian Racing Rule 7(b) empowers the Committee . . .

"To licence jockeys, trainers and others on such terms and conditions as it shall think fit, and at any time to suspend, vary or revoke any such licence without giving any reason therefor."

Senior Counsel for the Committee did not draw the Tribunal's attention to any specific rule which exonerated the Committee from an obligation to give reasons in this matter and the Tribunal is not aware of any such rule.

In the case of Lloyd v Faraone (1989) WAR 154 at 163, Malcolm CJ stated:

"By...District Court...Act...a party to an action in the District Court who is dissatisfied with a final judgement may appeal from that judgement to the Full Court. Such an appeal is as of right, whether for error of fact or law. In these circumstances, the trial judge has a duty, in which both the litigants and the appellate court have an interest, to reveal his reasons. Those reasons must be revealed to such an extent as will enable an appellate court to consider and determine whether or not the judgement is erroneous. In Carlson v King (1947) 64 WN (NSW) 65 at 66 Jordan CJ said:

"It has long been established that it is the duty of a court of first instance, from which an appeal lies to a higher court, to make, or cause to be made, a note of everything

necessary to enable the case to be laid properly and sufficiently before the appellate court if there should be an appeal. This includes not only the evidence, and the decision arrived at, but also the reasons for arriving at the decision."

In Pettit v Dunkley [1971] 1 NSWLR 376 at 387-388 Moffitt P (with whom Manning JA agreed) said:

"... there is as much a duty or judicial obligation or an obligation imposed by law to give reasons in an appropriate case as there is otherwise a duty to act judicially, such as to hear arguments of counsel and hear evidence and admit relevant evidence of a witness. The reason why the judicial obligation to give reasons in an appropriate case does exist, is that, where an appeal is provided, the trial at first instance does not exhaust the rights which parties may have. Just as an expressed statutory requirement to find facts and give a decision on the particular question of law which arises is directed to ensuring that the right of appeal in case of error of law is effective, so any general judicial duty to give reasons is similarly directed. The views of Gordon CJ quoted (supra) recognise that the duty of the judge or court is not limited to hearing the case and entering a verdict. Not only has he a judicial duty to determine and enforce the rights of parties at a trial judicially conducted at first instance, but he also a judicial duty which, within some limits, is directed to preserving and facilitating any rights of appeal from his decision which a party may have."

This passage was repeated by Moffitt P (with whom Glass JA agreed) in Wright v Australian Broadcasting Commission (1977) 1 NSWLR 697 at 702.

In my opinion, while the assessment of a global figure without explanation as to how it has arrived at is not of itself a ground for reversing a judgement of a judge sitting alone, where there is not only an absence of explanation, but a failure on the part of the learned trial judge to make relevant findings of fact essential to the task of assessment, in circumstances where credibility was in issue and the appellate court cannot review the evidence and make its own findings, there is an error of law which would justify the appellate court setting aside the judgement. The error lies not in the result, but in the failure to give relevant reasons in circumstances which result in a party being deprived of an effective right of appeal conferred by statute."

Generally speaking the Committee of the Western Australian Turf Club is clearly in a very much different position to that of a court. However, to the extent that the Committee is not the ultimate determiner of the rights of individuals involved in the racing industry, due to the statutory right of appeal, at least in this aspect the Committee is in substance in no different position. Whilst the Rules of Racing do expressly contemplate in some circumstances that the Committee may make decisions without assigning reasons, there appears to be no such specific provision relevant to the determination which was made in this particular matter. Accordingly it could be argued that this silence in the Rules means that all the more in this case there is an obligation on the Committee in dealing with Mr Mancini to provide an explanation in order that the decision may be dealt with properly in the event of an appeal.

In Kentucky Fried Chicken Pty Ltd v Gantidis and Another 24ALR 161 at 166, a town planning case, Steven J stated:

"... For the omission of reasons from Tribunal's written determination to be significant that determination must, no doubt, be, at the very least, such a document as may be expected to contain some statement of the reasons for the decision arrived at. Only then will its silence on specific issues go any distance, as a matter of logical inference, towards suggesting that the Tribunal has failed to consider those issues."

The Tribunal simply does not know the basis upon which the Committee resolved to impose the disqualification and the basis upon which it arrived at the 18 month disqualification. As a consequence the Tribunal finds that it is not practicable for it to consider the appropriateness of the penalty. This penalty must, presumably, relate to the matters identified in the minutes of the Committee meeting. Such a presumption is consistent with the Chief Executive's letter and the Chairman of the Club's opening statement. It is totally unclear, however, whether any aspects of Mr Mancini's behaviour influenced the penalty or indeed attracted sanction in their own right. It may have been the case that each separate aspect of the matter attracted a separate penalty of disqualification to be served concurrently or on the other hand cumulatively. Regrettably one simply does not know the precise basis upon which Mr Mancini was dealt with.

The situation is aggravated by the fact that the Tribunal was given no information from either party at the appeal as to the appropriate penalties to be applied to owners for these or any other analogous types of matters.

In these circumstances the Tribunal cannot assess the appropriateness of the 18 month disqualification. Accordingly the Tribunal has no alternative but to exercise the powers vested in it pursuant to the provisions of s.17(9) of the Racing Penalties (Appeals) Act and to require the Committee to issue reasons for and clarification of the imposition of the 18 month disqualification.

Dan Mossenson DAN MOSSENSON, CHAIRPERSON

Pamela H. Hogan PAMELA HOGAN, MEMBER

Ted Mulligan TED MULLIGAN, MEMBER



26 JULY 1996

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 MS P HOGAN (MEMBER)
 MR T MULLIGAN (MEMBER)

DATE OF HEARING: 13 JUNE 1996

IN THE MATTER OF an appeal by Mr Peter Mancini against the determination made by the Western Australian Turf Club Committee on 16 April 1996 disqualifying him, in his capacity as an owner, for a period of 18 months.

Mr Potter, instructed by Fordhams, represented the appellant.

Mr J Zucal represented the WA Turf Club Committee.

For the reasons stated in our unanimous decision the Tribunal is not able to assess the appropriateness of the 18 month disqualification. The Tribunal requires the Committee to provide the reasons for and clarification of the imposition of the 18 month disqualification on Mr Mancini.

The fee paid on lodgement of the appeal is refunded.



DAN MOSSENSON, CHAIRPERSON



26/7/96