

REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: PETER MANCINI

APPLICATION NO: A30/08/320

PANEL: MR D MOSSENSON CHAIRPERSON
MR T MULLIGAN MEMBER
MR F ROBINS MEMBER

DATE OF HEARING: 3 OCTOBER 1996

IN THE MATTER of an appeal made by Mr P Mancini against the determination of the Western Australian Turf Club Committee on 16 April 1996 imposing two periods of disqualification under Rule 182.

Mrs SJ Crisp, instructed by Fordhams, represented the appellant.

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

On 16 April 1996 after conducting a show cause inquiry at which Mr Mancini was legally represented it was resolved by the Committee of the Turf Club that Mr Mancini be disqualified for 18 months. Mr Mancini appealed the decision to the Tribunal on the 13 June 1996. On the 26 July 1996 the Tribunal handed down its reasons for determination. As explained in those reasons the Tribunal was unable to assess the appropriateness of the 18 month disqualification and ordered the Committee "*to issue reasons for and clarification of the imposition of the... disqualification*".

The Committee responded by letter dated the 22 August 1996 as follows:

"THE WESTERN AUSTRALIAN TURF CLUB
70 Grandstand Road, Ascot • Telephone (09) 277 0777
22 August 1996

The Registrar
Racing Penalties Appeal Tribunal
1st Floor, Hyatt Centre
87 Adelaide Terrace
EAST PERTH WA 6892

Dear Sir

RE: PETER MANCINI

Further to your Determination dated 26 July 1996 requiring the Western Australian Turf Club Committee to issue reasons for and clarification of its decision to disqualify Peter Mancini for a period of eighteen (18) months, we submit the following.

In arriving at its decision, the WATC Committee was of the view that Mancini's failure to disclose his criminal record on applications to Register Racehorses and Transfers of Ownership of Racehorses and his failure to declare his criminal record to the Stewards Inquiry were omissions which had the effect of seriously eroding the control of racing.

The Committee is of the opinion that it is fundamental to the integrity of the Racing Industry and its control that these declarations be made truthfully and completely. In respect to Mancini, the Committee took into consideration the fact that he had an earlier opportunity, when questioned by the Stewards, to furnish correct details, but he failed to do so.

In relation to Mancini's conduct towards the Officials of the WATC, namely the Stewards at their Inquiry and afterwards towards the Racecourse Investigator, Mr Goddard whilst he was pursuing his duties, the Committee viewed this with grave concern. The Committee believes that Officials of the WATC and any other Race Club in Western Australia should be able to carry out their duties in respect of racing matters and conduct inquiries without fear or intimidation or be subject to conduct which is threatening and improper. Mancini's conduct towards the Stewards and the Racecourse Investigator is viewed by the Committee to be both threatening and improper.

The Committee also took into consideration the particulars put forward by Mancini's Counsel, Mr Prunty, when Mancini appeared before the Committee. These include:

1. The pressures he experienced due to the downturn in his business.

2. *The personal pressure he is under because of his inability to sell his assets as a result of an embargo placed on them by the Director of Public Prosecutions.*
3. *The adverse affect on his health these stressful events have had and that as a consequence he is now under medical supervision.*
4. *That is he is now remorseful about his actions.*

Whilst it was portrayed by Mr Prunty that Mr Mancini's racing partners would suffer repercussions if he was disqualified, the Committee was not greatly influenced by this element.

After taking into consideration all of the abovementioned, the Committee considered that Mancini should be disqualified for a period of eighteen (18) months for failing to declare his criminal record as required. Further, the Committee considered that Mancini should be disqualified for a period of eighteen (18) months in relation to his conduct towards the Officials of the WATC whilst carrying out their duties.

In assessing these penalties and taking into particular account Mr Mancini's mitigation and his present remorseful attitude, the Committee decided that it was appropriate that these penalties be served concurrently resulting in an overall disqualification period of eighteen (18) months.

Yours faithfully

*Philip D Neck
CHIEF EXECUTIVE"*

The appellant was dissatisfied with this and again appealed to the Tribunal.
The grounds of this appeal were that:

- "1. *The penalty imposed by the Committee upon me was, in all the circumstances, manifestly excessive and in particular:*
 - (a) *an 18 month disqualification for failing to fully disclose my criminal record; and*
 - (b) *an 18 month concurrent disqualification for my conduct towards WATC Officials,*

exceeded the penalty range for similar conduct particularly when regard is had to my Antecedents and submissions made by Counsel to the WATC Committee."

The appeal which was listed for hearing on the 17 September 1996 was adjourned at the request of the appellant. The matter came on for hearing on 3 October 1996. The appellant was not present at the hearing. At the outset Mrs Crisp on the appellant's behalf advised the Tribunal that Mr Percy (counsel for the appellant) "...who cannot be here. ...has asked me to seek three orders", namely:

- that proper particulars be provided,
- an adjournment for 14 days, and
- a stay of proceedings.

It was argued for the appellant that the adjournment was justified on the basis of the failure by the respondent to provide sufficient particulars for the appeal to proceed.

Senior counsel for the respondent strongly opposed the application and sought a dismissal of the appeal in these terms:

"This is the most impertinent thing that this Tribunal has ever had done to it. We came here after agreeing to an adjournment recently at the request of this appellant at short notice and agreeing that there'd needn't even be a hearing for the purpose of the adjournment. We come here to respond to the appeal tonight, and might I say with some expense to my client, with no advice whatever that there's going to be an application for adjournment, or that Counsel is going to send along and I don't say this in any derogative way whatsoever a messenger to seek the quaintest orders that you have ever heard of.

...All you have before you is an appeal against penalty and everybody knows that it is an offence under the Rules to put false particulars in any declaration required under the Rules and everybody knows that it is an offence under the Rules to abuse the daylight out of any official who is on duty, not let alone stewards trying to conduct an inquiry having their tape recorder ripped out of their hands, etc. And you are met with some pedantic nonsense. We don't know. They won't tell us what was the relevant Rule as though domestic tribunals are required necessarily to go down the path of laying formal charges that Stewards' inquiries do.

... He told them to stick things up their arse, grabbed their tape recorder, turned it off for a period, told them it was a power game and it was about time you Mr Powrie crawl back under a rock and went back to sleep and told Mr Goddard he was a fucking backstabber ex-copper who had no balls. I didn't bother to go into that last time we were here but that's just a sample.

... Is it seriously suggested that it can be demonstrated that the penalty imposed when you know the nature of the conduct and you see the general framework of these penalties imposed for breaches of the rules can be demonstrated to be outside a proper discretionary range available. By some erroneous attempt to compare the facts of one case with the facts of another down to the fine detail and perhaps Mr Wolf didn't use the word fucking but this man did. And perhaps he didn't use arse but this man did or vice versa. What is seriously being said as a breach of the rules of natural justice? They want the Controlling Body to turn its staff to doing their work to no avail, in our submission.

... we repeat, with the very greatest of respect, this is the most impertinent that has ever been done to this Tribunal. Its destructive to the control of racing. It is obvious that conduct such as this, that is leaving out serious offences of dishonesty from a declaration in relation to the registration of horses and the type of abuse continued over a period of many minutes, if not longer, of several officials of the club involving bad language, threats and total impropriety cannot justify the penalties imposed."

By way of response Mrs Crisp submitted that Mr Mancini, who was out of the jurisdiction, should not be unfairly prejudiced by the way in which counsel chooses to conduct the appeal. The Tribunal was told Mr Mancini was not aware that Mr Percy was not present. It was therefore argued that it would be most unfair to Mr Mancini for the appeal to be dismissed out of hand. Counsel did indicate however that Mr Mancini was aware of the proceedings.

The appellant's solicitors had written to the Chief Executive Officer of the Turf Club requesting particulars of offences of a similar nature. No attempt was made to issue a summons for production of this information pursuant to the relevant provisions of the *Racing Penalties (Appeals) Act 1990*.

The Tribunal was not persuaded that particulars should be ordered or that an adjournment was appropriate. The parties had been given more than reasonable notice of listing the matter after it was adjourned at the request of the appellant. For the reasons set out at pages 9 and 10 of the transcript the three orders sought on behalf of the appellant were refused.

Mrs Crisp sought and was granted leave to withdraw. Mr Davies QC argued that the appeal should be dismissed for want of prosecution. In support of that proposition the Tribunal was told that this was not the first time that the matter had been heard. The merits of the appeal previously had been argued even although the Tribunal ran into the obstacle of not knowing the basis upon which the penalties were imposed and structured. Senior counsel submitted that "*...this appeal is a forlorn matter which is being deliberately and recklessly wanting in prosecution since then.*" The Tribunal was told there was good argument for saying that there was no merit in the appeal.

The Tribunal was persuaded by these arguments and ordered that the appeal be dismissed for want of prosecution. The Tribunal now publishes its reasons for so deciding.

An appeal in relation to this matter had previously been heard and determined by the Tribunal. In the earlier proceedings Mr Mancini was represented by Mr Percy. The Tribunal's Determination and Reasons for Determination of the 26 July 1996 reveal the following relevant factual matters:

- During the course of a Stewards' inquiry "*in relation to discrepancies between a verbal account supplied and tendered criminal record*" Mr Mancini became "*abusive, offensive and threatening*".
- Subsequent to the inquiry Mr Mancini abused and threatened the racecourse investigator whilst Mr Mancini was being escorted through the premises.
- A recommendation was made to the Club Committee to call on Mr Mancini to show cause why he should not be warned off.

- Mr Mancini was advised in writing of the need to attend before the Committee to consider the reports regarding the matters and was informed of the need for evidence and witnesses to be made available.
- Mr Mancini duly attended before the Committee meeting for the purpose accompanied by his solicitor.
- The Committee put Mr Mancini on notice as to the precise purpose of the inquiry.
- Mr Mancini had received copies of all of the reports in relation to the matter.
- Mr Mancini's legal representative was given a full and unhindered opportunity to present Mr Mancini's case before the Committee.
- The Committee considered the position and subsequently wrote to Mr Mancini advising that he had been "*disqualified for 18 months*". Mr Hart, one of the committeemen, was recorded dissenting as he preferred a "*warning off*" penalty.
- Mr Mancini appealed to this Tribunal on the grounds of natural justice, failure to give adequate reasons and excessive penalty.
- The Tribunal found that adequate notice of the nature of the proceedings was given and that there was no failure to afford natural justice or procedural fairness.
- The Tribunal did not know the basis upon which the Committee resolved to impose the disqualification and how it arrived at the 18 month disqualification.
- As the Tribunal could not assess the appropriateness of the 18 month disqualification it required the Committee to issue reasons.

Taking into account the background to this matter including the adjournment, the failure by Mr Percy to attend before the Tribunal or to make other appropriate arrangements, coupled with the appellant's absence, was inappropriate and unsatisfactory in the circumstances of this matter. The appeal was adjourned upon the request of the appellant and was relisted to a date suitable to counsel for the appellant. The Tribunal was left with the clear impression, considering all circumstances surrounding the listing and relisting of the matter, coupled with what occurred at the date of the hearing, that no genuine steps were being taken to prosecute the appeal. Further, bearing in mind firstly, that the appeal had already been argued before the Tribunal previously, secondly the seriousness of the matter and thirdly the totally unacceptable conduct of the appellant the Tribunal is satisfied that there was no prospect of the appeal succeeding. It was open to the Committee to impose a penalty of warning off, which is a more serious penalty, or to disqualify for a longer period than the 18 months.

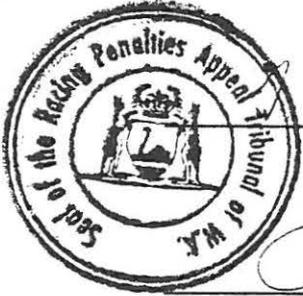
The respondent, through no fault of its own has been put to considerable trouble and expense in relation to this matter. The Committee of the WA Turf Club controls and supervises racing in Western Australia. Its role is vital in the affairs of the racing industry. Any actions taken by a participant of the sport which interferes or improperly disturbs the authority of the Committee to the proper conduct of the sport should not be countenanced or condoned. This second appeal had all of the hallmarks of serving no useful purpose. It was simply putting the body charged with the running of the sport to wasted effort and expense.

Before exercising its discretion to strike out the appeal the Tribunal was mindful of the consequences to Mr Mancini. In principle the Tribunal was far from happy to proceed in the absence of the appellant. S16(5) of the Racing Penalties (Appeal) Act 1990 specifies *"If a person served with notice of a hearing under subsection(3) does not attend at the time and place fixed by the notice, the Tribunal may conduct the proceedings in the absence of that person."* In all of the circumstances the Tribunal was satisfied that it was

appropriate to proceed and to accede to the submissions made on behalf of the respondent.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON



Ted Mulligan

TED MULLIGAN, MEMBER

Fred Robins

FRED ROBINS, MEMBER

9/12/1996