

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: G & D LILLEYMAN & R RITCHIE
APPLICATION NO: A30/08/331
PANEL: MS P HOGAN (PRESIDING MEMBER)
DATE OF HEARING: 19 DECEMBER 1996

IN THE MATTER OF an application for leave to appeal by G & D Lilleyman and R Ritchie against the determination of the Western Australian Trotting Association Committee on 15 November 1996 in paying a Breeder's Bonus of \$5000 to PR, JF & JA Fletcher after YOUNG PAMELA won the 1996 3YO Filly Sires Final run on 29 March 1996.

Mr G Lilleyman was given leave to represent the applicants.

Mr M Skipper appeared for the Western Australian Trotting Association Committee.

In this matter the appellants have lodged a Notice of Application for Leave to Appeal directed towards a determination of the Western Australian Trotting Association Committee notified to Mr Lilleyman by letter dated 15 November 1996, that the Committee had adopted the recommendation of the Stewards that the Committee take no further action in this matter.

The matter relates to the payment of a \$5000 Breeder's Bonus paid when the pacer *YOUNG PAMELA* won the 1996 State Sires Series 3YO Fillies Final on 29 March 1996. The ground for the application for leave to appeal are that the applicants were owners of the mare *PAMELA MAC* at the time she foaled the filly known as *YOUNG PAMELA*.

In addressing the Tribunal as to why he should be granted leave to appeal, Mr Lilleyman for the applicants, indicated that the determination as to who is a breeder is covered by the rules which are administered by the Stewards and the Western Australian Trotting Association Committee. He also indicated that he had some advice that he should appeal to this Tribunal.

Mr Skipper submitted that it would not be appropriate to grant leave to appeal in this case as:

1. The matter has been the subject of two thorough investigations by the Stewards.
2. The matter does not involve a question of public interest.

3. The Tribunal's discretion should only be exercised pursuant to section 13(1)(d) of the *Racing Penalties (Appeals) Act* where it can be demonstrated that there are special or unusual circumstances. In support of this submission, Mr Skipper relied on the earlier decisions of the Tribunal in the matters of *Cooper & Baker* (Appeal 066), *Steele* (Appeal 266), *House* (Appeal 188), *Wimbridge* (Appeal 272), *Brewis-Weston* (Appeal No 255) and *Scarvaci* (Appeal No 330).
4. The Tribunal would come to the same conclusion as the Stewards.

Mr Lilleyman responded by requesting an adjournment for the purpose of obtaining legal advice. He was clearly unaware of the relevant previous decisions of this Tribunal. However, he did make some submissions in response to Mr Skipper's submissions and from that response, it is clear that Mr Lilleyman simply does not agree that the matter was properly investigated by Mr Parker and that he does not agree with the Stewards' decision to recommend that the Western Australian Trotting Association Committee take no further action.

Although this is a matter of important interest to the applicants, the Tribunal agrees that the matter is not one whereby leave should be granted by reason of the public interest. In this case, the only matter that the Tribunal need concern itself with when considering whether leave to appeal should be granted pursuant to section 13(1)(d) is whether there are special or unusual circumstances applicable. As the Chairman stated in *Cooper & Baker*, examples of such circumstances are:

1. Where there is an appeal alleging and demonstrating a denial of natural justice;
2. A case which may involve an assertion of bias against the Stewards; or
3. Where it can be shown that the Stewards' panel has in some way been improperly constituted.

No such allegations have been made by the applicants in this case. However, Mr Lilleyman does seek an adjournment to obtain legal advice as to how he should respond to the submission that the applicants must show special or unusual circumstances. Mr Skipper responded to this request by submitting that:

- (a) Mr Lilleyman is a successful businessman capable of making such submissions himself;
- (b) There is nothing that could be put to the Tribunal at a later date that could not be put now; and
- (c) An adjournment would add to the cost of the proceedings.

In deciding whether to grant or refuse an adjournment, I must consider what prejudice would be suffered by either party as a result of a decision to grant or refuse that adjournment. Mr Lilleyman says he can't probably argue his case as he wasn't prepared for previous cases to be quoted. Mr Skipper effectively says what's the point of adjourning the matter when nothing will be achieved by the adjournment.

In this case, it is clear to me that the applicants' ultimate submission, if leave was granted, would be that they were the owners of the horse at the time and therefore the breeders, that is, that the Stewards got it wrong when looking at the issue of ownership.

As the Chairman stated in *Cooper & Baker*, leave should not be granted where an aggrieved appellant disagrees with the view adopted by the Stewards and seeks to have his own perception or interpretation of an incident adopted by the Tribunal and substituted for that of the Stewards. It seems that the applicants' case rests on the legal interpretation of the definition of breeder as it

appears in the rules, which in turn depends on the concept of ownership. That, in my opinion, is a matter for determination through the civil court system. It is not a matter that fits into the concept of special or unusual circumstances as required for an exercise of discretion under section 13(1)(d).

I am not prepared to grant Mr Lilleyman an adjournment. It is clear that his desire is to persuade the Tribunal that the applicants were the owners of the mare at the relevant time and to enable him the opportunity to obtain legal advice as to the effect of the authorities that were handed up is most unlikely to be productive.

The application for leave to appeal is refused.

The fee paid on lodgement of the application is to be refunded.

Pamela M. Hogan

PAMELA HOGAN, PRESIDING MEMBER

23/12/96

