

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: STEFAN JOZEF CHOMIAK

APPLICATION NO: A30/08/378

PANEL: MR D MOSSENSON (CHAIRPERSON)
MS K FARLEY (MEMBER)
MR J HEALY (MEMBER)

DATE OF HEARING: 28 AUGUST 1997

DATE OF DETERMINATION: 28 AUGUST 1997

IN THE MATTER OF an appeal by Mr S J Chomiak against the determination made by Western Australian Turf Club Stewards on 29 July 1997 imposing a suspension of 3 months and a fine of \$500 for breach of Rule 175A of the Australian Rules of Racing.

Mr A Taylor was granted leave to appear for the appellant.

Mr P Criddle represented the Western Australian Turf Club Stewards.

This is an appeal made by Mr Chomiak against the determination of the Stewards of the Western Australian Turf in relation to an inquiry which was conducted on 29 July 1997. The inquiry was into an incident relating to an allegation that Mr Chomiak as a trainer had mistreated a registered racehorse. After receiving evidence during the course of the inquiry the Stewards decided to charge Mr Chomiak with a breach of Rule 175A of the Australian Rules of Racing.

Rule 175A of the Australian Rules of Racing states:

"Any person bound by these Rules who either within a racecourse or elsewhere in the opinion of the Committee of any Club or the Stewards has been guilty of conduct prejudicial to the image, or interests, or welfare of racing may be punished."

At the Stewards' inquiry the appellant was charged as follows:

"...with conduct prejudicial to the image of racing, that you are a Licensed Trainer with the West Australian Turf Club, in the opinion of the Stewards mistreated a horse which was in your care at Ascot Trackwork on Monday the 21st July, 1997."

Mr Chomiak eventually pleaded guilty to the offence.

The Stewards considered the question of the penalty and concluded:

"Mr. Chomiak in assessing a penalty an appropriate penalty Stewards took into consideration the statements produced by Assistant Racecourse Investigator Mr. Greg Mackintosh, we took into consideration that you as a Licensed Trainer, are responsible for the care and well being of horses in your care, and we believe that in this case you have failed to do so. We believe the image that you have portrayed to other Licensed persons, we believe was totally unacceptable. We have also taken into consideration your good record, however Stewards believe this kind of conduct to be of a very serious nature Mr. Chomiak. Taking all these points into account we believe that the appropriate penalty to be the suspension of your Trainers Licence for a period of three months and also a fine of \$500 Mr. Chomiak."

Mr Chomiak has appealed against both the conviction and the penalty. In relation to the conviction the ground is that there has been a denial of natural justice. In support of that ground, there are three particulars:

1. *The alleged lack of time in order to arrange a defence and to call witnesses.*
2. *Confusion associated with or about the actual charges which were laid.*
3. *The inconsistency of the evidence which was placed before the Stewards.*

We have had the benefit of detailed submissions from Mr Taylor on behalf of Mr Chomiak together with four statements from Messrs Hanna, Randall, Marks and Rayment that address aspects of the incident and also deal with Mr Chomiak's background and past behaviour.

We have also had the benefit of submissions from Mr Criddle on behalf of the Stewards.

Mr Taylor has in support of his argument submitted that Mr Chomiak was totally confused during the course of the Stewards' inquiry due to a whole range of contributing factors including his background, his difficulties with the English language, the state of his health and his emotional distress at the time. Certain inconsistent evidence has been drawn to our attention by reference to various passages contained in the transcript of the Stewards' inquiry. It has also been brought to our attention that the Veterinary Steward was called upon days after the incident in order to inspect the horse. This tardiness was inappropriate in the circumstances of this particular offence relating as it does to an allegation of mistreatment of an animal.

The Tribunal notes that at the outset of the inquiry the Chairman of Stewards after introducing the Stewards Panel to Mr Chomiak and identifying the observer who was present advised Mr Chomiak that a charge or charges may be laid under the rules from evidence flowing from the inquiry. Mr Chomiak was asked if he understood that and he replied in the affirmative. It is clear from the transcript that at different stages of the inquiry Mr Chomiak had various things explained to him and that at the point of entering a plea he accepted the fact as is clear from the top of page 19 of the transcript that he was guilty of the offence and asked for the imposition of a small fine.

After carefully considering all of the material before us we have come to the conclusion that it has not been demonstrated that the Stewards were in error in convicting Mr Chomiak of this particular offence. The relevant rule specifies that the conviction may occur "*in the opinion of the Stewards*". That being the case this is not the type of appeal where it is appropriate for this Tribunal to substitute its own opinion for that of the Stewards in relation to the particular incident. Rather this

Tribunal may only interfere and upset a conviction in circumstances where it can be demonstrated that no reasonable Stewards could reasonably come to the conclusion which these Stewards did arrive at with all of the relevant material.

The Tribunal is of the opinion that the Stewards were reasonable in convicting Mr Chomiak in all of the relevant circumstances. Accordingly the conviction is confirmed.

Mr Chomiak in appealing against the penalty has, through Mr Taylor, argued that the penalty was too severe taking into account a number of factors. These include Mr Chomiak's obvious good record, his age and penalties which were imposed for similar offences on previous occasions.

It is clear from two passages in the transcript which occur in the middle of page 19 and at the top of page 20 that Mr Chomiak was told by the Stewards that the Stewards were considering one of the three possible types of penalties in regard to the matter. After having identified in Rule 196 the possibility of imposing a disqualification, a suspension "or" a fine Mr Chomiak was told by the Chairman of the Stewards:

"I'll put it you which would you, which would you prefer"

and on one occasion shortly afterwards the fact that:

"What we're trying to ascertain now Mr. Chomiak is which one would suit you best."

It is clear from the transcript that Mr Chomiak contemplated the implications of either a suspension or a fine. Despite the statements that were made to him by the Stewards, a suspension and a fine were imposed.

We have taken into account the following factors in arriving at our determination of the penalty:

1. The statements from the Chairman of Stewards offering an alternative;
2. The fact that in our opinion the Stewards have not given sufficient weight to Mr Chomiak's good record;
3. That even although this is clearly a serious offence the conduct on this occasion is at the lesser end of the scale of seriousness;
4. That the offence occurred in circumstances of fear, provocation and possible panic on Mr Chomiak's behalf; and
5. The Stewards did not take into account penalties of similar offences which we have heard about this evening.

We have concluded that it is inappropriate in all of the circumstances to have imposed both a penalty of suspension and of a fine. The Tribunal is satisfied that penalty that was imposed is excessive. The appropriate penalty in all of the circumstances is a period of one months suspension. The Tribunal accordingly substitutes that penalty for the suspension and fine imposed by the Stewards. The appeal as to penalty succeeds to that extent.

The fee paid on lodgement of the appeal is forfeited.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

