APPEAL 400

DETERMINATION AND REASONS FOR DETERMINATION OF

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT:	**RICKY JAMES FARRELL**
APPLICATION NO:	**A30/08/400**
PANEL:	**MR P HOGAN (ACTING CHAIRPERSON)**
DATE OF HEARING:	**22 DECEMBER 1997**
DATE OF DETERMINATION:	**22 DECEMBER 1997**

IN THE MATTER OF an appeal by Mr R Farrell against the determination made by Western Australian Turf Club Stewards on 12 December 1997 imposing a suspension of 1 month for breach of Rule 175A of the Australian Rules of Racing.

Mr P Harris, instructed by D G Price & Co, represented the appellant.

Mr R J Davies QC represented the Western Australian Turf Club Stewards.

These are appeals against conviction and penalty.

The facts are not in dispute.

The appellant is an apprentice jockey licensed with the Western Australian Turf Club. As such, he is a person bound by the rules of the Club.

On Tuesday, 9 December 1997, at about 2.15 pm, the appellant was one of five persons travelling in a motor vehicle on Great Eastern Highway, Belmont. Three of the others are licensed apprentice jockeys and one is a licensed trainee apprentice.

The vehicle was being driven by Apprentice Hawkins. The appellant was in the middle of the rear seat. As the vehicle approached a set of traffic lights, it passed a civilian person, namely Mr Comerford, who was riding a bicycle. Mr Comerford was struck on the back with foodstuffs thrown from the vehicle.

The vehicle stopped at the traffic lights. Mr Comerford continued on and rode past. He saw that all of the occupants were laughing. The vehicle continued on, as did Mr Comerford. As the vehicle pulled alongside again, there were another two incidents of foodstuffs being thrown from the vehicle in the direction of Mr Comerford.

Later that afternoon, Mr Comerford made inquiries and ascertained that the driver of the vehicle was Apprentice Hawkins. The next day, he spoke to Apprentice Hawkins and ascertained the identities of the other occupants of the vehicle to be Apprentices Farrell, O'Heare and Hughes, and Trainee Apprentice Molloy. Through that day, Mr Comerford spoke to all of the occupants of the vehicle.

Mr Webster is the Master of Apprentices Farrell, O'Heare and Trainee Apprentice Molloy. Mr Rowe is the Master of Apprentice Hawkins. Mr Rowe informed Mr Webber, who is the Master of Apprentices at the Western Australian Turf Club, of the incidents that had allegedly occurred. Mr Webber requested the Chief Stipendiary Steward to conduct an inquiry into the alleged conduct.

A Stewards' inquiry was held on Friday, 12 December 1997. All of the parties were present and gave evidence before the Stewards.

Mr Comerford gave evidence along the lines summarised previously in these reasons. He said also that the appellant has admitted throwing foodstuffs out of the vehicle on the first occasion, and on the second occasion. The appellant said that at the time, he thought it was funny and that it was a joke.

At the Stewards' inquiry, the appellant admitted the correctness of Mr Comerford's evidence. He said that what he threw from the vehicle were the remains of fast food chicken, which had recently been bought and was being consumed along the way.

At the conclusion of the inquiry part of the proceedings, the Stewards charged the appellant with an offence pursuant to Rule 175A of the Australian Rules of Racing.

Rule 175A states as follows:

> *"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."*

The particulars of the charge were:

> *" ... Apprentice Farrell in that your admitted conduct on the afternoon of Tuesday the 9th December, 1997 whilst travelling in Apprentice Kristian Hawkins' car was in the opinion of the Stewards prejudicial to the image of racing ..."*

The appellant pleaded guilty and then spoke in mitigation.

The appellant now appeals from his conviction. The amended grounds of appeal as accepted this afternoon are as follows:

1. In view of the evidence presented at the Stewards inquiry, the Stewards erred in:

   (a) charging the Appellant with conduct prejudicial to the image of racing under Australian Rule of Racing 175A;

   (b) accepting the Appellant's plea of guilty to the charge; and

   (c) imposing a penalty upon the Appellant following receipt of his plea.

PARTICULARS

(i) the words *"within a racecourse or elsewhere"* as contained in AAR 175A were insufficient to give the stewards jurisdiction to proceed with the charge. Consequently, the stewards actions were at all times *ultra-vires*.

(ii) the incident occurred outside the geographical confines of the course and was not a racing related matter.

(iii) the conduct complained of did not have a sufficient nexus to the racing industry and therefore could not be *"prejudicial to the image ... of racing"*.

(iv) the Police and Courts were the appropriate authorities to deal with the matter (if any).

In my view, the substantive grounds of appeal are those contained in what are called the particulars and I propose to treat them as the grounds of appeal.

As to ground (i), it is said that the words *"within a racecourse or elsewhere"* were insufficient to give the Stewards jurisdiction to deal with the charge, and consequently the Stewards' actions were at all times *ultra vires*.

This appears to me to be a ground of appeal which attacks the Rule itself, rather than the application of it. The Rule itself or rather that part of it comprising the phrase, *"or elsewhere"*, is said to be *ultra vires*. In my view, no sufficient legal argument has been advanced to me to find that ground of appeal made out.

If the phrase *"or elsewhere"* is given its ordinary meaning, I am of the view that it makes the Rule applicable anywhere, subject perhaps to jurisdictional limits of territory, although I express no concluded opinion on that either. In this particular case, it is true that the conduct complained of was on a public road and involved a member of the public, but there is nothing in that fact in my view to take away from the wide operation of the Rule. In any event, the conduct complained of was carried out in the presence of four others and it would seem to me to make no difference that those others may also been guilty of some wrong doing.

For these reasons, that ground of appeal is not made out.

The next ground of appeal is that the conduct complained of occurred outside the geographical confines of the course and was not a racing related matter. In my view, it matters not that the conduct occurred outside the geographical confines of the course. As I have stated already in these reasons, the conduct to be considered is not confined to the course. There is no requirement under the Rule that the incident be a racing related matter.

For these reasons, that ground of appeal is not made out.

Ground (iv) is that the Police and the Courts were the appropriate authorities to deal with matter (if any). I do not think that this is a ground of appeal at all and it is not made out. The only inquiry which the Stewards embarked upon, and which is under appeal here, is whether the Rule was breached.

Ground (iii) is that the conduct complained of did not have a sufficient nexus to the racing industry and therefore could not be prejudicial to the image, or interests, or welfare of racing. In my view, there must be some connection to racing to attract the operation of the Rule. I see that as simply an application of the facts to the Rule. That is what occurred in the cases mentioned today. That is what

occurred in Zielke's case in Queensland, in Campbell's case in Western Australia and in Marks' case in South Australia. It seems to me that that is the exercise which the Stewards embarked on here, namely applying the facts to the Rule. In convicting the appellant, the Chairman of Stewards said at page 31:

> *"The conduct the Stewards see as definitely contrary to, prejudicial to the image of racing and saying that, you can quite well imagine that Mr. Webber told us that Sargeant Comerford had no trouble ascertaining that it was Apprentices in the car because of firstly, the locality and secondly the stature, although he didn't recognise anyone, he was quite confident that there were five Apprentices rather than five small persons in the car."*

The locality of the incident being in Belmont together with the fact that there were five licensed persons, and only five licensed persons together, in the vehicle, in my view is sufficient connection to the racing industry to attract the operation of the Rule. In any event, that was certainly the opinion of the Stewards.

Thus the Stewards had before them evidence of the two things necessary under Rule 175A. There was evidence of the quality of the conduct which could only be described as sufficiently bad to attract the Rule. They also had before them evidence of a connection to racing and in the opinion of the Stewards, the appellant was guilty. The opinion of the Stewards will not lightly be interfered with. In my view, it will not be interfered with in this case.

For those reasons, I find that ground (iii) is not made out. For all of these reasons, the appeal against conviction is dismissed.

As to penalty, the appellant was suspended from riding in races for one month.

The Stewards took into account the seriousness of the offence and the appellant's remorse. It is certain to me from my reading of the transcript that the appellant regretted his actions and would have apologised given the opportunity. In any event, the Stewards took those things into account. The Stewards also took into account his previous record which included a warning for bad conduct.

The imposition of a penalty is of course a matter of discretion and the exercise of that discretion will not be interfered with unless the Stewards have failed to take into account a relevant factor, or taken into account an irrelevant factor, or imposed a penalty which is so outside the range as to manifest error itself.

In my view, the Stewards have done none of those things. In particular, the penalty of a suspension for one month was open to the Stewards in this case. They considered a fine and decided against it.

For these reasons, the appeal against penalty is also dismissed.

The suspension of operation of the penalty automatically ceases.

The fee paid on lodgement of the appeal is forfeited.

Seal of the Racing Penalties Appeal Tribunal of W.A.

PATRICK HOGAN, ACTING CHAIRPERSON