

DETERMINATION AND REASONS FOR DETERMINATION OF  
THE RACING PENALTIES APPEAL TRIBUNAL

APPLICANT: ROBERT WAYNE MATTHEWS  
APPLICATION NO: A30/08/418  
PANEL: MR D MOSSENSON (CHAIRPERSON)  
DATE OF HEARING: 4 JUNE 1998  
DATE OF DETERMINATION: 4 JUNE 1998

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IN THE MATTER OF an application for leave to appeal by Mr R W Matthews against the determination made by Western Australian Turf Club Stewards on 6 April 1998 relating to the eligibility of runner TRULY SHY.

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Mr R W Matthews represented himself.

Mr L Wagener appeared for the Western Australian Turf Club Stewards.

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This is an application made by Mr Matthews for leave to appeal. Mr Matthews is a licensed trainer with the Western Australian Turf Club and the trainer of the horse TRULY SHY.

TRULY SHY was withdrawn from running in Race 2, the Pinjarra Laundromat Maiden, by the Stewards of the Western Australian Turf Club on 13 March 1998. The reason for the Stewards having taken that action is set out early in the transcript of their interview with Mr Matthews, on the basis of the evidence presented by Mr Chadwick as well as the evidence of Dr McKean.

After conducting further inquiries into the matter and after receiving further veterinary evidence and material presented by Mr Matthews, the Stewards ultimately took action pursuant to Australian Rule of Racing 50, which states:

*“All nominations and entries are subject to approval and the Committee of any Club, or the Stewards, may decline to receive, or at any time after having received, reject, any nomination or entry without giving any reason for doing so. If any nomination or entry be rejected under this Rule, the fees paid in respect thereof shall be refunded.”*

The Chairman of Stewards who conducted the inquiry, after specifying or stating that Rule and having summarised the evidence that had previously been received by the Stewards, told Mr Matthews that *“the Stewards intend to decline all future nominations for the horse TRULY SHY”*.

Mr Matthews is dissatisfied with that determination and has applied to this Tribunal for leave to appeal, essentially, on the basis that he has been denied natural justice.

It is clear from what I have been told and from reading the transcript that the Stewards did conduct a fairly extensive inquiry into the matter. During the course of that inquiry, Mr Matthews was afforded every opportunity to marshal the supporting material and evidence which he believed would assist his cause. In the end result, he was not able to persuade the Stewards of the appropriateness of the horse being able to continue to race. Consequently the Stewards took action pursuant to Rule 50.

It would appear that leave is necessary before an appeal may proceed because this matter only concerns the eligibility of a runner to take part in races. It also appears that there is no right of appeal to the Controlling Authority. This matter is not one which the Tribunal has express authority to hear without leave being granted.

In considering whether or not leave should be granted, I have taken into account all of the propositions that have been put to me by Mr Matthews and the response from Mr Wagener. It does appear clear from an examination of the transcript that the manner of informing Mr Matthews of the proposed action contemplated to be taken by the Stewards was reasonably sign posted despite the fact that Mr Matthews was not expressly invited to react to the possibility of the Stewards making a determination in the context of Australian Racing Rule 50. Be that as it may, during the course of the inquiry Mr Matthews was afforded every opportunity to put forward the best evidence he could in support of his position.

In order for this appeal to ultimately succeed, not only must I be persuaded that the Stewards were in error in arriving at the conclusion which they did but also that in upholding an appeal in the circumstances of this particular case, where a question of safety is involved, that the ultimate decision of the Tribunal does not jeopardise the important aspect of safety.

Rule 50 is couched in terms of "... nominations and entries are subject to approval ... of the Stewards, may decline to receive, or at any time after having received, reject, any nomination or entry without giving any reason for doing so...".

I am satisfied from the material before me that the Stewards were entitled in all of the circumstances to reject the nominations and entries, or an entry of this horse. It is clear what their reasons were for taking that action from a perusal of the transcript. Mr Matthews has conceded some ground in relation to the eye condition of his horse. He has also indicated that the only way that he could convince the Stewards of the safety of allowing the horse to continue to race would be for the Stewards to be called upon to embark upon some close vigil of the animal's performance in the course of training and other activities.

After giving the matter some consideration, I am not persuaded that it is appropriate or possible for this Tribunal to make an order of the sort which is implicit in what Mr Matthews has put to me. Section 17(9) of the *Racing Penalties (Appeals) Act 1990* spells out the powers of the Tribunal upon making a determination. Amongst other things after upholding an appeal the Tribunal may recommend or require that the Stewards take further action "*in relation to any person*" (section 17(9)(d)). That provision does not contemplate that the Tribunal has the power to order the Stewards to embark upon the supervision process of the sort contemplated by Mr Matthews. Although I do note that section 17(9)(e) says that the presiding member may "*make such other order as the member presiding may think proper*" I do not believe in all of the circumstances it would be appropriate to make the sort of order which Mr Matthews contemplates in the matter.

For these reasons, I am satisfied that it is inappropriate to grant leave to appeal. The application for leave to appeal is dismissed.

*Dan Mossenson*

DAN MOSSENSON, CHAIRPERSON

