APPEAL - 436

DETERMINATION AND REASONS FOR DETERMINATION OF

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT:	**DAVID ANDREW O'HEARE**
APPLICATION NO:	**A30/08/436**
PANEL:	**MR P HOGAN (PRESIDING MEMBER)**
DATE OF HEARING	**3 DECEMBER 1998**
DATE OF DETERMINATION:	**3 DECEMBER 1998**

IN THE MATTER OF an appeal by Mr D A O'Heare against the determination made by the Western Australian Turf Club Stewards on 23 November 1998 imposing a one month suspension for breach of Rule 175A of the Australian Rules of Racing.

Mr T F Percy QC, assisted by Mr P Harris, instructed by D G Price & Co, represented the appellant.

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

This is an appeal against a conviction.

The appellant is a licensed apprentice jockey. He was one of a group of four apprentice jockeys and a Mr Trent Morrissey, who together arrived at the Burswood Casino on the evening of Sunday, 15 November 1998. All entered the Casino. Apprentice Harvey was only fifteen years old. His entry to and remaining on the premises of the Casino was contrary to the *Casino Control Act* because he was under age.

The events after his entry can be summarised from the report of Burswood security staff given in evidence at the Stewards' inquiry on 28 November 1998. What occurred was that Apprentice Harvey was asked for some form of identification. He produced an 18+ Card and a motor driver's licence with no photo. On being further questioned by security staff, Apprentice Harvey said that he was seventeen years old. The identification that he produced was in the name of Trent Morrissey. Acting on information, the Burswood security staff then went to find another under age person. Later security staff were back at their office with the appellant and Apprentice Kristian Hawkins. On being asked questions, the appellant admitted that he knew that Apprentice Harvey was only fifteen years old, but that it had nothing to do with him. The report said that the appellant was truculent towards police. Due to all of the circumstances, the appellant was deemed by security staff to be an undesirable person and was barred from the Casino for three months. That appears to be a summary of the evidence given by the Burswood security report.

For my part, I am not prepared to find and I don't think that the Stewards found that the conduct of the appellant in speaking to security staff that night was the conduct which was sufficient to attract

the operation of this rule. In any event, security staff dealt with that conduct in the barring of the appellant for three months.

In their inquiry, the Stewards focussed on the appellant entering the Casino with Apprentice Harvey who he well knew to be under age. It was by entering with Apprentice Harvey through the side door, having taken him to the Casino in his own car, that the appellant was said to have assisted Apprentice Harvey in some way. I repeat that the appellant's version of events given to the Stewards and given again today at this appeal is that the appellant had nothing to do with Apprentice Harvey, basically that it wasn't his responsibility.

I would disagree with that. The admitted and found facts were that the appellant at least permitted if not caused Apprentice Harvey to be driven to the front door of the Casino in his, that is the appellant's own car. Apprentice Harvey was only fifteen and he should have been taken home. Another of the apprentices, not the appellant or Apprentice Harvey, was adversely affected by alcohol and he later caused damage to property. By their presence at the Casino, having arrived with this other apprentice, the appellant and Apprentice Harvey were at least associated with him.

Without straying too far from the point, the gravamen of what was alleged against the appellant at the Stewards' inquiry and here is that he at least abetted the entry of Apprentice Harvey into the Casino. The Stewards without using those precise words found that he did and I would agree. Although that isn't an offence in itself, the Appellant at the inquiry was not facing a criminal trial under the criminal standard of proof. What he did though, was he took in his car, the fifteen year old Apprentice Harvey to the Casino and went with him into the Casino through the side door. That conduct at least in the view of the Stewards and I agree was wrong and prejudicial to the image of racing. The image of racing, I would agree, is not confined to what is seen and heard on the spot by outside observers and it does include what later may become apparent once all the facts are known.

The connection here with racing, is that four of the persons who arrived that night in the vehicle together were licensed apprentices, having recently returned to Perth from a race meeting at Mt Barker. Further, I would take the view that the image of racing is not necessarily confined to the perception of outside persons looking in at this group of licensed persons as one group. The conduct of each one of the apprentices if it was prejudicial to racing in the eyes of one of the others may well attract the operation of the rule. It would matter not in my view that each individual was bound together in a common cause so to speak.

For all of those reasons, the appeal against conviction is dismissed.

I turn to consider the appeal against penalty.

The appellant can only succeed if there has been an error in principle or some fact has been mistaken in the process of arriving at the penalty. So far as I can see from the transcript the Stewards have not taken into account any irrelevant factors or failed to taken into account any relevant factors. As to the financial effect on the appellant of any suspension, that was certainly addressed by Mr Williams on behalf of the appellant. I might add that the Stewards themselves quite obviously would well know what sort of rides this appellant would be getting and what sort of income he would be making. That is part of their job and although the Stewards didn't say so in as many words, certainly the Chairman said it on page 42 of the transcript that they had considered all the evidence. It appears to me that the Stewards are in a better position than anyone to know what the result would be on the appellant. The Stewards had the appellant's record and there is no suggestion that they got that wrong.

The range of penalties again is something which is well known to the Stewards and indeed part of their job to know it and keep it and apply it. It has been supplied to me by way of a print out of

penalties imposed for breaches of this rule. By a quick glance at that, one can see that suspensions for one month are often imposed. Fines as well are often imposed. The question does arise then whether the Stewards considered all the available penalties and again, one can't go behind the transcript. The Chairman said on page 42 that they had considered all the aspects of the various penalties available. It appears to me that the mere fact that the range of penalties includes suspensions for periods of about a month in many cases and fines, indicates that the Stewards are well aware that a fine is an available penalty. They simply decided not to impose it in this case.

In the end result, I cannot see that there has been any error made in the imposition of the penalty process. For those reasons, the appeal against penalty is also dismissed.

PATRICK HOGAN, PRESIDING MEMBER