

THE RACING PENALTIES APPEAL TRIBUNAL

**REASONS FOR DETERMINATION OF
MR D MOSSENSON (CHAIRPERSON)**

APPELLANT: GARRY BERNARD ELLIOTT
APPLICATION NO: A30/08/543
PANEL: MR D MOSSENSON (CHAIRPERSON)
MR J PRIOR (MEMBER)
MR W CHESNUTT (MEMBER)
DATE OF HEARING: 25 OCTOBER 2001
DATE OF DETERMINATION: 28 FEBRUARY 2002

IN THE MATTER OF an appeal by Mr GB Elliott against the determination made by the Stewards of the Western Australian Trotting Association on the 21 August 2001 imposing a 6 month disqualification for breach of Rule 243 of the Rules of Harness Racing.

Mr GB Elliott appeared in person.

Mr WJ Sullivan appeared on behalf of the Stewards.

Background

On the 21 August 2001 the Stewards of the Western Australian Trotting Association conducted an inquiry into a violent fight which broke out at the York Trotting Club on the 25 July 2001. Involved in the affair were the appellant, who is a licensed trainer/driver, 2 other licensed trainer/drivers Mr Brad Stampalia and Mr Clayton Elliott (the appellant's son), Mrs Janet Elliott, a registered owner, and Mr Peter Stampalia, patron. One of the Stewards at that meeting, Mr MH Castillo, was summoned from the Stewards' room soon after the conclusion of the meeting to assist at the incident. Mr Castillo's written report of the incident was read out to the Stewards' inquiry. The report states:

'On completion of our stewards' inquiries after the last race, there was a series of knocks at the stewards' door. On opening, there was a lady (I think Mrs Elliott) who seemed to be in a disturbed state. She informed

me that she had been called a slut by the Stampalias and threats were made to the Elliotts to go outside the grounds of the race course and fight.

Upon leaving the stewards' area towards the car park, I witnessed a white Falcon sedan parked next to a car and float and people having a loud argument. As I approached the area, the white Falcon left the grounds of the race course. Mr Elliott Senior hopped out of his vehicle and came towards me and his wife. At that point, Mrs Elliott pointed to a guy and said, 'This is the guy that called me a slut.' This person was Mr Peter Stampalia who came over and attempted to give his version on what was said, saying that the Elliotts abused them first.

It became very heated between both Mr Peter Stampalia and Mr G Elliott, which ended up in a fight despite myself trying to break the fight up. At this time the white Falcon sedan had returned at high speed towards us and when attempting to stop on loose gravel skidded into us causing Mrs Elliott and myself to make contact with the vehicle's bonnet.

Mr Clayton Elliott, the driver of the car, jumped out and began fighting with Mr Brad Stampalia. I attempted to break both men up by restraining Mr Clayton Elliott and Mr Brad Stampalia. At this time the fight between Mr Elliott Senior and Mr Peter Stampalia was continuing involving Mrs Elliott also striking Mr P Stampalia, which ended up with both Clayton Elliott and Brad Stampalia being involved.

I then witnessed Mrs Elliott fall to the ground amongst the fighting men. This fight was broken up and Mrs Elliott was complaining that she had been kicked by someone. Mr Brad Stampalia was attempting to get his father into the car so they could leave. I witnessed Mr Elliott Senior bleeding from the nose, and Mrs Elliott was complaining about her stomach and believing she would have to go to hospital.

Prior to leaving the scene, Mrs Elliott informed me that she had abused the Stampalias prior to the commencement of this whole incident.'

Present were Mr G Elliott Senior, Mrs J Elliott, Mr Clayton Elliott and an unidentified lady with a baby which I spoke to. Also, there was Mr Peter Stampalia, Mr Brad Stampalia. There was two unidentified men sitting in the back of the Stampalia's car, and also a man with a tall large frame.' (T2-3)

Also read into the transcript of the Steward's inquiry was the York Trotting Club report addressed to Mr R Bovell, Chief Executive of the Association. That report states:

'Dear Rob, I am instructed by my committee to bring appropriate WATA personnel to the attention of a particularly nasty and dangerous situation which unfolded on the track and inflamed again a short time later in the float area after race 7 at York Trotting Club, and patrons already stunned by the tragedy of a fatal accident that occurred near the track, were forced to witness licensed persons and others in an all-

in brawl. Unfortunately, because of the fatality, police were contacted but could not attend.

The York Club is confident the appropriate strong action taken by the stewards who witnessed the disgraceful scene hopefully will deter this unacceptable behaviour in future. An example must be set to prevent these thugs (who have on more than one occasion been involved in this type of behaviour) from denigrating the harness racing industry and in particular the club where they chose to act like morons.

It is with regret that a letter of this description has to be written, however, if this type of behaviour is not addressed with grave concern by the WATA, there appears to be little or no chance of marketing harness racing as a family sport. The York Trotting Club acknowledges the pressures endured by stewards attending any meeting and do not see that part of their duty is to become involved in melees. Prevention is better than cure and this larrikin activity must be eradicated from our industry forever. Yours faithfully, Robin Deadman, Secretary.' (T3)

As part of the Stewards' inquiry process each of the participants was questioned separately in succession regarding their conduct after the meeting. To paint the overall picture of this most unfortunate affair it is helpful to refer to the salient points of what each combatant told the Stewards in the order their evidence was presented.

Mr C Elliott told the Stewards that following the inquiry in the Stewards' room after the race meeting he had been threatened by Mr Stampalia. Subsequently as Mr Elliott was changing in preparation for the drive home, the Stampalias approached and Peter Stampalia began abusing Mr C Elliott and swearing at both him and his mother. Mrs Elliott went off to the Stewards. Mr C Elliott then went over to the appellant to say goodbye, after which he drove off, reached the road, remembered that he had left his wallet behind and returned. Mr C Elliott then described the situation to the Stewards in these terms:

'...And as I came back in to get the wallet I see my mother and - - my father on the ground and mother land on top with about 5 or 6 people around them kicking them. I can't tell you how many people are kicking them but no one is trying to stop the man that's kicking them. So the first thing I did went straight to where the fight was, put it in park, pull the hand brake on before I stop. It skidded to a halt about half a metre in front of my mother because she was laying on top of my father, and I looked down and seen her.

So my first thought was they're in trouble, no-one's helping them. So fly out and seen red. Straight through the lot of them, tried to break them up. Just scatter them, get the attention away from my father to myself. At that point about - -I think two blokes got hold of me. At that point Mr Brad Stampalia punched me in the side of the head, because I looked across and seen him and he was laughing when he did it. So my main aim them (sic) was to get him, because I don't like being hit while I'm being held. I think that's disgraceful. If you can't fight properly. So I went straight for him. Kept going for him. I had all my clothes - half my

clothes ripped of. My necklace - - my old necklace is all broken and everything.' (T5)

Mr C Elliott then described how he was scratched, bruised, punched and pulled by the hair. Mr Elliott denied his car had skidded in and made contact with Mr Castillo and Mrs Elliott on the bonnet. He told the Stewards that he had been held and restrained. The Chairman of Stewards then put to Mr C Elliott that:

'...the stewards' main concern is not who started or how it got started, but the altercation itself, that you being involved in it. As what you've said from your own evidence that you come in seeing red and you've got involved in the fight. That's what the whole inquiry is about, is the conduct and, as I say, it's not as to who started. No doubt it started on a verbal altercation and then has just snowballed from there.' (T7)

The appellant was then called to the inquiry and given the opportunity to explain his side of the story. He told the Stewards that when Mr Castillo came up with Mrs Elliott to point out the person who had made the offensive remark to her that he was pushed 3 times. He pushed back. When asked by the Chairman of Stewards what happened after that he replied:

'Well, I suppose it just got out of hand, got heated. I was kicked in the head, in the nose and split my lip open. I went to the ground. My wife threw herself on top of me, and she was kicked repeatedly as well. And I'd been kicked twice by I don't know how - - how many people; 2 people, ...until my wife threw herself on top of me...but it actually boiled over from the track - - from that last race, sir, ...' (T8)

Mr Castillo identified the person who started the pushing as Mr Peter Stampalia. The appellant acknowledged that he definitely retaliated. In response to the Chairman's statement that the way Mr Castillo's report reads it indicates that *'...your actions went well beyond self defence and amounted to participation in a violent and aggressive manner'* the appellant responded:

'Sir, when your getting kicked on the ground and I was KO'd after the thing. I did grab a bloke. There was two blokes on my son, Clayton. I did grab one in a head lock and I was pulling him away and received a pick (sic) or a punch, I'm not sure what it is. It was a king hit. It come from another person. I don't know who it was. Like I said that's the end of me. I'm out. I was on the ground and I remember being kicked and I remember my wife laying on top of me to stop me from being kicked or it might have have been worse.' (T9)

Mrs Elliott gave lengthy evidence in the proceedings. During the course of her evidence and as the inquiry unfolded it became abundantly clear that there were a number of inconsistencies in the various versions of the events. For example, the speed with which Mr C Elliott drove, whether his car did or did not make contact with both Mrs Elliott and Mr Castillo and whether Mrs Elliott struck Mr Peter Stampalia. Despite that Mrs Elliott clearly admitted that she was appalled at everyone's behaviour.

Following her evidence Mr Brad Stampalia and Mr Peter Stampalia were called to the inquiry. After some introductory information was presented they were questioned in turn by

the Stewards. Although their respective versions differ in detail they both confirm the sad fact that a savage and unpleasant scene had occurred in public view at this country racecourse. An argument led to verbal abuse. The situation became increasingly inflamed resulting in physical abuse as well both personal injury and property damage. The situation seems to have erupted after the Steward Mr Castillo appeared. Mr Castillo was incapable of placating matters. As Mr Brad Stampalia described things once Mr Castillo had come on the scene:

'...Dad was trying to explain his side of the story to Mr Castillo. Now, Garry (the appellant) wouldn't let Dad have his say... he kept bumping Dad out of the way and getting in front of Mr Castillo... He kept getting in front of Dad and virtually getting in between him and Mr Castillo... So he did that - - well, two or three times and Dad pushed him out of the way and said, "Shut up. I'm having my say. You've had your turn." Then on that instant, Garry was over there and Mr Castillo was here and Dad was in front of Mr Castillo. Garry had come over the top and tried to punched Dad over the top and slightly contacted... it was just like a brush, and then it flared from there... well, it wasn't punches thrown. Mr Castillo was in between. It was more a wrestling and so forth. ...

Then from nowhere the car come back and as it says in the letter, he come back and skidded, and Ivan who's out there, he had to jump out of the way of the vehicle, otherwise he was going to get hit pretty severely. And then the car slid and they got hit by the car. As Clayton - - then he jumped out of the car. He's jumped out of his car and ran at the pack because there was a few people, you know, of a melee like you say. He's run at the pack and tried to king hit Dad over the top.

When that happened, I grabbed Clayton, just to grab him out of the pack. I never threw a punch. I grabbed him, but as I grabbed him to stop it, someone grabbed me or the pack, and we fell on the ground...'
(T30)

Mr Castillo described the situation at that stage as one where both Mr Stampalia and the appellant were wrestling on the ground.

Mr Peter Stampalia claimed that he was *'...more the central figure than Bradley... because I was the one arguing with the Elliotts, Bradley was in the car; before you arrived'*. (T28).

Mr Brad Stampalia gave his version of what happened in these terms:

'We were leaving. I was leading the horse. Dad was coming behind with the ropes and that an so forth that he took off the - - when we untied the horse. My brother was pushing the car. He was there - - That was one of the gentleman; my older brother, Andrew, and Dominic and Mark and Ivan Babich were there.

As we were walking past Clayton because sister² (sic) - - Their car was parked right - I don't know - you know the car park right near the fence there, and basically, our car was here and we've had to walk past their vehicles to get to our car. As we were walking past, Clayton started

mouthed off saying, "Have a nice trip home, you dickheads." And so forth; swearing, whatever. Can't remember exactly what words, but - - I was actually walking - - I went to put the horse in the float and dad said basically shut up, "Get in your car and go home."

They kept arguing. Clayton kept bad mouthing - - ..., kept abusing dad. Then his mother come over and started going crook. At this time, Clayton took his shirt and all that off and went down to a singlet at minus 2 degrees at York. He's pulled his top and all that off and down to a singlet and started raising his fists. But his mother then has jumped in between the two. They never - - There was no fighting then but he was suggesting he wanted to fight and carry on.' (T29)

According to Mr Brad Stampalia Mrs Elliott abused Peter Stampalia *'and he eventually snapped and did. He abused her back...'* (T30).

Briefly Mr Brad Stampalia described the matter as having started with an argument with the Elliotts which was not serious except for the fact that Mrs Elliott was swearing at him. This led to Mr Stampalia informing Mrs Elliott what he thought of her, in not too polite terms, which in turn caused her to call Mr Castillo. On Mr Castillo's appearing, Mr P Stampalia claims he could not get a word in. He sought *'...a bit of space to speak'* which led to him being hit over the head by one of the Elliotts.

'Then I got a little bit wild with that because, you know, I'd hadn't hit anyone. And then that's when Mrs Elliott got between me and Mr Elliott and was tearing at me clothes, kicking me. And I couldn't actually hit him at the time because I've got a lady between me and him. ...the next thing I look up and there's - - a car's skidding towards us. Once the car's skidded to a halt... we sort of all ended up in a bit of a pile.' (T35)

All participants in the affair were eventually charged under Rule 243 of the Rules of Harness Racing. That Rule states *'A person employed, engaged or participating in the harness racing industry shall not behave in a way which is detrimental to the industry'*. The charge against each respective party was laid separately but in each case in identical terms. All participants were convicted and disqualified for 6 months except for Mr P Stampalia who, being unlicensed, was warned off for 6 months.

Mr Sullivan, as Chairman of the inquiry, laid the charge against the appellant in the following terms:

'Mr Elliott, after carefully considering all the evidence the stewards accept the report by Steward Castillo that you were involved in a physical altercation at the York Trotting Club on Wednesday the 25th of July 2001. Therefore, the stewards are charging you under the provisions of Rule 243 of the Rules of Harness Racing which states:

"A person employed or engaged or participating in the harness racing industry shall not behave in a way which is detrimental to the industry."

The charge against you is that your behaviour was detrimental to the harness racing industry. Do you understand the charge or do you wish to put something in defence of the charge?' (T46)

In reply the appellant stated:

'Well, sir, are you allowed to defend yourself, or do you - - got to cop a hiding.' (T47)

Mr Sullivan responded:

'Well, as I said to you earlier on in the inquiry that, you know, it gets to a point where you're defending yourself or you're actually participating in a violent and aggressive manner. And from the report from Mr Castillo, you were involved in the altercation in a physical manner.' (T46)

The appellant replied:

'In a self-defence way ... You know, that's all I can say. It was self-defence in my own area. I mean, Mr Castillo was there trying but he had no way of stopping it. I mean, I was only defending myself and my family from getting hurt. And I was the one that was hurt, sir. I did not in any way - - would I do anything detrimental to trotting. I'm from a good trotting family and I have been for years.' (T46-47)

The appellant was not able to add anything. After considering the matter the Stewards found the charge sustained. The appellant was advised of this with the simple statement *'Mr Elliott, the Stewards do find the charge sustained'*. (T47) After that nothing at all was presented by the appellant to the Stewards regarding penalty other than his claim to be innocent. In announcing the penalty the inquiry Chairman stated the following:

'...it is the unanimous decision of the stewards that you be disqualified for a period of 6 calendar months which against that you have the right of appeal to the Racing Penalties Appeal Tribunal.' (T56)

The appellant appeals against both the conviction and the penalty. His grounds of appeal assert that he did everything possible to avoid the incident, help was sought from the Stewards who were unable to control the situation and that all he was able to do was to defend himself. At the hearing the appellant was granted leave to appeal against the severity of the penalty.

The appellant sought and was granted a suspension of operation of the penalty on the 19 September 2001 until his appeal was determined or as otherwise ordered.

Complications

Deciding this appeal has not been easy. There are numerous complicating factors to be considered. Although irrelevant to deciding this appeal it is worth noting that these same factors largely also apply to the appeals to the Tribunal which were instituted by Mr C Elliott and the Stampalias arising out of the same incident. These factors are:

- 1 All of the multiple offenders involved were all meted out the same length of penalty following their respective convictions.

- 2 No findings of fact were made or any explanations given by the Stewards in relation to any of those convictions.
- 3 The Stewards gave no reasons as to the penalties either. There is nothing personal to any party which the Stewards indicated had been taken into account in relation to any of the penalties. None of the parties was informed why they had been treated the same as the other participants in terms of the length of the punishment.
- 4 In the appellant's case nothing had been presented in mitigation of penalty other than his protestation of innocence.
- 5 Steward Castillo's report arguably is somewhat superficial and not backed up with much supplementary evidence at the inquiry bearing in mind the number of combatants involved in the incident and the seriousness of the matter. This Steward was present and in a position to comment on most of the incident first hand. This observation is not made as a criticism of the Steward, who was after all personally physically caught up in a whirlpool of violence which he had no capacity to control. The point is that it is unfortunate that the one dispassionate party did not add much detail at the inquiry to supplement the brief report. The lack of detailed dispassionate commentary makes it all the harder to distinguish the roles and culpabilities of the combatants.
- 6 The Stewards, not surprisingly, conducted their deliberations in relation to each participant in isolation. They kept the warring parties physically separate and apart at the hearing. The antagonists were denied the opportunity of actually hearing the evidence raised by the others against them and of responding or otherwise reacting to that evidence. Consequently, no opportunity to cross examine was available to anyone. However, this point was not taken by any of the parties before the Stewards. Nor was that point made by any of the respondents during the course of the appeals.
- 7 Although Mr B Stampalia appealed to the Tribunal against his conviction and penalty his appeal was withdrawn. The Tribunal was informed that Mr B Stampalia had appealed to the Committee of the Western Australian Trotting Association against his 6 month disqualification in respect of this incident. The notice of decision dated 4 October 2001 of the Committee of the Association makes it clear that the appeal '*was in respect of penalty only and not guilt*'. Only this one participant chose to proceed before the Committee. Three others appealed to the Tribunal whilst Mrs Elliott did not take the matter further.
- 8 The Tribunal has been appraised of and has to consider as part of the material before it a number of external attitudes which have been expressed regarding the unfortunate affair. Not all those expressions were before the Stewards.

I will shortly address complications 1 to 3 inclusive and 7 in some detail. Before doing so one should not lose sight of one obvious aspect of this sorry saga. On the face of the material that was placed before the Stewards it is difficult to imagine how any other conclusion could be reached than the fact that the appellant, a licensed person, was actively involved from an early stage in a disgraceful scene on a race course involving verbal abuse and physical violence between a number of members of 2 antagonistic families. That fight took place at the York Trotting Club after a race meeting. Virtually

every aspect of the 5 participants' behaviour which is recorded in the transcript of the Stewards' inquiry, save for the action of calling in aid one of the Stewards, has absolutely no place in trotting and has the potential to immeasurably damage the image and reputation of the sport. The local trotting club readily recognised this fact. Irrespective of which individual may have started the incident, who may have over reacted, or who may have been the more aggressive all participants from some points of view arguably are equally culpable of the charges that were made against them.

The first 3 complications referred to above, as to identical penalties with no reasons, can be dealt with quickly and together. It is unsatisfactory that the Stewards did not enunciate any reasons to justify their guilty findings. The transcript contains no factual findings or conclusions at all. The guilty parties are entitled to know the basis upon which the Stewards have reached their conclusions. One can only assume that, in the eyes of the Stewards, not only was each offence of identical seriousness but also that each participant's behaviour was regarded as warranting the identical penalty. Without the assistance of an explanation or reasons for reaching any such conclusion one can only assume a huge coincidence was involved for there to be total equality. The Tribunal has no way of knowing what factors the Stewards relied on to arrive at their conclusions, what considerations influenced them and on what basis they imposed the penalty on the appellant. The situation is somewhat aggravated in the circumstances where there were several other participants involved in the same inquiry process who were each involved in the incident. One can only assume that the Stewards could not distinguish between the conduct of any of the combatants in terms of the seriousness of the conduct. However, each had to be charged separately and each was entitled to be dealt with on the respective particular merits of each separate case based on the relevant facts specific to each one.

In Robert Charles McPherson v Racing Penalties Appeals Tribunal of Western Australia (Full Court, Supreme Court 950085 delivered 3/3/1995) Rowland J, with whom Ipp and Steytler JJ agreed, concluded that the Tribunal, which is obliged to give reasons under s21 of the Act '*should at least identify the range of penalties usually adopted for the offence and the circumstances of this offence*' (p10).

His Honour then went on to state:

'We are here dealing with the livelihood of a trainer. As there is a right of appeal given to a person who claims to be aggrieved with a decision of the Stewards, it is implicit, in my view, that there is an obligation on the appellant body to give sufficient findings or reasons so as to explain to the recipient and all others in the industry the basis on which the penalty is given or how it is arrived at.

...In my view it is impossible for this Court to say that the penalty imposed was manifestly excessive. On the other hand, on the material before us, it appears to be far outside the range of penalties apparently imposed for similar offences in the Eastern States. As no reasons have been delivered by the Stewards or the Tribunal as to what the local penalties are that have been usually imposed, then there is an inference that, at least in so far as the Tribunal is concerned, it has failed to consider this issue for itself.' (p11)

The fact that the incident involved verbal and physical entanglements of significant proportions called for some factual disentanglement by the Stewards in the inquiry process. It was not altogether helpful for the Stewards to simply adopt the attitude that it was not a main concern who started the fight or how it began. The respective roles of each party at all relevant stages of the whole affair, commencing with the verbal abuse should influence the manner in which the participants were ultimately dealt with in the adjudication process. Certainly so far as the seriousness of the contributions the roles played are vital considerations.

So far as the fourth point is concerned, at least before the Tribunal some material as to mitigation and personal factors was presented. In support of his position Mr Elliott produced testimonials from Mr Graham Cox, member of the Geraldton Pacing Club Committee, Mr Mike Kinsella, President of the Cunderdin Trotting Club Inc and the Deputy Principal of the Western Australian College of Agriculture Cunderdin. Those references indicate that the appellant is well regarded in the industry and outside of pacing.

So far as the appeal by Mr B Stampalia to the Trotting Association Committee is concerned there were 9 committee members, the chief executive officer and the secretary of the Association, Mr B Stampalia and Mr W Sullivan (representing the Stewards) present. The notice of decision of the Committee, which is dated 4 October 2001, states:

Following consideration of the transcript of the inquiry, letter from Mr B Stampalia dated 22 August 2001, a report from WATA Steward Mr M Castillo dated 6 August 2001, and the information provided by Mr B Stampalia and Mr W Sullivan at the Appeal, the Committee

Resolved: *To amend the six months disqualification penalty to a \$500 fine, suspended for 12 months, subject to good behaviour.*

Following are the reasons for the reduction in penalty:

- (a) *The evidence indicated that Mr B Stampalia had at no time acted in an aggressive manner.*
- (b) *The Stewards acknowledged in evidence that Mr B Stampalia's only part in the incident involved him wrestling on the ground with Mr C Elliott. There is grave doubt that Mr Stampalia did anything else other than try to pacify the situation and that him wrestling on the ground with Mr C Elliott was only a consequence of him trying to diffuse the situation and stop Mr C Elliott from fighting.*
- (c) *Given the evidence it would appear that the penalty imposed upon Mr B Stampalia is unnecessarily harsh.*
- (d) *Evidence indicates that Mr B Stampalia was provoked and used reasonable force in an endeavour to contain the situation.*
- (e) *When considering the penalty the Committee took into consideration penalties imposed upon drivers Mark Reed and*

Gary Hall Snr for an incident which occurred on 29 September 2000.

- (f) *The Committee, after considering all evidence, believes that Mr B Stampalia is not guilty of any offence, however, given the appeal to the Committee was restricted to consideration of penalty only, no decision on guilt was made.'*

The Committee had the benefit of all of the material which was before the Stewards as well as Mr B Stampalia's letter of the 22 August 2001. That letter states:

'The President and Committee

The Committee maybe aware that I attended an inquiry on 21st August 2001 in regard to an incident at the York Trotting Club on the 25th July this year. The result of the inquiry is that I have received a six-month disqualification, the same penalty as the aggressors who I understand have a previous history of such incidents on more than one occasion.

An argument occurred after the last race, in the car park between the Elliotts and my father concerning the way Clayton Elliott drove his pacer, after which an altercation eventuated. My only participation in this matter was to endeavour to pacify and protect my father in this incident and restrain Clayton Elliott. At the inquiry Steward Costello verified that I was mostly a bystander in the altercation and was in no way involved in provoking the aggressors. In fact I was trying to convince my father to ignore the other party and get in the car.

I respectfully ask the Committee to reconsider the penalty due (sic) the following reasons:

I was trying to pacify the situation and not provoke it.

I have an unblemished record in harness racing since first being granted a license some six years ago.

Harness racing is my only source of income as I am involved full time.

The disqualification will cause me to loose (sic) my clients and cause protracted hardship long after the period of the penalty.'

At the Committee's inquiry the Stewards produced a letter from the West Australian Country Trotting Association dated 12 September addressed to Mr Rob Bovell, chief executive officer of the Association stating 'WACTA Committee fully endorse the action of WATA Stewards in respect to the disqualification of licensed personnel who participated in the melee at York Trotting Club on the 25 July 2001'. This communication was clearly not before the Stewards at the time they dealt with the matter.

The Committee's deliberations, from numerous aspects is more than puzzling. Firstly, the expression of belief gratuitously made in (f) of the determination clearly suggests that the Committee considered the Stewards were wrong in convicting Mr B Stampalia. The Stewards had the advantage over the Committee of hearing the evidence first hand and judging the demeanour of the witnesses. Secondly, although the fine imposed by the

Committee which it suspended subject to good behaviour is relatively light, it is not nominal. Whilst I appreciate the appeal to the Committee was as to penalty only, a person innocent of an offence might still justifiably feel disenchanting with it.

Clearly the most telling point however is that the Committee was not empowered to deal with the matter. The Western Australian Trotting Association Act 1946 as amended constitutes and incorporates the Association. The main object of the Association is to foster and extend the sport of trotting throughout the State, keep it clean from abuse and to regulate and control it statewide (first schedule by-law 2). The management of the Association is vested in a committee of elected members (by-law 4). The committee has power to suspend or expel members whom it considers guilty of doing anything which brings discredit to the Association or the sport of trotting or impairs or affects the enjoyment of the Association by other members (by-law 22(d)).

The Committee appoints the Stewards (by-law 54) who conduct and carry out race meetings and trotting events and are responsible for seeing that the rules of trotting are observed (by-law 56). The Committee is also empowered to make and alter rules regulating the sport (Rule 59). Under the current Rules (Rules of Harness Racing 1999) the Stewards are given wide powers to carry out their functions (Rule 15). The Stewards are the professionals who are appointed with the specialist knowledge and experience to carry out their duties. The Committee is empowered to entertain appeals against decisions of the Stewards (LR256A). This power, which was introduced into the present rules in February 2000, is not new. The equivalent provision under the previous rules was Rule 60.

However, these provisions cannot be looked at in isolation. Mr B Stampalia's appeal notice to the Tribunal is dated 3 September 2001. It was received at the Tribunal Registry on that date. As a consequence at law the Committee from that date in fact had no power to entertain Mr B Stampalia's appeal to it. S15 of the Racing Penalties (Appeals) Act 1990 is the statutory embargo on the Committee. That section reads:

'15. Other avenues of appeal may no longer be applicable

(1) Subject to subsection (2), notwithstanding

(a) any law or rule of law to the contrary; or

(b) anything contained in the Greyhound Racing Rules, the Rules of Racing or the Rules of Trotting or in the constitution, rules, or articles of an appropriate controlling authority, or a racing club,

an appeal shall not, after the commencement of this Act, be made to, or heard by, a controlling authority, a racing club or any committee or stewards in respect of any determination or finding in relation to which an appeal is made to the Tribunal under section 13.

(2) Where, in relation to any determination or finding of a controlling authority, of a racing club, or of any committee or stewards, an appeal lies to the Tribunal only if the Tribunal gives leave, any appeal in respect of that determination or finding heard otherwise than by the Tribunal shall be given

effect to until such time as the Tribunal has given leave and made its determination.'

Mr B Stampalia was entitled to appeal to the Tribunal as of right and required no leave as contemplated in sub-section 2. He appealed to the Tribunal within time. This appeal was made pursuant to s13 of that Tribunal's statute by a person aggrieved with a decision of the Stewards imposing a disqualification of a person (s13(1)(a)). In these circumstances the Committee's purported handling of the subsequent appeal to it was ultra vires and invalid.

Even if the Committee's actions were not a nullity on the material before me I fail to understand how the Committee could have decided Mr B Stampalia's appeal the way it did. Nothing in the material that I have read as to what the Committee considered would, on a proper analysis of all relevant issues, justify the purported decision to overrule the Stewards' determination.

Conclusion

I agree with the description given by Mrs Elliott at the Stewards' inquiry that the behaviour of all participants was appalling. I also agree with the appellant's description that there was '*an all in fight*'. There is no doubt that the Stewards were entitled to conclude that the appellant's behaviour was detrimental to the harness racing industry. He participated in moronic behaviour, being an uncontrolled and violent incident involving different members of 2 families. The affair included abusive language, wrestling, kicking, punching and ignoring the directions of the Steward who was on the scene. The appellant allowed himself to be drawn into or engage in the brawl with other licensed members of the industry following a race meeting in the carpark of the racecourse on public view. The brawl literally took place around one of the Stewards who, despite his best efforts, was not able to disengage the participants. The role and authority of that particular Steward was completely compromised. A family sporting scene degenerated to a feud.

On the basis of the material before them, the Stewards were entitled to come to the conclusion that they should accept the report of Steward Castillo. Nothing suggests that any of the observations contained in that report are unsafe or otherwise unsatisfactory. That report reveals that from an early stage after Mr Castillo came on the scene it became very heated between the appellant and Mr Peter Stampalia. The fight ensued. On the appellant's evidence the appellant retaliated after he had been repeatedly pushed. Nothing has been presented to dissuade me from agreeing with the Stewards' observation made to the appellant that the appellant's conduct exceeded self defence and that the appellant thereafter participated violently and aggressively. The appellant was not there as an isolate. He was with other members of his own family who were violently involved with another family. There had been previous episodes of feuding between the 2 families. Nothing indicates that there was no involvement by the appellant in a physical altercation in respect of which there is simply only the attempt to explain or justify elements of the behaviour based upon who was the aggrieved party and who was the aggressor.

The whole affair is a very sorry one for an industry which is struggling particularly in the country. There can be no doubt that the overall incident was damaging to the industry, as was the separate conduct of each active participant. The seriousness of the occurrence and the grave inappropriateness of this loutish manner cannot be overemphasised. The industry can ill afford to treat any behaviour which is prejudicial to the conduct of the sport but harshly in the hope that all members of the respective families involved and all others in

the industry will be dissuaded from taking the law into their own hands on licensed premises.

Whilst Mrs Elliott sparked off the episode by making the comments when the appellant was present the appellant clearly helped ignite the situation and his conduct helped fan and spread the flames.

For these reasons I would dismiss the appeal and confirm the conviction.

Despite that I have taken into account the factors helpful to the appellant's position that initially he was pushed and back pedalled before he retaliated. I am satisfied that no error has been shown on the part of the Stewards as to penalty, bearing in mind the range of penalties which may be imposed for such a serious offence.

Whilst it is not directly relevant Mr Sullivan referred the Tribunal to the penalties imposed in relation to physical incidents in thoroughbred racing. I have considered all of the thoroughbred racing appeals involving physical incidents between participants. It is clear the other jurisdiction does view such matters very seriously. Suspensions up to 2 months for assaulting another party have come before the Tribunal and been ratified. The conduct of the appellant in the present case is more serious than any of the conduct which was involved in the racing cases.

In Bull (Appeal 539) the decision of the Stewards of the Trotting Association to disqualify a trainer for 6 months for breach of Rule 231 for assaulting a registered stablehand was confirmed on appeal. For using stock whips on horses in training a penalty of 12 months disqualification was on appeal confirmed (Bull (Appeal 540)) and another reduced on appeal to 6 months (Richards (Appeal 541)).

Nothing presented demonstrates the penalty imposed on this appellant is not within an appropriate range of penalties. I have not been persuaded by anything that has been placed before me, despite the appellant's long and valued involvement in the industry, to reduce the penalty on the basis that it is manifestly excessive.

I would confirm the penalty.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON



THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF
MR J PRIOR (MEMBER)

APPELLANT: GARRY BERNARD ELLIOTT

APPLICATION NO: A30/08/543

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR J PRIOR (MEMBER)
MR W CHESNUTT (MEMBER)

DATE OF HEARING: 25 OCTOBER 2001

DATE OF DETERMINATION: 28 FEBRUARY 2002

IN THE MATTER OF an appeal by Mr GB Elliott against the determination made by the Stewards of the Western Australian Trotting Association on 21 August 2001 imposing a 6 month disqualification for breach of Rule 243 of the Rules of Harness Racing.

Mr GB Elliott appeared in person.

Mr WJ Sullivan appeared for the Stewards of the Western Australian Trotting Association.

I have read the draft reasons of Mr D Mossenson, Chairperson.

I agree with those reasons and conclusions and have nothing to add.

John Prior



JOHN PRIOR, MEMBER

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF
MR W CHESNUTT (MEMBER)

APPELLANT: GARRY BERNARD ELLIOTT
APPLICATION NO: A30/08/543
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WILLIAM CHESNUTT, MEMBER

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Mr WJ Sullivan appeared for the Stewards of the Western Australian Trotting Association.

This is a unanimous decision of the Tribunal.

For the reasons published the appeal is dismissed.

The suspension of operation of the penalty automatically ceases.



DAN MOSSENSON, CHAIRPERSON

