THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR D MOSSENSON (CHAIRPERSON)

APPELLANT:	**MICHAEL NORMAN BEECH**
APPLICATION NO:	**A30/08/474**
DATE OF HEARING:	**28 OCTOBER 1999**
DATE OF DETERMINATION:	**4 APRIL 2000**

IN THE MATTER of an appeal by Mr MN Beech against the determination by the Western Australian Trotting Association Stewards on the 14 September 1999 imposing a 2 year disqualification for breach of Rule 497(1) of the Rules of Harness Racing.

Ms S Lloyd, on instructions from Hammond Worthington, appeared for the appellant.

Mr RJ Davies QC, assisted by Mr B Goetze, on instructions from Minter Ellison, appeared for the Western Australian Trotting Association Stewards.

Stewards' Inquiry

On the 9 February 1999 the Stewards of the Western Australian Trotting Association commenced an inquiry in relation to the analyst's finding of a total carbon dioxide level (after adjustment for uncertainty) of 36.1 millimoles per litre in the blood sample taken from FRANCO PARKER NZ prior to it competing and finishing fourth in Race 5 at Bunbury on 23 January 1999. Mr Beech trained the horse. The inquiry was conducted pursuant to Rule 38 of the Rules of Harness Racing. That Rule empowers the Stewards *'...to inquire, adjudicate or report on any*

matter that the Controlling Board or Chairman of Stewards considers it advisable to investigate'. The Rule gives *'... complete control of the inquiry'* to the Chairman of Stewards or appointed nominee. Further, there is power to adjourn any inquiry from time to time. The Beech inquiry proved to be a very long and complicated affair with many adjournments. It continued on the 13 and 14 April, 29 June, 27 July, 9 and 25 August and eventually was concluded on the 14 September 1999. In accordance with Rule 48 the evidence of the inquiry and decision were committed to writing. The size of the exercise is reflected in the fact the transcript of the evidence covers 424 pages and in addition there were many exhibits.

Mr Beech is a licensed trainer/driver with the Association. As the trainer and reinsperson of FRANCO PARKER NZ he appeared at all stages of the inquiry. On the first sitting day some of the time was taken up dealing with the requests for an adjournment of the proceedings by Mr Beech to enable him to further consult his lawyer. The Stewards made it clear early on that Mr Beech's lawyer would be allowed to be present in the inquiry to cross-examine expert witnesses. Evidence was then presented by Dr McGregor, the veterinary surgeon who was in attendance at the Bunbury Trotting meeting in question, as to the taking of the sample. The following passage which commences on page 12 of the transcript of the inquiry gives some indication of how the inquiry was likely to unfold and what the Stewards were likely to encounter in advancing the inquiry and trying to put the various pieces of the jig-saw together:

'CHAIRMAN:	*The Stewards can't understand why you can't acknowledge whether you signed – whether this is your signature on the sheet and whether you were happy when the blood was extracted from purportedly FRANCO PARKER, that you were satisfied by signing the sheet and also signing the bottle with the referee sample in it.*
BEECH:	*I wish to get all this evidence together, sir, and talk about it with the lawyer so that I know the right answers.*
CHAIRMAN:	*Well, the right answers are you either signed it after you were aware that the blood was taken from FRANCO PARKER or you weren't.*
BEECH:	*Sir, I wish to be represented.'*

At the continuation of the hearing on the 13 April Mr Beech gave evidence that he had left school at the age of 15 years, was now 52 years of age and had been a horse trainer for approximately 30 years. He currently held an A Class trainer's licence, was formerly employed as a full time horse trainer for 20 years but due to financial problems found other work over the last 5 years and trained horses to supplement his income. Mr Beech currently was responsible for training some 6 horses at his stables in Wanneroo assisted by his son Scott and de facto partner Margaret Guy. The stables were said to be secure with 2 dogs as a deterrent and a neighbour who watches them carefully. They are situated on approximately 6.75 acres of land and are fenced. The horses are generally worked at approximately 4.00am. Mr Beech would leave the stables at approximately 7.00am to attend work and arrive home at 4.00pm. Scott is responsible for feeding the horses in Mr Beech's absence. Mr Beech had maintained the same pattern of feeding for approximately 10 years. The Stewards were told on the day before the race in question Scott was responsible for feeding FRANCO PARKER and would have administered approximately 60 grams of Thiasal E at 11.00am. The horses were loaded between 2.30 and 2.45pm for a 3 hour trip to Bunbury. There were no stops made during the journey. Mr Beech in a prepared statement which was read into the transcript went into some considerable detail to illustrate how the guidelines for the taking of the pre-race swab were not followed. Mr Beech asserted that he did not administer a drug nor any sodium bicarbonate to FRANCO PARKER. He claimed the horse was second favourite and he knew it would be swabbed. Further, he said he did not possess a stomach tube, had never administered sodium bicarbonate to a horse and on the night FRANCO PARKER did not perform well.

During the second day of the hearing there were more discussions regarding legal representation. Mr Beech's lawyer Mr Hammond was advised he would be able to be present when expert witnesses were giving evidence and could cross-examine them or present expert evidence. This was to be under the provision of Rule 38(b). Next there was introduced into the evidence the report from the Racing Chemistry Laboratory in relation to the pre-race drug sample that the total carbon dioxide (TCO_2) level of 36.1 millimoles per litre in plasma was recorded with an uncertainty in measurement of ± 1.4 millimoles per litre. By letter which was read out the solicitor for Mr Beech sought the right to represent his client by more than simply being able to cross-examine expert witnesses. It was requested that Mr Beech be entitled to be represented throughout the entire inquiry. In

support it was argued Mr Beech was not adequately able to represent himself having left school at the age of 15 with no formal qualifications, having been involved in only one other inquiry which occurred in the early 1980s and many complicated issues would be likely to be canvassed in the course of the inquiry. The Stewards responded to that letter with the advice that Mr Hammond *'shall be permitted to cross-examine expert witnesses only. The Stewards should not allow him to sit throughout the inquiry to represent your client. In response to your submissions (a) your client has been licensed for 23 years; (b) your client is attending numerous race-day inquiries; (c) your client shall be required to answer questions from the Stewards and (d) the Stewards believe your client is quite capable of asking questions that could be asked of him'.*

The Stewards also dealt with the correspondence regarding the offer for the horse to be impounded for a period of 48 hours in order to ascertain the range of FRANCO PARKER's TCO_2 levels. They eventually refused to accede to the proposal on the basis of *'objections raised in your facsimile of 10 March 1999 (which) make the purpose of the impoundment pointless'*. After this Mr Hammond cross-examined Dr McGregor at considerable length regarding the way in which he carried out the taking of the sample and factors which potentially may raise TCO_2 levels. This was followed by a lengthy series of pre-prepared questions which were asked on Mr Beech's behalf of the Chairman of the inquiry regarding the circumstances surrounding the taking of the sample. Once the Chairman finished responding Mr Smeath, a trainer/reinsman, gave evidence in the proceedings followed by Margaret Guy, Mr Beech's de facto partner, who read a statement prepared by her lawyer.

This brief outline of the first 2 days of the proceedings should be sufficient to give an indication of the approach being adopted by and on behalf of Mr Beech and the manner in which the Stewards were reacting to those tactics in the early stages. It is not productive to summarise the whole of the proceedings. Suffice to say the matter continued along similar lines until the hearing on 27 July 1999. It was during the continuation of the inquiry on that date that the Stewards issued a charge against Mr Beech for a breach of Rule 497 of the Rules. That Rule deals with 'Drug Free Racing' and states:

> *'(1) When any horse which has been presented to race is found to have had administered to it a drug:*
>
> *(a) any person who administered the drug to the horse;*

(b) the trainer; and

(c) any other person who was in charge of the horse at any relevant time,

is deemed to have committed an offence.

(2) It shall be a defence to a charge under sub-clause (1) for the trainer and any other person who was in charge of the horse at any relevant time to prove that he took reasonable and proper precautions to prevent the administration of the drug.'

The particulars of the charge are specified by the Stewards to be:

'...that as the trainer of the pacer FRANCO PARKER you presented the horse to race in race 5 at the Bunbury trotting meeting on Saturday 23 January 1999 where the pre-race referee blood sample taken from the pacer was found upon analysis to contain a total carbon dioxide level of 35.6 millimoles per litre of plasma, which is above the allowed level under Rule 498B (sic) of 35.0. It is therefore deemed that a drug capable of producing carbon dioxide has been administered.'

The relevant parts of Rule 498 specify:

'For the purposes of this Part:

(a) a horse is deemed to have been presented to race if it has not been scratched prior to 9.30 am on the day of the race;

(b) where a sample from a horse is found to contain a substance described in this Rule in excess of maximum quantity or ratio appearing opposite the substance then the horse shall be deemed to have had administered to it a drug or drug capable of producing that substance:

Substance	*Maximum Quantity or Ratio*
...	
Carbon Dioxide	*35.0 millimoles of Total Carbon Dioxide per litre in plasma.*
...	

(c) a sample shall be deemed to contain a drug if upon analysis:

(i) a metabolite is found present in the sample; or

(ii) an artifact forms or is found in the course of the analysis; or

(iii) any isomers or a substance deemed to be a drug are found to be present in the sample.'

After Mr Beech pleaded not guilty to the charge a considerable amount of time was spent inter alia in questioning witnesses again. At the commencement of the final day of the hearing the Chairman of the inquiry enunciated in some detail the findings and conclusions of the Stewards. The decision to convict Mr Beech is expressed in the following terms:

'Mr Beech, this inquiry was opened on 9 February 1999 as a result of the analyst's report from the Chemistry Centre Laboratory, sample No. 400, which was taken from FRANCO PARKER prior to it competing in race 5 at the Bunbury Trotting Club meeting on 23 January 1999. At that time you were the registered trainer. The TCO_2 level reported by the Chemistry Centre was 36.1 millimoles per litre in the plasma after 1.4 had been deducted for an uncertainty of measurement.

The referee sample No. 400 was despatched to the Australian Racing Forensic Laboratory to be tested for total carbon dioxide level. The Australian Racing Forensic Laboratory reported a TCO_2 level in sample No. 400 to be 36.8 millimoles per litre plus or minus 1.2 for uncertainty of measurement.

The Stewards sitting on the inquiry was myself, Wayne Sullivan, Domenic Tyson, who officiated at the Bunbury meeting, and also Mr Reg Denney. At the continued hearing on 13 April 1999 you were advised that Mr Tyson had become ill and would take no further part in the inquiry, and after speaking to your lawyer you agreed that the inquiry could proceed without Mr Tyson.

As Mr Tyson took no further part in the inquiry and had no participation in the taking of the blood samples, Stewards do not believe that Mr Tyson could assist the inquiry in the signing of a manifest sheet and the clerical errors made by Dr McGregor.

At the first sitting on 9 February 1999, Stewards heard evidence from Dr McGregor, who was the Club's veterinarian on the night. Stewards questioned Dr McGregor in regards to his procedure in the taking of the blood samples on the night and also the clerical errors and amendments made on the manifest sheet and also that he failed to sign the manifest sheet after taking all the blood samples from the runners in race 5.

From the outset of the inquiry Dr McGregor confirmed that the tube numbers and times had been entered on the manifest sheet by himself and further stated later during the inquiry, on being questioned by Mr Inglis, that he would swear under oath of same.

In a statement tendered by Ms Guy she said there was no ice in the esky when the blood samples were taken from FRANCO PARKER and the samples had not been put into ice immediately they were taken. Stewards do not accept that evidence.

Mr Sullivan advised that he had collected ice from the Committee bar which was put in the esky, and Dr McGregor confirmed that there was in fact ice in the esky. Dr McGregor also confirmed that he had placed the vials in the ice immediately after the blood samples were taken.

Ms Guy also stated that Dr McGregor had put the seal over the vial and was not put in a plastic bottle and sealed. Dr McGregor refuted Ms Guy's statement and confirmed that he had placed one vial No. 400 into a plastic screw-top jar and placed a seal signed by himself and Mr Beech which was received by the Chemistry Centre as the referee sample and despatched to the Sydney laboratory who recorded that on arrival the seal was intact on the plastic bottle which contained sample No. 400.

Counsel for you has also tendered articles by Frey, Klein and Foreman into the pre-race exercise and frusemide, sex and ambient temperate (sic) *on blood sodium bicarbonate and pH values in standard-bred horses. The research by Frey, Klein and Foreman found that the levels were only in the low 30s and with no uncertainty adjustment and conceded that some of the horses tested may have been artificially administered an alkalising agent.*

You also tendered an article, 'Electrolytes, why feed them?' by Ruth Davis into her studies which found bicarbonate levels to be around 30 to 32 millimoles per litre in plasma, which is within the normal range without an uncertainty of measurement being deducted. However, the test was not on total carbon dioxide.

Stewards also considered the evidence by Dr McGregor regarding heat and age which was all uncontrolled and was only an opinion which had no peer review.

Stewards also considered the evidence from Dr Kannegieter in regard to the testing procedures of the two laboratories. After considering the evidence from Mr Russo, Stewards are satisfied that the procedures by the laboratories were in accordance for which the Beckman Elise was designed and accept the levels recorded. Dr Kannegieter's level reported on heat, sweating and travelling.

Stewards tendered a letter from Professor Reuben Rose to Mr Skipper dated 16 April 1996 stating that environmental temperature does not affect TCO_2 levels. Floating has no effect on TCO_2 levels. Sweating will only increase TCO_2 levels such as in endurance riding.

Stewards tendered articles by Dr Lloyd, RJ Rose and P Riley under the heading of 'Milkshakes' which again confirm that travel, sweating and excitement would not increase the TCO_2 levels to above the permitted level.

Stewards also considered the article of RF Slowcombe, PJ Huntington, Karen L Lind and JH Vine on plasma total CO_2 and electrolytes.

Stewards prefer the sound research from the articles tendered from Professor Rose, Dr Lloyd and Riley, RF Slowcombe and P Huntington and Karen L Lind and JH Vine over that of Dr Kannegieter, Ruth Davis from Vet Surge International and Dr McGregor.

Stewards considered the TCO_2 levels from the blood samples taken from FRANCO PARKER on 26 January, 22, 24, 26 and 31 March 1999 and consider that FRANCO PARKER is not an abnormal horse in regard to his TCO_2 level.

Stewards also considered weather reports tendered by yourself and the Stewards. On 23 January 1999 at Mandurah the maximum temperature rose to 34 degrees at 4 pm and 5 pm. At Bunbury the maximum temperature was 30.6. However, when a blood sample was taken at rest at the stable on 26 January 1999, the temperature in Perth was 38.3 and the blood sample taken from FRANCO PARKER returned a level of 31.7, and when the horse raced at Northam on 13 January 1999 the temperature rose to 39.7 degrees and the TCO level taken from FRANCO PARKER recorded a level of 28.6.

You stated in your statement, Mr Beech, that you did not administer any bicarbonate to FRANCO PARKER. However, you stated on 23 January your son Scott Beech fed FRANCO PARKER approximately 60 grams of Thiasal E, which is double the manufacturer's recommended dose and contains 51 per cent sodium bicarbonate.

You did not accept that sample No. 400 was that of FRANCO PARKER. After taking blood samples from FRANCO PARKER on 16 April 1999 a DNA test confirmed that the sample No. 400 was in fact that of FRANCO PARKER.

Dr Rieusset also gave evidence that for a horse to have a TCO_2 level of 35.6 a substance would have had to be administered.

Stewards do not accept the evidence from Ms Guy that one vial was not placed in a plastic screw-top bottle and sealed, known as the referee sample. Ms Guy also stated that she had not viewed Dr McGregor all the time the samples were taken from FRANCO PARKER and was approximately 6 metres away.

Mr Beech, you stated that your son Scott Beech is responsible for the feeding of the horses. Mr Beech is the registered trainer of FRANCO PARKER. We do not believe that you have taken all reasonable and proper precautions to prevent administration of a drug in accordance with the drug rules of harness racing.

Stewards accept the relevant articles from Professor Rose, Dr Lloyd, Riley, R Slowcombe, Huntington and Lind and Vine, which are based on sound scientific research that heat, excitement, sweat and travel would not be responsible for a horse having a TCO_2 level above the permitted level of 35 millimoles per litre.

Stewards also accept that the TCO_2 level of 36.8 millimoles per litre plus or minus for uncertainty of measurement recorded by the Racing Forensic Laboratory in sample No. 400.

It is not unusual in these types of cases that there be no acknowledgment of an administration of the drug, nor is it incumbent on the Stewards to identify who or when the drug was administered.

After carefully considering all the evidence, the only reasonable conclusion the Stewards could reach is that it is more probable than not that an administration of a drug to elevate FRANCO PARKER's TCO_2 level above the allowable level of 35 millimoles per litre was administered. Therefore, the Stewards are unanimous in finding you guilty as charged.

As the trainer of FRANCO PARKER, you presented FRANCO PARKER to race at Bunbury on 23 January 1999 where it had been found to have had a drug administered to it.

Mr Beech, the Stewards must now decide on the matter of penalty under the provisions of rule 55A. Are you aware of the rules under rule 55A, Mr Beech?'

The Stewards then proceeded to deal with Mr Beech pursuant to the provisions of Rule 55A which address 'Minimum Penalties – Part 42 (Administration and Detection of Drugs)'. The rule states:

'A person who is convicted of an offence under:

(a) Part 42 of these Rules other than Rule 499; or

(b) Part 32 of the Rules repealed by these Rules other than Rule 363 of those Rules,

is liable to a penalty which is not less than –

(c) in the case of a first such offence, a period of 12 months disqualification.

(d) in the case of a second such offence, a period of 2 years disqualification.

(e) in the case of a third such offence, a period of 5 years disqualification.

(f) in the case of a fourth or subsequent such offence, disqualification for life.

unless, having regard to the extenuating circumstances under which the offence was committed, the Controlling Body or the Stewards decide otherwise.'

After Mr Beech was asked whether there were any extenuating circumstance that the Stewards must consider Mr Beech was given permission for Ms Guy to read out a submission on penalty as follows:

'Michael Beech's submissions as to penalty: Rules of trotting, rule 55A in part 8 of the rules of trotting, the rules provide that, inter alia, a person who is convicted of an offence under part 42 of these rules is liable to a penalty which is not less than, in the case of a first such offence, a period of 12 months disqualification, unless, having regard to the extenuating circumstances under which the offence was committed, the controlling body or the Stewards decide otherwise.

I have been charged under rule 497(1) of the rules. Rule 497 is in part 42 of the rules. Rule 55A provides the Stewards with a discretion to impose a penalty other than a period of disqualification.

...

.... 'Penalty' is defined in the rules to mean warning off, disqualification, suspension, cancellation or withdrawal of licence or of registration, alteration of the placing of a horse, deduction in status of a driver or a fine.

Appropriate penalty: Appropriate penalty would be a fine. It is submitted that a fine in the vicinity of approximately $2,000 would be fair in all the circumstances. Extenuating circumstances, rule 55A.

I am extremely conscious of my obligations as a trainer. As a trainer I take extreme care in what I feed to my horses. I regularly consult those who I believe to have expertise in the area. There is no evidence nor has there been any suggestion that I have deliberately administered a drug to FRANCO PARKER.

I have taken to what I believe to be reasonable and proper precautions to prevent the administration of any substance which would have caused FRANCO PARKER'S TCO_2 level to be above 35 millimoles. The experts concur that sodium bicarbonate does not necessarily enhance a horse's performance.

Professor Reuben Rose has agreed with the proposition that if a reading is under 37 millimoles there is room for doubt.

266 and 277 of the WATA versus Stampalia PRESLEY STRIKES inquiry 31 August 1998. (sic)

Dr Kannegieter has stated that where there are TCO_2 levels between 35 millimoles and 37 millimoles people will be penalised who should not be penalised.

Page 130 WATA versus Stampalia PRESLEY STRIKES inquiry 31 August 1998.

Previous record: I have not appeared at a WA Stewards inquiry for approximately 17 years. Approximately 17 years ago I received a fine of $1,000 from the Stewards. I first obtained an owner/trainer's permit from the WATA approximately 35 years ago. I have no formal qualifications or experience in any other industry other than the harness racing industry.

The effect of a period of disqualification: A period of disqualification would adversely affect my financial position. I have financial commitments in terms of a home loan on my property. I do not have any savings nor do I own any shares.

I have treated this inquiry with the utmost importance and have endeavoured to leave no stone unturned in explaining why FRANCO PARKER had a level of TCO_2 above 35 millimoles. This has cost me a large amount of money and has adversely affected my health.

Penalty already imposed: I believe that I have already suffered significantly as a result of this inquiry. I have found the inquiry process

extremely disconcerting. At no stage have I felt competent to represent myself during the inquiry.

FRANCO PARKER has been suspended from racing since the inquiry commenced in February 1999, pursuant to the provisions of rule 500. Excuse me. He was subsequently allowed to race but they haven't put the date when that was on here.

...

Right. Expert opinions: During the course of the inquiry I have called or used evidence form the following experts and veterinarians: Dr McGregor, Dr Kannegieter and Professor Reuben Rose. Each of these experts has supported the proposition that it was possible for a horse to have a high TCO_2 reading other than the administration of a drug within the meaning of rule 497.

Even though the Stewards have no accepted my explanation as to why FRANCO PARKER had a TCO_2 reading above 35 millimoles I submit that there are reasonable grounds for the explanation that I provide.'

The Stewards then considered the matter and concluded that:

'We don't believe a fine of $2,000 is appropriate under the circumstances. The offence is a very serious breach of the rules and if allowed to go unchecked will undermine the confidence of the racing public and have serious consequences for the industry. You have sufficient experience to be aware of you obligations as a trainer to present your horse drug-free.

The WATA has gone to great lengths to advise trainers of the care required of them in relation to the use of drugs in their horses and have made available facilities for trainers to assist in ensuring that they produce their horses drug-free for racing. If due care is exercised there is no excuse for a trainer to fall into jeopardy of the drug rules.

With regard to the extenuating circumstances under which the offence as committed, we are guided by Judge Steytler's determination in the Anderson appeal in which he says:

> *That is to say the extenuating circumstances which are there referred to are circumstances which reduce the culpability attaching to the commission of the offence in such a way as to warrant the imposition of a penalty less than the minimum which should ordinarily attach to the offence. It seems to me in that circumstance to be necessarily implicit in the rule that the circumstances referred to must be circumstances under which the offence was committed other than those which are ordinarily present in the case of offences of the kind under consideration and which are unusual or exceptional in that sense.*

Stewards do not believe that there are extenuating circumstances in this case.

When we look at your offences report sheet, we do see, Mr Beech, that you did have a conviction on 26 April 1984 under the provisions of rule 364,

which comes under the drug rules under part 32 of the rules which were repealed by these present rules, and disqualified for a period of six months and upon appeal you had that reduced to a $1,000 fine. However you do have a conviction under rule 32 of the rules repealed by these rules.

For these reasons and in accordance with rule 55A the Stewards consider the appropriate penalty to be a two year disqualification from participating in harness racing. In accordance with rule 502 part 1 of the rules as amended on 29 August 1997 – I'll just read you that rule. It's under the heading of 'Post-race disqualifications', 502(1):

> *Except as provided in sub-rule (2) of this rule where a horse has run in any race and is found by the Stewards or the controlling body to have had a drug administered to it the horse shall be disqualified from the race.*

FRANCO PARKER shall be disqualified from the race in question and the places amended accordingly.'

At the very end of the inquiry a written submission was presented by Mr Beech regarding the costs incurred by Mr Beech in the inquiry. The Stewards were informed Mr Beech would look to the Stewards for the legal costs incurred in preparing submissions by Mr Beech's lawyers and their time at the inquiry on 13 and 14 April 1999 *'which related to the procedural errors in this matter'*.

Grounds of Appeal

Mr Beech appeals against both the conviction and the penalty. The substituted notice of appeal is in these terms:

1. *The Respondents erred in law in failing to find that the Appellant had established a defence pursuant to Rule 497(2) of the Rules of Trotting in that the Appellant did take all reasonable and proper precautions to prevent the administration of a drug to the Appellant's horse, Franco Parker.*

2. *The Respondents erred in law by failing to take into account relevant considerations in that they:*

   (a) *concluded their inquiry prior to the completion of the Appellant's submissions;*

   (b) *refused to properly answer questions regarding the panel of experts constituted by the Western Australian Trotting Association looking into TCO_2 levels in horses; and*

   (c) *prevented witnesses from giving evidence about the panel of experts.*

3. *The Respondents' decision was attended by bias, or alternatively could reasonably be perceived to be biased in that the Respondents:*

   (a) *made clear that they would ignore the findings of the Western Australian Trotting Association panel looking into TCO_2 levels, no matter what those findings might be;*

   (b) *continued to allow the Chairman to preside over the Inquiry when the Chairman of the Respondent was a material witness regarding important evidence namely the checking of blood samples. The Chairman was asked to stand down and refused to do so. The Chairman was the Chief Steward at Bunbury on 23 January 1999, and he continued to act as Chairman;*

   (c) *refused to properly consider the expert evidence the Appellant presented to the inquiry in support of his submission that Franco Parker obtained a level of 35.0 millimoles without the administration of a drug;*

   (d) *failed to allow relevant evidence to be adduced; and*

   (e) *failed to allow evidence to be tested by cross-examination by the Appellant's experts.*

4. *The Respondent erred in law in failing to accept that their testing procedure for blood samples at Bunbury on 23 January was flawed. The Respondents admitted that they failed to follow and committed many breaches of the guidelines for the taking of blood samples. The Appellant had a legitimate expectation that the correct procedure for taking blood samples would be followed.*

5. *The Respondents failed to allow the Appellant the opportunity to independently analyse the blood sample taken from Franco Parker.*

6. *The Respondents failed to properly consider or consider at all that other factors could elevate a horse's TCO_2 levels, such as temperature, travel, the age of the horse, sweating and an abnormally high resting TCO_2 level.*

7. *The Respondents erred in failing to impound Franco Parker and conduct their own tests, notwithstanding that the Appellant offered the Respondents the opportunity to impound Franco Parker.*

8. *The Respondent erred in allowing the Appellant only limited access to legal representation, for the purposes of cross examination and examination of experts. The Appellant was not allowed to have his experts in the hearing room. He was not allowed to have the benefit of legal advice in the hearing room, and this gave rise to a breach of procedural fairness.*

9. *The Respondents failed to take into account the extenuating circumstances within the meaning of Rule 55A that applied to the Appellant's case.*

Particulars of Extenuating Circumstances

(a) The Appellant had taken all reasonable and proper precautions to prevent the administration of a drug to FRANCO PARKER.

(b) There was no evidence that the Appellant had administered a drug to Franco Parker for the purposes of obtaining any advantage.

10. The penalty imposed by the Respondents is manifestly excessive having regard to:

(a) the fact that the Appellant had taken all reasonable and proper precautions to prevent the administration of a drug;

(b) the extenuating circumstances in the Appellant's case;

(c) the fact that the Appellant was stood down from 25 August 1999 pursuant to Rule 43. On 9 August his horses were transferred to another trainer and removed from his property.

(d) the fact that the Appellant had already suffered some penalty for this offence on that the Appellant's horse, Franco Parker has been unable to race for a period of 7 months;

(e) other penalties imposed by the Respondents in other cases where they have accepted extenuating circumstances and which were not dissimilar from the Appellant's case;

(f) the fact that the Appellant's previous conviction for a breach of the Rules of Trotting occurred same (sic) 17 years ago.'

Grounds 5 and 10(d) were abandoned during the appeal.

Appeal Submissions

In the course of her submissions on Mr Beech's behalf Ms Lloyd pointed out that the Stewards' inquiry into this affair extended over 8 sitting days and bridged some 8 months. Not only were costs of the appeal sought but also costs of the inquiry before the Stewards. Counsel for the appellant argued each of the large range of issues which are covered by the appeal grounds and which emerged from the great diversity of matters which were ventilated on Mr Beech's behalf before the Stewards. An underlying element to the appellant's case related to the application of the rules of natural justice and the application of administrative law

requirements. Issues of bias and lack of jurisdiction were included. A significant body of case law on these various subjects was referred to by counsel in pressing the appeal. Those authorities by and large covered the relevant general principles. These cases are identified on the appellant's list of authorities. I have read and considered each of them.

In response Mr Davies QC submitted that the proceedings before the Stewards and the Tribunal both contained an air of unreality to them. Senior counsel pointed out a huge amount of effort was directed towards the circumstances surrounding the taking of the sample. However, the underlying element was whether the sample was in respect of the correct horse. The DNA test had put paid to most of the issues. Both Mr Beech and Dr McGregor had signed the label. The breach of the guideline had nothing to do with whether the sample was taken from this horse. Everything to do with taking a proper sample was complied with. The nature and status of the guidelines were questioned. The errors or oversights in relation to the guidelines were nothing more than that and they had nothing to do with the integrity of the sample. According to senior counsel for the Stewards the voluminous adjournments and requests for the adjournments were all for the benefit of the appellant. All of the expert evidence had been led in the presence of counsel representing Mr Beech who not only heard the evidence but was afforded the opportunity to cross examine. As a consequence Mr Russo was called 3 times, Dr Rieusset 3 times and Dr McGregor twice. Detailed closing submissions were presented which were no doubt prepared by the lawyers representing Mr Beech. In other words Mr Beech had not suffered from lack of legal representation.

Senior counsel also argued that a perception of bias was insufficient for domestic tribunals. The simple questions to be considered were whether this was the right horse, was the sample correct and properly taken, could it have exceeded 35 millimoles naturally taking into account such circumstances as the age of the horse, the weather and the fact that the horse was being transported.

Mr Davies invited comment from the Tribunal regarding the way the defence of Mr Beech was conducted before the Stewards. He argued the approach adopted before the Stewards had the hallmarks of inhibiting rather than assisting the inquiry. The Stewards were more than patient and tolerant and afforded every courtesy to Mr Beech and those assisting him throughout a very arduous process. This aspect of courtesy was not always reciprocated by counsel assisting

Mr Beech. It was submitted that in view of these circumstances this appeal is an appropriate case for the Tribunal to make some observations regarding what transpired because of the appeal impact on hearings before the Tribunal and not just on the process before the Stewards.

At the conclusion of the appeal after the Tribunal reserved its decision I refused to grant a suspension of the operation of the penalty. I adopted this course despite the fact that a number of the issues were the same as those which were then under review before the Full Court in the *Stampalia v The Racing Penalties Appeal Tribunal of Western Australia and others* [2000] WASCA 24 which meant the determination of Mr Beech's matter prior to the handing down of the *Stampalia* decision was inappropriate. The decision in *Stampalia* was delivered on the 17 February 2000.

General Comments

The drug free racing rule in trotting has been in the Rules for quite some time. The one rule in trotting deals with both a provable administration offence and cases where a horse is presented to race with a drug in its system. Basically the Rules of Harness Racing are very similar to the Australian Rules of Racing. However, the thoroughbred racing code has 2 separate drug offence rules, one of actual administration and the other of presenting. Further, the TCO_2 threshold in racing is 1 millimole per litre higher. In the relatively rare case of a proven administration the person responsible may be proceeded against in terms of sub-rule 1(a) of Harness Racing Rule 497. In the other cases there does not need to be proof that the accused person actually administered the drug or, for that matter, had any knowledge as to how the drug entered the horse's system. So often the facts as to the administration and other circumstances of perpetration are either unknown to the participants called to an inquiry, are not revealed even if known, or are incapable of being determined by the Stewards from the material before them. If drug free racing always required the Stewards to determine the basis upon which the drug entered a horse's system then the role of the Stewards in proving a drug offence would in most cases become extremely difficult. Other than in the most obvious of cases, such as in the unlikely event of a confession, the prospects of being able to prove a drug administration offence would be rather remote. In order to protect the industry the Rule in question has been so framed to make the trainer or other person responsible for the horse at a material time in the context of actual racing liable simply upon proof of the drug in the horse's system once at the course for the purpose of racing unless that person were able to

prove to the Stewards' satisfaction that at the time reasonable and proper precautions had been taken by that person to prevent the administration. Absent such precautions the offence is deemed to have been committed irrespective of how the actual administration occurred. The intent of this Rule is to avoid the malpractice. In order for the public to have confidence in the trotting industry it is necessary for the Rules to prohibit animals from competing with illicit substances in them, and where this does occur, for those who should have avoided or prevented this from happening to be severely punished for their acts of commission or omission.

The application and enforcement of the drug free racing rule clearly involves a consideration of the competing interests. On the one hand are the concerns of the industry. It is in the public interest for the community to be able to enjoy the fair and equable conduct of and participation in races. The gambling public is entitled to expect all the participating horses to have prospects of winning by fair means observed equally by all those involved in the sport. On the other hand there are the private interests of persons whose livelihoods depend on being able to exercise the privileges of their licences by continuing to operate within the industry. Also there are the private interests of the owners of horses that compete who are vying for the prize money. All those who do enjoy the privileges of holding licences in the industry contractually are obliged to exercise the privileges of their licences according to the Rules.

The drug rule in its clearest terms puts trainers on their guard and requires them to so conduct and supervise the affairs of their trotting establishments to exclude the possibility of drug affected animals from competing. When it is established that a horse which has been presented by a trainer to race with a drug administered to it, then an offence under this Rule is '*deemed to have* (been) *committed*' by that person. The onus then shifts to the person to demonstrate that there should be no conviction on the basis of the conduct, precautions and actions which have been taken at that time to prevent the administration of the drug. This provision must be read with Rule 498 which is quoted above which deems a horse to have had administered to it a drug in the various circumstances specified in the Rule. In the case of carbon dioxide administration is deemed under the trotting rules to have occurred where the maximum quantity or ratio of the substance is at least 35 millimoles of TCO_2 per litre in plasma.

This appeal also raises for consideration the role and responsibilities of the Stewards. The Stewards are the persons appointed by the body which controls trotting in this State to assist in the control of harness racing (Rule 9). The Stewards are given very wide powers under the Rules including *'...the whole control of matters relating to racing... and ensure that these Rules are observed and enforced'* (Rule 11). Stewards may test for drugs and impose punishments (Rule 11). They are authorised to conduct inquiries *'and at their discretion... pursue to conclusion any inquiry for the purpose of ascertaining whether a breach of the Rules has occurred...'* (Rule 24). Subject to the rights of appeal to this Tribunal and the powers of the controlling body their decisions are final (Rule 25).

The standard of proof in these matters is on the balance of probabilities according to the test in *Briginshaw v Briginshaw* (1938) 60 CLR 336.

Outcome

Despite the length of the inquiry, the number of grounds of appeal and the scope of some of the issues raised on behalf of Mr Beech this matter can now be disposed of relatively quickly. This is particularly so now in the light of the Full Court's decision in *Stampalia* (supra).

By way of an introductory comment I am satisfied overall that the Stewards did conduct this matter thoroughly, fairly and patiently. In doing so they were confronted with more than the usual complications. The whole matter was made very much more difficult due to the unhappy circumstances surrounding the taking of the sample. Despite the fact that it was clearly established that the veterinarian failed to adhere to the guidelines, I am satisfied the ultimate issues determining Mr Beech's position is as Mr Davies argued. The departures from the guidelines, unfortunate and inappropriate as they may be, do not afford Mr Beech any exoneration from or relief of his duties under the Rules. The sample involved was taken from FRANCO PARKER, the horse in question. The integrity of the sample was unaffected, in my opinion, by any of the guideline departures. The fairness and patience with which the inquiry was conducted are apparent from the transcript. The Chairman of Stewards handled all aspects of the situation with propriety as he progressively addressed each of the many hurdles encountered along the way. Some of those hurdles bordered on the obstructive, such as Mr Beech's obstinacy relating to acknowledging that he signed at the time of taking the sample. Much legal pressure was brought to bear on the Stewards.

Much time was consumed by the exercise in accommodating the requirements of Mr Beech. Despite all of that I am satisfied from the transcript that the Stewards remained open minded until the outcome was announced. From my experience of these matters it appears the Stewards were pushed close to the limits of what they could reasonably be expected to tolerate in the course of carrying out their exacting duties under the Rules. However, they did fairly and painstakingly stick to their task. They addressed all relevant issues. Their findings both as to conviction and penalty, which are quoted above, are clearly open on the material before them and do not in my opinion demonstrate any error on their part.

The first ground of appeal addresses the reasonable and proper precaution defence question. I have carefully considered each of the passages in the transcript which counsel for the appellant has relied on in support of this ground. I am not persuaded by any of the arguments for Mr Beech. Although this ground asserts a legal error in not finding that the defence was established it fails to specify what the error was and how it is alleged that the defence was established. As drafted the ground seems only to leave open the interpretation that the Stewards should have made a different finding. I am of the opinion that this is not the case. I am satisfied on the evidence the Stewards were entitled to come to the conclusion which they did. The onus was on Mr Beech to prove that he should be exonerated of this deeming offence. I do not consider Mr Beech discharged his onus of proof.

The second ground alleges a legal error of failing to take into account three allegedly relevant considerations. In part this ground raises issues which are addressed again in a more focused manner in other grounds relating to the way in which the Stewards conducted the inquiry. Underlying it is the sentiment that Mr Beech was denied a fair opportunity to defend himself and the Stewards mishandled the conduct of the inquiry. This criticism is taken further with the novel argument that the costs not only of the appeal but also of the inquiry should be borne by the Stewards. I can see no merit in this line of reasoning. The inquiry was not only a lengthy one in actual sitting time but also in the extended period of time over which it ran. It was a fairly complicated affair. The appellant, quite legitimately, raised a whole bevy of issues and arguments in attempting to exonerate himself. The Stewards systematically worked through them and eventually reached a point where they considered that a charge should be laid. At that point in the process nothing said or done by the Stewards indicated that they

had closed their minds but only that they had reached a conclusion that Mr Beech should be charged with an offence. It was still necessary for the offence to be proved and for Mr Beech as the accused to be given every reasonable opportunity to deal with the defence open to him under the Rule. It becomes a matter of judgment at what point in the process Stewards should crystallise matters. The judgment as to when sufficient evidence is before them to warrant laying a charge is at the discretion of the Stewards subject to them not acting contrary to law. Stewards clearly cannot act arbitrarily or capriciously and must evaluate the material before them and be satisfied that there is a prima facie case of breach of the Rule. The Stewards were entitled to conclude the investigative part of their inquiry when they did. The activities of the panel of experts was irrelevant, could not influence the ultimate outcome and was properly rejected by the Stewards. Ground two fails.

Ground 3 raises a question of bias or reasonable perception of bias. Nothing that has been presented supports an argument of bias. As to the alternative argument I have clearly indicated the actions of the panel looking into TCO_2 levels in horses are irrelevant and were properly ignored by the Stewards. In the circumstances I can see nothing untoward in the actions of the Chairman in continuing to conduct the inquiry. The Chairman did in fact respond to each of the long list of questions asked of him in relation to the blood samples. It is not usual during inquiries for Stewards to introduce evidence. Provided they maintain an open mind on the subject their actions in so doing do not taint the proceedings. I see no merit in the matters raised in (c), (d) and (e) of this ground. As to (e) the evidence was tested by counsel for Mr Beech in cross-examination. Finally I am satisfied there is nothing contained in the reasons of Owen J in *Stampalia* (supra) which assists the appellant's arguments.

The fourth ground alleges an error of law in not accepting the testing procedure for the blood sample was flawed and there was a legitimate expectation of the correct procedure being followed. Clearly there is in place a strict regime for the taking of samples, the preservation of the integrity of samples and the method involved in obtaining results. Unless the sampling quality controls at the racecourse are maintained then all participants in the industry whose livelihoods and futures are at stake, including the owners and trainers can be excused for becoming concerned as to the accuracy or reliability of the whole process. If the Association through its Stewards wishes to maintain the strong policy of

outlawing drugs it should ensure those charged with the responsibility of taking samples do so according to the laid out procedures. Otherwise the industry will fall into disrepute and there will be room for participants to cast doubt on what should be a thoroughly clinical and scientific process. Despite this I am satisfied from the facts of this case that nothing untoward actually occurred of a material nature which Mr Beech could rely upon. Earlier I concluded the departure from the guidelines did not in my opinion assist Mr Beech. The assertion in the first sentence to this ground that the Stewards failed to accept that the testing procedure was flawed is not correct. In their reasons, quoted above, the Stewards do acknowledge having questioned Dr McGregor as to *'...the clerical errors and amendments made on the manifest sheet and also that he failed to sign the manifest sheet after taking all the blood samples....'*.

The next ground to be considered, ground 6, alleges a failure to properly consider or take into account other factors which could elevate the TCO_2 levels. Nothing persuades me there is any merit in this argument. Equally the next ground dealing with failure to impound and conduct own tests lacks merit. There is no obligation on the Stewards under the Rules to accede to such a request.

As to ground 8, dealing with procedural unfairness due to limited access to legal representation and advice and experts not present, the reasons of Owen J (as agreed to by Wallwork and White JJ) in *Stampalia* (supra) are most helpful and directly on point. After dealing with the role and powers of the Stewards Owen J observes that under the Rules of Trotting (which were replaced by, but not materially changed, the Rules of Harness Racing) the statutory framework is relevant as to the right to legal representation. The Stewards are bound to observe procedural fairness (*Stampalia* paragraph 31 p16). The facts of this case, as in *Stampalia*, do not support this ground being made out. Mr Beech was given access to consult his lawyer. He presented written material prepared by his lawyers. The experts were cross-examined by Mr Hammond, the lawyer, who was fully aware of what was happening in the proceedings.

As to the alleged failure to take into account extenuating circumstances (ground 9) Rule 55A clearly requires a consideration only of the circumstances under which the offence was committed, *'that is to say, the extenuating circumstances which ...reduce the culpability attaching to the commission of the offence in such a way as to warrant the imposition of a penalty less than the minimum which should ordinarily attach*

to the offence'. (*Anderson v Racing Penalties Appeals Tribunal of Western Australia* unreported; FCt SCt of WA; Library No 970504 3 Oct 1997 Steytler J (with whom the other members of the Court agreed)). Mr Beech's explanation contained in the written submission which was read out to the Stewards (quoted above) failed to directly address this issue save for the second last paragraph and therefore would have been of little assistance to his cause. The Stewards' conclusion, quoted above, in my opinion is totally appropriate in all of the circumstances of the matter.

The ninth ground fails in my opinion. It was open to the Stewards on the evidence to conclude that the appellant had not discharged his burden of proving that he had taken *' all reasonable and proper precautions to prevent the administration'*. The second particular alleging there was no evidence of administration for the purpose of obtaining any advantage is not an extenuating circumstance as contemplated by the rule or a condition precedent to the offence being found.

For these reasons I would dismiss the appeal as to conviction.

Penalty

The final ground of appeal alleges that the penalty is manifestly excessive. In 1994 the Rules were amended to introduce minimum penalties in relation to administration and detection of drugs. Rule 55A was amended subsequently (G.G. 10/11/1998) to require a person convicted of an offence under Part 42 to a penalty of 2 years disqualification for a second offence *'unless, having regard to the extenuating circumstances under which the offence was committed, the Controlling Body or the Stewards decide otherwise'*. It is an inescapable fact that despite Mr Beech's long years in the industry without blemish, he does have one previous drug offence. This being the case the rule requires the Stewards to impose a minimum 2 year penalty without any discretion to do otherwise. None of the matters raised in Ground 10(a) to (f) can change this situation. This is harsh. This fact appears to be recognised by the controlling body which is moving to change the rules to operate retrospectively.

The Chief Executive of the Committee of the Association has written a letter to the Registrar of the Tribunal dated 28 February 2000 in the following terms:

> *'I have been instructed by the Committee to write to the Racing Penalties Appeal Tribunal to advise that the WATA Committee intends to establish*

a rule which provides for amendment to modify the retrospectivity of Rule 55A of the Rules of Harness Racing which applied prior to 1 September 1999.

As you are aware, the retrospectivity of offences in the Rule Book, which applies from 1 September 1999, takes into account offences committed on or after 21 October 1994. Under the Rules which applied prior to 1 September 1999 retrospectivity of offences was lifetime for the purposes of determining minimum mandatory penalties.

Mr Beech was found guilty of an offence by the Stewards in September 1999 and because his offence took place prior to 1 September 1999 he was charged under the old rules whereby the retrospectivity of offences was lifetime for the purposes of determining minimum mandatory penalties.

The Committee believes this to be unfair and wishes to ask RPAT to consider his appeal on the basis of the proposed new rules.

In respect of the current Steward's Inquiries for persons who have committed offences prior to 1 September 1999 the Stewards have been requested to not hand down any penalties for persons who may be affected by the change in the retrospectivity rule until such time as the change to the rules is effected.

Obviously, it is hoped that now the Racing Penalties Appeal Tribunal is aware of the Committee's intentions in this matter it may have some impact upon the RPAT determination.'

How this may be called in aid of Mr Beech I shall leave to counsel to address the Tribunal.

Costs

The question of costs, which is rarely raised before the Tribunal, needs to be dealt with due to the submissions on Mr Beech's behalf both at the conclusion of the Stewards' inquiry and at the appeal hearing. Those advising Mr Beech foreshadowed they would be seeking such costs at the end of the Stewards' inquiry as well as during the course of the appeal. No propositions were advanced to give any support to such a proposition or to demonstrate why it is potentially arguable. If it were simply raised as a tactic and driven by the notion that it may in some way put more pressure on the Stewards it is in my mind entirely misconceived. The proposition as to costs is over zealous and reflects a continuation of the somewhat misguided and unproductive onslaught which confronted the Stewards. As a consequence the Stewards have had to conduct an inquiry of monumental proportions and as senior counsel for the stewards pointed out this had implications for the role played by the Tribunal in adjudicating the appeal.

The Tribunal is a statutory tribunal created by *The Racing Penalties (Appeals) Act 1990 (WA)*. The Tribunal only has the powers and jurisdiction given to it by the Act. The Tribunal can only award costs if it is expressly authorised to do so by the Act. I do not believe it has any inherent power to do so. S17(9) of the Act deals with costs and expenses and states:

> *'Upon the determination of an appeal the Tribunal may –*
> ....
> *(e) make such other order as the member presiding may think proper including an order for the total or partial refund of any fee paid or, subject to subsection (10), an order that all or any of the costs and expenses of the Tribunal or any party to the appeal shall be paid by a specified person; and*
>
> *(f) where the payment of costs or expenses is ordered, fix the amount to be paid.*
>
> *(10) An order for the payment of costs shall not be imposed save where the member presiding is satisfied that the appeal, or the aspect of the appeal to which the order relates, was vexatious or frivolous.'*

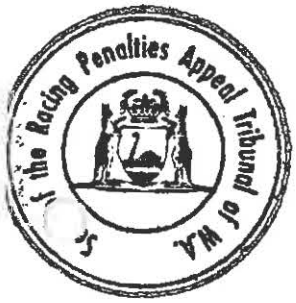
Clearly there is only a limited power to award costs once it has been demonstrated to the presiding member's satisfaction either the appeal itself is vexatious or frivolous or an aspect or aspects of the appeal meet that description. The reference to 'the appeal' is a reference to the procedure adopted or process embarked upon by the aggrieved party who challenges a determination or finding as contemplated in s13 of the Act. It is the action taken by an aggrieved party which initiates and proceeds with the conduct of an appeal before the Tribunal. An appeal shall be instituted by lodging with the Registrar written notice and the prescribed fee (s16 of the Act). The term *'appeal'* covers the totality of the actions which may be taken by an appellant in exercising statutory rights under the Act.

This offender clearly has no genuine argument in regard to costs.
Whether the Tribunal has the power, in an appropriate case, to award costs against a respondent to an appeal by virtue of the words in s13 *'...the aspect of the appeal to which the order relates'* or only to the appellant's appeal or to a component or components thereof need not be decided here and was not argued.

Conclusion

For these reasons I am satisfied that there is no merit in the appeal. The Stewards have, in the face of a difficult and trying set of circumstances, not fallen into any error which could justify the Tribunal interfering with the conviction and penalty. However, for the reasons explained earlier which are unrelated to the merits of the appeal I would invite submissions on penalty.

DAN MOSSENSON, CHAIRPERSON



APPEAL 474

DETERMINATION OF

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT:	**MICHAEL NORMAN BEECH**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)** **MR J PRIOR (MEMBER)** **MR R NASH (MEMBER)**
APPLICATION NO:	**A30/08/474**
DATES OF HEARING:	**28 OCTOBER 1999**
DATE OF DETERMINATION:	**4 APRIL 2000**

IN THE MATTER OF an appeal by Mr M N Beech against the determination by the Western Australian Trotting Association Stewards on the 14 September 1999 imposing a 2 year disqualification for breach of Rule 497(1) of the Rules of Harness Racing.

Mr S Chapman was granted leave to appear for the appellant.

Mr R J Denney appeared for the Western Australian Trotting Association Stewards.

In their published reasons the Tribunal has unanimously determined to dismiss the appeal against conviction and has invited submissions from both parties as to penalty. The explanation for seeking those submissions is set out in the Chairperson's reasons.

Today Mr S Chapman, the owner of FRANCO PARKER NZ, appeared for the appellant and Mr R Denney appeared for the Western Australian Trotting Association Stewards.

Mr Denney for the Western Australian Trotting Association Stewards now concedes that as a consequence of the recent changes to the Rules, namely Local Rule 314E, that an appropriate penalty is disqualification for 12 months in lieu of disqualification for 2 years.

Mr Chapman argues that the period of 12 months disqualification should be further reduced by the period of 6 weeks that the appellant was stood down during the Stewards' inquiry.

The Tribunal is not persuaded by the argument raised by Mr Chapman for the following reasons:

1. The matter was not argued during the course of the appeal and indeed was not raised as an issue even although the question of the appropriateness of the penalty was otherwise fully argued.

2. In the light of the reasons expressed criticising the mode or method of conduct of the appeal, it would be inappropriate in all of the circumstances for this Tribunal now to grant by way of a concession to Mr Beech a reduction of that 6 week period.

In all of those circumstances it is ordered that:

1. The appeal as to conviction is dismissed.

2. Pursuant to the provisions of new Local Rule 314E the period of disqualification be reduced to 12 months.

DAN MOSSENSON, CHAIRPERSON

Seal of the Racing Penalties Appeal Tribunal of WA

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR R NASH (MEMBER)

APPELLANT:	**MICHAEL NORMAN BEECH**
APPLICATION NO:	**A30/08/474**
DATES OF HEARING:	**28 OCTOBER 1999**
DATE OF DETERMINATION:	**4 APRIL 2000**

IN THE MATTER OF an appeal by Mr M N Beech against the determination by the Western Australian Trotting Association Stewards on the 14 September 1999 imposing a 2 year disqualification for breach of Rule 497(1) of the Rules of Harness Racing.

Ms S Lloyd, on instructions from Hammond Worthington, appeared for the appellant.

Mr R J Davies QC, assisted by Mr B Goetze, on instructions from Minter Ellison, appeared for the Western Australian Trotting Association Stewards.

I have read the draft reasons of Mr Mossenson, Chairperson. I agree with those reasons and conclusions and have nothing to add.

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

R J NASH, MEMBER

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR J PRIOR (MEMBER)

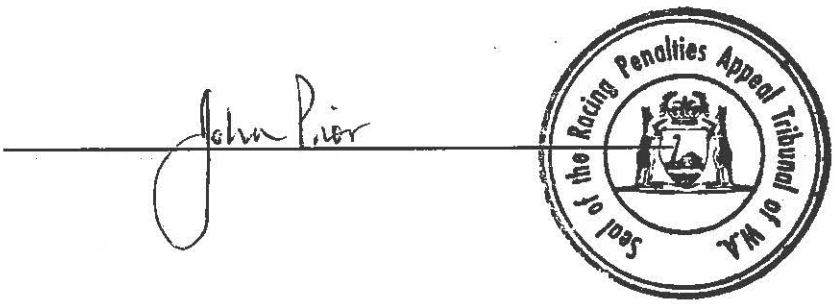
APPELLANT:	**MICHAEL NORMAN BEECH**
APPLICATION NO:	**A30/08/474**
DATES OF HEARING:	**28 OCTOBER 1999**
DATE OF DETERMINATION:	**4 APRIL 2000**

IN THE MATTER OF an appeal by Mr M N Beech against the determination by the Western Australian Trotting Association Stewards on the 14 September 1999 imposing a 2 year disqualification for breach of Rule 497(1) of the Rules of Harness Racing.

Ms S Lloyd, on instructions from Hammond Worthington, appeared for the appellant.

Mr R J Davies QC, assisted by Mr B Goetze, on instructions from Minter Ellison, appeared for the Western Australian Trotting Association Stewards.

I have read the draft reasons of Mr Mossenson, Chairperson. I agree with those reasons and conclusions and have nothing to add.



JOHN PRIOR, MEMBER