

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF
MR J PRIOR (MEMBER)

APPELLANT: GLEN DAVID RICHARDS

APPLICATION NO: A30/08/541

PANEL: MR P HOGAN (PRESIDING MEMBER)
MR J PRIOR (MEMBER)
MR W CHESNUTT (MEMBER)

DATE OF HEARING: 5 DECEMBER 2001

DATE OF DETERMINATION: 23 JANUARY 2002

IN THE MATTER OF an appeal by Glen David Richards against the determination made by the Stewards of the Western Australian Trotting Association on 31 July 2001 imposing 12 months disqualification for breach of Rule 243 of the Rules of Harness Racing.

Mr L A Margaretic appeared for the appellant.

Mr B J Goetze, instructed by Minter Ellison, appeared for the Stewards of the Western Australian Trotting Association.

As a result of a letter received from Mr W D Powell, a Registered Stablehand and Ms S R Roberts, a Registered Trainer/Driver the Stewards of the Western Australian Trotting Association opened an inquiry on 24 July 2001 into incidents alleged to have occurred during the Geraldton Pacing Club 2000/01 racing season.

That letter in its entirety is reproduced in BULL v WATA STEWARDS (Appeals 539 & 540) and will not be repeated here. The allegations against Mr Richards in respect of this charge as stated in the letter were:

"We have both been staying on course at Geraldton this season whilst racing our horses and have seen several instances that we found to be quite disturbing to us and detrimental to the trotting industry.

Between us we have seen Travis Bull & Glenn Richards using stock whips on pacers in their care on many occasions."

"We also observed Glenn Richards doing similar things to two horses in his care.

LENTARA Friday 15th June 1.15pm on the dirt track giving his horse two separate gallops whilst using stock whip on both occasions.

On race day on 17th June at 9.00am while horse was in his yard with a rogues hood on, removable plugs and rug he was struck with the stock whip as the plugs were pulled. The same horse also received the same treatment the following week on race day, Sunday 24th June."

After taking evidence from Mr Richards on 24 July 2001 in respect to the allegations stated in the letter in question, the inquiry was adjourned. The inquiry resumed on the 31 July 2001 when both Mr Powell and Ms Roberts gave evidence. At the conclusion of the hearing the Stewards charged Mr Richards with a breach of Rule 243 of the Rules of Harness Racing.

Rule 243 states:

"Behaviour Detrimental to the Industry

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

The particulars of the charge were:

"...that you behaved in a way which was detrimental to the industry by using unapproved equipment, namely, a stock whip in the training of your horses which most probably inflicted suffering to those horses and certainly caused great concern to onlookers in an area used by licensed and unlicensed person (sic)."

Mr Richards denied the charge and stated:

"For a start, it's – you're only going his word against mine. I never did it."

The appellant then made mention of other licensed persons caught with unapproved whips and the warnings they received.

After considering the evidence the Chairman announced a guilty finding in these terms:

"As I said before we've carefully considered all the evidence, and we prefer the evidence of Mr Powell in relation to the use of stock whip. We don't accept your evidence that Mr Powell or Ms Roberts, for that matter, made up their evidence on the basis of jealousy or anything else, other than reporting a possible offence against the rules which was prompted by their concerns for the welfare of the animals. Therefore we find you guilty as charged. Is there anything you wish to put to us on the matter of penalty before we decide on that?"

Included in Mr Richard's response was:

"Yeah. I've seen swish whips and I – The stock whip that is just an absolute lie. I've never ever used a stock whip; wouldn't know how to use one. Would not know what to do with it. Probably end up wrapping it around my head. And as I said, two other people have been done with this same thing, and they got warnings. So unless we're going to use me as another circumstance, then I'll probably already get 12 months like Mr Bull did, and you already have your minds made up."

I've done a lot of good for trotting. I can't believe that you've got me on a charge of being detrimental with the trotting. I've got a bloke such as George Way into trotting. All right, he's had a long history, but spent hundreds of thousands of dollars in the trotting industry. I've helped him out. I've got to where I have not through being a bludger and taking it easy, through a lot of hard work. That's how I've come to establish my name in the trotting industry, and as I said, I'm very well liked and – you know, don't get from where I get from bludging and from not doing anything. I've worked hard.

I uphold the industry, not by myself. I was here through a lot of other people. I do enjoy the industry and I do say to other people and try and get them involved. I've regularly appeared on Wes Cameron's show on a Wednesday night, and have done nothing but try to improve the industry and am always looking to improve the industry, not only for myself but for the industry as a whole."

After adjourning to consider the submissions, the Stewards announced penalty as follows:

"Mr Richards, in relation to penalty, the use of a stock whip was on a number of occasions and in full view of the fraternity and public. It was not an isolated one-off act on the spur of the moment, and your behaviour was calculated and deliberate. Your record shows that you've not previously been dealt with in similar circumstances, however, the nature of the offence is viewed most seriously by the Stewards.

It's not appropriate that you use these methods in training horses, and we feel that any penalty must not only deter you – will be a penalty to yourself and deter you from similar acts in the future, but also others. And we believe that the appropriate penalty is a 12-month disqualification..."

Mr Richards lodged a Notice of Appeal on 7 August 2001 and did not seek the suspension of operation of the penalty.

The grounds of appeal pursuant to the Notice of Appeal are:

- The Appellant was not requested to enter a plea as he was initially called as a witness to other proceedings.
- The Stewards erred in concluding the Appellant was guilty based on the evidence presented at the Inquiry.
- The suspension imposed was manifestly excessive when considering the Appellant's record and the nature of the charge.

Appeal as to Conviction

No submissions were made in respect of the first ground on the hearing of this appeal. I am satisfied that Mr Richards understood the charge and that the inquiry proceeded on the basis that the charge was defended after he denied the charge as stated.

Mr Margaretic, counsel for the appellant, submits that:

1. That it was not possible for LENTARA to be struck with a stock whip in the manner alleged given the confines of the yard (photographs of the stables and yards were tendered as an exhibit at the appeal hearing); and
2. That Mr Powell was the only eyewitness to the alleged incidents.

As to the first point of the submission, the Stewards had the benefit of hearing first hand accounts from Mr Powell, Ms Roberts and Mr Richards. They preferred the evidence of Mr Powell and Ms Roberts.

During the inquiry the following exchange took place:

POWELL: *On the track I seen – I was within about 80 to a hundred metres away when I saw the horse getting shook up and with the whip cracked about it. And then the first incidence – or both incidents on the – in the stable area with the hood and the rug on, I was no more than, say, 7 to 8 metres away. And it was the – as Sue described, the whishing noise of the whip going through the air and making contact to the horse and then the horse leaping into the corner of the yard as it's happened.*

CHAIRMAN: *And on each occasion it was a stock whip that was used?*

POWELL: *Definitely a stock whip.*

CHAIRMAN: *Because at the – Mr Bull's inquiry, we saw a modified swish whip. It wasn't that, it was definitely a stock whip?*

POWELL: *Definitely a stock whip, when I was in the yards – 500 per cent sure.*

CHAIRMAN: *And there's no doubt in your mind that it was Mr Richards?*

POWELL: *It was Mr Richards behind the horse, yeah.*

And further on in the inquiry:

CHAIRMAN: *Right, but you has a – in your mind a clear view of Mr Richards striking the horse?*

POWELL: *Oh definitely. I – I was probably no further away from the horse's head than I am to you.*

CHAIRMAN: *And there's no doubt in your mind that the stock whip was striking the horse?*

POWELL: *No doubt whatsoever. The noise of it – there was other people there, and one woman just shunned (sic) and turned away as it was happening.*

I am not satisfied that it has been demonstrated the Stewards were in error in accepting the evidence of Mr Powell and Ms Roberts. I am not persuaded by the submissions made by counsel for the appellant that the alleged incidents could not have occurred in the yard.

As to the second submission, it is correct that Mr Powell was the only eyewitness to all the alleged incidents. Ms Roberts gave evidence only that she heard LENTARA being struck with a stock whip. Again the Stewards had the benefit of hearing first hand accounts from these witnesses.

Ms Roberts stated at the inquiry: *"Like the noise of the horse getting with the whip, like a slapping noise when it hits the side of the horse. And that's what I heard."*

The Stewards as judges at first instance were at liberty to find in favour of the credibility of the witness Mr Powell over the appellant. To some extent Ms Roberts' evidence corroborated Mr Powell's evidence.

I am not persuaded by the submissions made on behalf of the appellant that the Stewards were in error in finding Mr Richards guilty of the charge.

For these reasons I would dismiss the appeal against conviction.

Appeal as to Penalty

Many of the comments I have made in respect of the BULL appeals in relation to his appeal against penalty are applicable here.

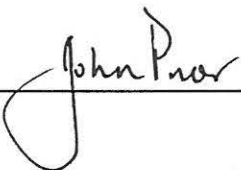
Testimonials were provided in support of Mr Richards. Also provided was a Race Book showing Mr Richards as the leading driver in Geraldton for the 2000/01 season.

The penalty imposed by the Stewards reflects the gravity of the conduct by Mr Richards. The training of horses by "fear" methods cannot be condoned or tolerated. Penalties which provide general deterrence are therefore required. The testimonials presented are not of much assistance in that the antecedents of the offender for this type of offence must be weighed against the serious facts of this offence. The fact that Mr Richards was the leading Geraldton Driver also is not of much assistance given that the training methods employed by both him and Mr Bull may have given him the edge over other participants. The appellant has shown no remorse and relies on the fact that other trainers found in possession of swish whips have not been charged with any offence. There can be no discount in the penalty for remorse as the charge was denied.

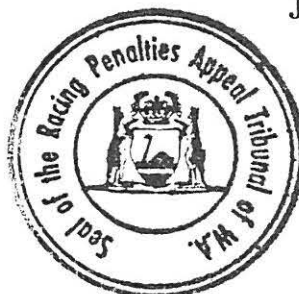
These incidents, in my opinion, whilst similar to those of Mr Bull are not as serious. Whereas Mr Bull embarked on an extended mission of training his horses with two types of unapproved whips on various horses, Mr Richards' conduct was confined to one horse on two occasions within a 10 day period with one type of unapproved whip.

Questions of parity therefore arise when considering the penalty imposed on Mr Bull for breach of this rule compared to the circumstances in which this appellant breached the same rule. (see GRIFFITHS v R (1977) 137 CLR 293 at 326) As the appellant received the same penalty as Mr Bull I consider the appellant has a justifiable sense of grievance as to the penalty imposed on him by the Stewards.

For these reasons I believe that the penalty imposed by the Stewards was excessive in the circumstances. I would uphold the appeal against penalty and substitute a period of disqualification of 6 months in lieu of the 12 months disqualification imposed by the Stewards.



JOHN PRIOR, MEMBER



THE RACING PENALTIES APPEAL TRIBUNAL

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APPELLANT:

GLEN DAVID RICHARDS

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Mr L A Margaretic appeared for the appellant.

Mr B J Goetze, instructed by Minter Ellison, appeared for the Stewards of the Western Australian Trotting Association.

I have read the draft reasons of Mr J Prior, Member.

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

P. Hogan

PATRICK HOGAN, PRESIDING MEMBER



THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF
MR W CHESNUTT (MEMBER)

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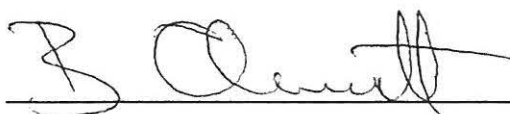
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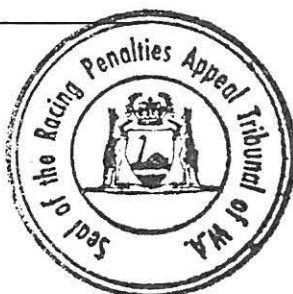
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I have read the draft reasons of Mr J Prior, Member.

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



WILLIAM CHESNUTT, MEMBER



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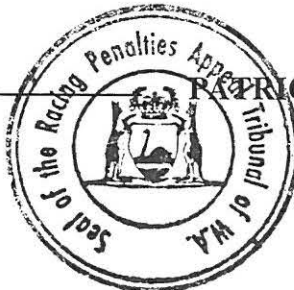
Mr L A Margaretic appeared for the appellant.

Mr B J Goetze, instructed by Minter Ellison, appeared for the Stewards of the Western Australian Trotting Association.

This is a unanimous decision of the Tribunal.

For the reasons published the appeal against conviction is dismissed and the appeal against penalty is upheld. The period of disqualification is varied to 6 months.

P J Hogan



PATRICK HOGAN, PRESIDING MEMBER