

DETERMINATION AND REASONS FOR DETERMINATION OF

THE RACING PENALTIES APPEAL TRIBUNAL

APPLICANT: RICKY JAMES FARRELL
APPLICATION NO: A30/08/573
PANEL: MR J PRIOR (PRESIDING MEMBER)
DATE OF HEARING: 9 JULY 2002
DATE OF DETERMINATION: 9 AUGUST 2002

IN THE MATTER OF an application for leave to appeal by Ricky James Farrell against the determination made by the Committee of the Western Australian Turf Club on 14 May 2002 refusing the application for a Jockey's Licence and a Trackwork Rider's Licence.

Mr R Grayden, instructed by Hammond Worthington, appeared for the applicant.

Mr R J Davies QC appeared for the Committee of the Western Australian Turf Club.

This is an application for leave to appeal made pursuant to section 13(1)(d) of the *Racing Penalties (Appeals) Act* against a decision of the Committee of the Western Australian Turf Club ("the Committee") which refused the application for a Jockey's Licence and a Trackwork Rider's Licence.

Background

The Applicant commenced as an apprentice jockey in 1993 and started riding in 1994. On 25 August 1999 Mr Farrell suffered serious head injuries as a result of a fall during a mid-week race meeting at Belmont Park. He sustained a sensory neural hearing loss. Medical treatment to rectify the hearing loss included a cochlear implant in situ on 22 March 2000.

Following rehabilitation the Applicant rode trackwork for the majority of 2001. At all times his progress was monitored by the Committee of the Western Australian Turf Club per the medium of extensive medical reports. On 20 November 2001 the Committee resolved that in view of Mr Farrell's medical condition he not be granted a Jockey's Licence and for the same reason, he discontinue track work.

Subsequently, Mr Farrell underwent further hearing tests at the request of the Western Australian Turf Club. Following the results of those tests, the Committee on 14 May 2002 resolved that, in view of the risks associated with Mr Farrell's hearing impairment, he not be granted either a Jockey's Licence or a Trackwork Rider's Licence.

It is against that decision that this application is now brought.

Grounds of Appeal

The amended grounds for the application are as follows:

1. The Committee erred in fact in determining that on the basis of medical evidence available the Applicant should be refused a jockey's licence and a trackwork licence on medical grounds.
2. The Committee erred in law in denying the Applicant natural justice in that:
 - (i) the Applicant and/or his representatives were denied the opportunity to be heard at the Committee hearing;
 - (ii) The decision of the Committee was unreasonable on the face of the evidence available; and
 - (iii) The decision of the Committee was attended by reasonable bias on the part of the Chief Executive Officer of the Turf Club.

Reasons for Decision

I have had the benefit of reading the papers that were presented to me in the file as well as some additional material that was tendered from the bar table. I have heard submissions from both Counsel.

Ground 1

At the hearing of this application I received into evidence an Affidavit sworn by the Applicant on 8 July 2002 which now is exhibit 1 in these proceedings. Included in the annexures to this Affidavit are a number of medical reports and workers compensation progress medical certificates relating to the Applicant. My inspection of the materials that were provided to me for the hearing of this application reveals that all that material was also before the Committee when they made their consideration of the application by the Applicant. In addition to this there was also before the Committee two medical reports of Audiologist Peta Monley dated 7 February 2002 and 26 April 2002. These reports were obtained from the Audiologist at the request of the Committee, as they were concerned as to the safety and insurance implications for the Applicant if the Applicant was granted a jockey's and track work rider's licence. Copies of the reports were provided to the Applicant's Counsel at the hearing of this application.

In the report of the Audiologist Ms Monley dated 26 April 2002, she advises that she is unable to be completely certain of the Applicant's safety in relation to the Applicant's hearing ability and recommends that a trial race be arranged for the Applicant to demonstrate his ability to hear in a race like situation. She acknowledges from the extensive tests she carried out on the Applicant that the Applicant is not able to easily localise sounds using his hearing alone but is intelligent enough to use other cues to assist him. The Audiologist's comments are consistent with a number of medical reports which were before the Committee where the medical practitioners generally suggested that they were not able to provide a definitive answer as to whether the Applicant's residual injuries and treatment he had received for them were such that there would be a risk for the Applicant to engage in race riding or track work riding.

Senior Counsel for the Committee has submitted with respect to the suggestion that a trial race be carried out so the Applicant could demonstrate his ability to race in a real life situation, that this is something that could never effectively be carried out to replicate a race as it is always will be an artificial measurement.

In considering all the medical evidence, which was before the Committee, I am unable to find that the Committee erred in fact in determining that on the basis of the medical evidence available the Applicant should be refused a jockey's and trackwork rider's licence on medical grounds. In this respect I also consider it is appropriate to give some weight to the fact that the Committee are the

elected representatives of the industry and therefore in considering issues such as the issue of licences their experience in the industry must be taken into account. For me to allow this ground of appeal I am being asked to substitute my opinion to that of the Committee's opinion. As previously stated there was evidence before the Committee which gave rise to concerns for them as to the safety of persons involved in the industry if the Applicant was granted the licences sought. In my view the safety of riders and horses is a paramount consideration for the Committee to take into account in considering applications for jockey's and trackwork rider's licences, therefore it is not surprising that if there are any doubts as to safety issues the Committee may err on the side of caution and refuse to issue the licence which is applied for.

Ground 2(i)

There is no dispute that the Applicant and or his representatives were not given the opportunity to be heard at the Committee hearing. Both the Western Australian Local Rules and the Australian Rules of Racing do not give the Applicant the right to be heard at a Committee hearing such as that which was convened to consider his applications. Western Australian Local Rules 43 and 44 give the Committee strict and broad powers as to licences to ride, including the right to refuse to grant any licence without giving any reasons. As previously stated in this jurisdiction and in the Supreme Court of Western Australia people who participate in the industry are bound by the rules. There are exceptional circumstances where notwithstanding that there is no direct right under the rules of the relevant racing industry natural justice will require the opportunity for the relevant party to be heard by the relevant body in respect to its application or the inquiry. I am not satisfied that there is anything within the facts of this matter which would give rise to that right arising to the Applicant. The decision made by the Committee was based only on the medical evidence which was before it. The medical evidence was extensive but clearly gave rise to the reservations referred to above as to whether there was any safety risk with the Applicant carrying out the duties of track work or race riding. Given the comprehensive nature of the medical reports and given the fact further clarification was requested and obtained in relation to the Audiologist report of Ms P Monley, even if there was a right for the Applicant to address the Committee under the rules of natural justice it is difficult to see what matters could have been raised which were not apparent to the Committee from the various medical information they had received.

Ground 2(ii)

For the same reasons I have set out in relation to ground 1 I can see no merit in this ground.

Ground 2(iii)

I can see no merit in this ground.

The Chief Executive Officer is not part of the Western Australian Turf Club Committee. The decision that leave is sought to appeal against is a decision of that Committee. Nothing has been shown to me that the Chief Executive Officer participated or improperly influenced the Committee in coming to its relevant decision. This ground of appeal was effectively conceded for these reasons at the hearing of this application.

Conclusion

I am not persuaded in all of the circumstances of the matter that it is appropriate to grant leave to appeal. I am satisfied that the information before me does not reflect anything to suggest that the Committee has fallen into error in arriving at its decision. The factual material supports the appropriateness of the Committee's decision.

For these reasons leave to appeal is refused.

The efforts that the Applicant has taken following the significant injuries he sustained on 25 August 1999 to rehabilitate himself in order to try and return to the industry working as a rider can only be admired. The Committee was prepared to assist in this rehabilitation by allowing the Applicant to ride track work in 2001. This concession was made on the basis that they were waiting to obtain

medical evidence to confirm the safety and insurance implications if the Applicant continued to ride either as a track work rider or was granted a full jockey's licence to allow him to ride in races. It is unfortunate that the medical evidence remains equivocal as to the question of the safety of this Applicant to ride despite his valiant attempt to rehabilitate himself. As I have stated previously the Committee who represent the industry are required to give the safety of all persons and animals participating in the industry their paramount consideration.

John Prior

JOHN PRIOR, PRESIDING MEMBER

