APPEAL – 635

THE RACING PENALTIES APPEAL TRIBUNAL

JOINT REASONS FOR DETERMINATION OF MR R J NASH (MEMBER) AND MS K FARLEY (MEMBER)

APPELLANT:	**LINDSAY BRETT HARPER**
APPLICATION NO:	**A30/08/635**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)** **MS K FARLEY (MEMBER)** **MR R J NASH (MEMBER)**
DATES OF HEARING:	**27 & 28 SEPTEMBER 2005**
DATE OF DETERMINATION:	**10 FEBRUARY 2006**

IN THE MATTER OF an appeal by Lindsay Brett Harper against the determinations made by the Racing and Wagering Western Australian Stewards of Harness Racing on 5 May 2005 imposing seven years disqualification for breach of Rule 231 and five years disqualification for breach of Rule 243 of the Rules of Harness Racing, the penalties to be served concurrently.

Mr D Sheales appeared for the Appellant.

Mr R J Davies QC appeared for the Racing and Wagering Western Australia Stewards of Harness Racing.

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1. We have had the opportunity of reading a draft of the determination of the learned Chairperson with which we respectfully agree save to the extent stated in the paragraphs below. Since the facts of the case are satisfactorily set out in the Chairperson's reasons we will not repeat them.

2. Adrian Taylor, who can be described as the complainant in relation to the allegations made against the Appellant, was a person who the Stewards found to be a credible witness in respect of his allegations that the Appellant had assaulted him in the company of others (Stewards' Transcript - 236), which incident was the basis of both charges. The Stewards accepted Taylor's evidence that the Appellant had actively participated in the assault by kicking him repeatedly (ST - 237).

3. The Stewards in their reasons for decision relied on their finding that the Appellant had repeatedly kicked Mr Taylor as the basis of their finding him guilty of assault contrary to Rule 231, for which the Appellant received a 7 year disqualification. The acceptance of Mr Taylor's testimony was clearly critical to the Stewards' findings in respect of both charges.

4. At the hearing of the Appeal, the Appellant was given leave to call additional evidence, being evidence from Detective Sergeant Marshall ("DS Marshall"). DS Marshall gave evidence that he, in his capacity as a Police detective, interviewed Mr Taylor in relation to the alleged assault incident. He said "they" could not be not satisfied that Mr Taylor was a credible witness because his version of events about the assault kept changing. In particular, he said at the bottom of page 51 of the Tribunal Hearing:

"[Taylor] told us that Harper, he was only going to concede, wanted to concede, that Harper was present. But by the same token he denied his involvement in the physical aspect ....., but certainly there was no denial that Harper was present".

5. In our view, the evidence of DS Marshall was such that we cannot be satisfied that it would not have altered the view the Stewards took of the credibility of Mr Taylor in light of their acceptance of Mr Taylor's evidence that the Appellant had assaulted him by kicking him repeatedly. Having said that, we should not be taken to be expressing the view that the further evidence of DS Marshall should alter the findings made by the Stewards of the credibility of Mr Taylor. We have not seen Mr Taylor give evidence nor have we heard his response or explanations in respect of DS Marshall's evidence.

6. The Stewards were not privy to the fact that Mr Taylor had given Police numerous different and inconsistent versions of the incident that evening. In particular, the Stewards were not aware of the fact that Mr Taylor had denied that the Appellant was involved physically in the attack (albeit he was consistent about Appellant the being present).

7. In our view the matter needs to go back to the Stewards to reconsider their findings in the light of the additional evidence of DS Marshall. We anticipate the Stewards will need to hear oral evidence from DS Marshall and that Mr Taylor would need to be recalled to be questioned in relation to the matters the subject of DS Marshall's evidence.

8. Upon hearing further evidence, if the Stewards were to find that the Appellant did not physically assault Mr Taylor but was present during the assault and in some way aided, abetted, counselled or procured others to assault Mr Taylor, then that may not alter the characterisation of his conduct as behaviour which is detrimental to the industry contrary to Rule 243. That is a matter for the Stewards to reconsider in the light of the additional evidence and their findings as to what role or part was played by Mr Harper, if any.

9. In our view ground 5 of the Grounds of Appeal is made out. The Appeal against conviction in respect of both charges should accordingly be upheld and the matter should be referred back to the Stewards for rehearing.

ROBERT NASH, MEMBER

KAREN FARLEY, MEMBER

Seal of the Racing Penalties Appeal Tribunal of WA

APPEAL - 635

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR D MOSSENSON (CHAIRPERSON)

APPELLANT:	**LINDSAY BRETT HARPER**
APPLICATION NO:	**A30/08/635**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)** **MS K FARLEY (MEMBER)** **MR R J NASH (MEMBER)**
DATES OF HEARING:	**27 & 28 SEPTEMBER 2005**
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IN THE MATTER OF an appeal by Lindsay Brett Harper against the determinations made by the Racing and Wagering Western Australia Stewards of Harness Racing on 5 May 2005 imposing seven years disqualification for breach of Rule 231 and five years disqualification for breach of Rule 243 of the Rules of Harness Racing, the penalties to be served concurrently.

Mr D Sheales appeared for the Appellant.

Mr R J Davies QC appeared for the Racing and Wagering Western Australia Stewards of Harness Racing.

This is an appeal by trainer/driver Mr Lindsay Harper against two separate convictions, one for assault and the other behaving detrimentally to the industry, as well as the respective penalties of 7 and 5 years disqualification imposed by the Racing and Wagering Western Australia (RWWA) Stewards of Harness Racing. Both matters arise out of the same set of circumstances. The penalties were ordered to be served concurrently.

Background

On 22 January 2004 the Stewards opened an inquiry into a report received from Racecourse Investigator, Mr P O'Reilly, into an alleged incident said to have occurred on 29 December 2003 between Mr Harper and farrier Mr Adrian Taylor. Early in the inquiry Mr O'Reilly played a video of his interview of Mr Taylor. Mr Taylor also gave evidence in person at the Stewards' inquiry. He alleged that Mr Harper with some accomplices assaulted him at Mr Harper's training establishment. Mr Taylor said that this was in connection with a burglary at Mr Harper's residence which resulted in $70,000 cash having been taken from Mr Harper's safe. Mr Harper was not represented at the original hearing before the Stewards, but, acting on legal advice, declined to give evidence. At the conclusion of these proceedings the Stewards, acting pursuant to the powers of Rule 183 of the Rules of Harness Racing, stood Mr Harper down from driving in any harness race and refused the nomination of any horse trained or part owned by him.

At the resumption of the inquiry on 1 April 2004 the Stewards allowed Mr D Sheales, a barrister, to represent Mr Harper. Mr Harper again declined on legal advice to respond to questions from the Stewards relating to the events of 29 December 2003. At the conclusion of the resumption proceedings Mr Harper was charged with an offence under Rule 231(1) which states:

> ***'231. Assault and interference***
>
> *(1) A person shall not assault, abuse or otherwise interfere improperly with anyone employed, engaged or participating in the harness racing industry or otherwise having a connection with it.'*

The specifics of the charge were:

> *'You are charged under that rule for assaulting farrier Adrian Taylor on the evening of the 29th of December 2003 at your residence at 38 Gosnells Road East, Martin.'* (page 157 of the Stewards' transcript (ST).)

Mr Harper was also charged with a breach of Rule 243 which is in these terms:

> ***'243. 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 specifics of this second charge were:

> *'... that while your conduct towards farrier Adrian Taylor on the evening of the 29th of December 2003, that conduct being threatening and intimidating, you behaved in a way which is detrimental to the industry.'* (ST 157-8.)

Mr Harper pleaded not guilty to both charges. The Stewards refused an application by Mr Harper's counsel to have the suspension lifted. The inquiry was then adjourned.

Court of Appeal proceedings

By notice of originating motion dated 23 April 2004, Mr Harper applied to the Supreme Court of Western Australia for prerogative relief. Four substantive orders were sought namely:

1 An order *nisi* for the issue of a writ of *certiorari* to quash the decision of the Stewards made on 1 April 2004 to the effect that they had jurisdiction to continue the inquiry commenced by them on 22 January 2004.

2 An order *nisi* for a writ of prohibition prohibiting the Stewards from continuing their inquiry, on the ground that they lacked jurisdiction to do so.

3 An order *nisi* for the issue of a writ of *certiorari* to quash the decision of the Stewards made on 1 April 2004 refusing Mr Harper's application for the lifting of his suspension.

4 An order staying the suspension pending determination of Mr Harper's application by the Full Court.

The matter was heard by the primary Judge on 23 April 2004. No notice of the application was given to the Stewards, the Western Australian Trotting Association (WATA) or Racing and Wagering Western Australia (RWWA). Orders were made in the terms sought save that the orders *nisi* were made returnable before a single Judge of the Court in lieu of the Full Court.

By notice of motion dated 14 May 2004 the Stewards, the WATA and RWWA sought leave to appeal against the orders of the primary Judge. Two grounds of appeal were advanced. Firstly, that the orders *nisi* should have been made returnable before the Full Court, given the important issues which they raised. Secondly, that the order granting a stay of proceedings of Mr Harper's suspension had not been justified as there were no special circumstances, the stay had unnecessarily interfered with the ability of the Stewards to control the participation of licensed persons in the harness racing industry and Mr Harper's application for prerogative relief had very little prospect of success. On 2 June 2004 the primary Judge ordered that the application for leave be heard together with the appeal and the order *nisi* to show cause by the Full Court constituted by three Judges.

The Court of Appeal heard the return of the orders *nisi* and the application for leave to appeal on 10 March 2005. At the conclusion of the hearing the Court unanimously ordered that leave to appeal should be granted in respect of ground 2, that the appeal on that ground be allowed and that the order of the primary Judge imposing the stay should be quashed. The Court reserved its decision with respect to the return of the orders *nisi* and the balance of the appeal. The Court delivered its unanimous judgment on 15 April 2005. (*John Zucal, RWWA Chairman of Stewards & Ors v Harper* [2005] WASCA 76.) The Court determined that the Stewards had the jurisdiction to embark upon and to continue their inquiries. The Stewards had jurisdiction to hear the charges laid under Rules 243 and 231. The orders *nisi* were discharged.

Resumption of Stewards' inquiry

As a consequence on 27 April 2005 the Stewards' inquiry resumed. At the outset Mr Harper agreed that he would answer questions in relation to the allegations. After extensive evidence was taken the inquiry was adjourned to consider the charges. On 5 May 2005 the Chairman of Stewards announced their findings. The findings are lengthy and thoroughly address the complicated factual matters involved, the conflicts in the evidence and the complex issues for determination. For ease of reference later I have added letters to each of the paragraphs of the findings on conviction. This is what the Stewards found:

(a) *'The Stewards have considered both charges. By way summary the following is a chronological report of events.*

1) 22nd January 2004, the inquiry commenced into a report received from the Principal Investigator Mr P. O'Reilly of an alleged incident between licensed harness trainer/driver Mr Lindsay Harper and farrier Mr Adrian Taylor.

2) 1 April 2004, Mr Harper was charged on two counts under the Rules of Harness Racing with assault and behaviour detrimental to the Industry. Mr Harper was effectively stood-down until the completion of the inquiry.

3) 23rd of April 2004, Mr Harper's lawyers obtained an order nisi on the grounds that the Stewards' jurisdiction to hear this matter and a Stay of the Stewards' decision to stand down Mr Harper.

4) 10 March 2005, the Court concluded that the Stay should not have been granted and the Stewards' decision reinstated. Decision reserved re Stewards' jurisdiction.

1) 15th of April 2005, the Court concluded that the Stewards had jurisdiction to hear charges.

2) 27th of April 2005, inquiry resumed.

3) 5 May 2005, Stewards' hearings announced.

(b) *Mr Sheales, Barrister, was granted permission on the 1st of April 2004 to appear with Mr Harper before the Stewards and speak on his behalf and he then attended subsequent Stewards' hearings. The Stewards have considered all the evidence placed before them consisting of:*

1) The total evidence in general.

2) Principal Investigator, Mr P. O'Reilly's report and the video interview of Adrian Taylor.

3) The evidence of Mr Lindsay Harper.

4) The evidence of Mr Adrian Taylor.

5) The evidence of Bob Taylor.

6) The evidence of Mrs Pat Taylor.

7) The evidence of Miss Jodie Hollows.

8) The evidence of Mr Darryl Hallows.

9) The evidence of Mr Ray Hoffman.

10) The evidence of Mr Drew Taylor.

11) The submissions of Barrister, Mr D. Sheales.

In addition there have been eighteen (sic) exhibits entered into evidence.

Briginshaw standard.

(c) *Matters appearing before the Stewards are determined on the balance of probabilities as required in the Briganshaw (sic) standard. The Stewards' understanding of the Briganshaw (sic) principle is as follows: The standard of proof always remains as the proof on the balance of probabilities but when important matters of serious consequence to a person fall to be determined, a greater degree of clarity of evidence and satisfaction with that evidence is required before serious findings are to be made. Importantly, the Stewards, in considering serious findings, should act with care and caution and should consider whether on the state of the evidence it is prudent to make such a finding. The Stewards have applied that standard to this matter.*

Charge 1: Assault of Farrier Adrian Taylor

After inquiry the Stewards on 1st April 2004 charged Mr Harper as follows: Mr Harper, at this stage of the inquiry, the Stewards believe that you have a charge to answer in Australian Rules of Harness Racing 231 which states: 231 Assault and Interference part 1: A person shall not assault, abuse or otherwise interfere improperly with anybody, with anyone employed, engaged or participating in the harness racing industry or otherwise having a connection with it. You are charged under that Rule with assaulting Farrier Adrian Taylor on the evening of he 29th of December 2003 at your residence at 38 Gosnells Road, East Martin. Page 157, point 2 of the Stewards' transcript: Mr Harper understood the charge and pleaded not guilty to the charge.

The determination:

(d) *At the outset the Stewards' wish to advise that whilst the determination of each charge laid against Mr Harper was given its own consideration, in the final analysis, it became apparent that certain findings of fact made in the course of each determination were equally applicable to each charge and therefore the findings of fact made in the course of each determination were equally applicable to each charge and therefore the findings of fact made which follow, have equal significance in the determination of the second charge and are therefore not repeated. A newspaper article appearing on the front page of the West Australian newspaper on the 17th of January 2004 initiated this inquiry. The Principal Investigator, Mr Phil O'Reilly was requested by the Stewards to conduct inquiries into the alleged incident. He interviewed farrier Adrian Taylor, Mrs Pat Taylor and Mr Bob Taylor. Adrian Taylor gave a video interview which has been replayed at the Stewards' inquiry. Adrian Taylor was present at the Stewards' hearings, made statements, answered questions and was submitted to rigorous cross-examine (sic) on more than one occasion by counsel for Mr Harper. His testimony remained unshaken in that he was beaten severely by Mr Harper and others at Mr Harper's house. Mr Taylor believes that this was a reprisal beating done at the behest and organisation of Mr Harper as he believed that he, Taylor, had stolen a sum of money, 70,000 dollars from his safe. Adrian Taylor and Lindsay Harper have been acquain, acquaintances for a number of years. Over the two last years, sorry, over the last two years, Mr Taylor maintains that they had become good mates. Page 5.1 of the Stewards' transcript, "and were joined at the hip", video interview. Apart from his farrier work, Adrian Taylor had worked as a part-time gardener for Harper and was paid for his services. On the 19th of December 2003, Mr Harper's safe was robbed. 70,000 dollars in cash was stolen. Mr Harper admitted to contacting Taylor on the night of the robbery, instructing Taylor to attend his residence. This was consistent with what Taylor had earlier stated. Harper also confirmed that he later advised the police that he suspected Adrian Taylor of committing the robbery. At page 107.2 of the Stewards' transcript, Mr Harper states: "I said the only person I've had a dispute with in the last month and only person I know who would be capable of this sort [of] thing would be Adrian Taylor". At page 108.3 Harper states: "I thought there was a fair chance that he did it". Harper and Taylor continued to communicate from 19th to the 29th of December 2003. Adrian Taylor said that*

on one occasion after the robbery and prior to the bashing on the 29th of December 2003, Harper rang and instructed him to go to his place, Harper's place. When arriving at Harper's residence, Harper and persons unknown were playing pool. According to Taylor, he was stripped searched as they believed he was wearing a wire. Taylor was extremely upset at this and told his parents. Mr and Mrs Taylor's evidence supported Adrian Taylor's evidence on this point. After hearing this, Bob Taylor rang Mr Harper telling him to leave his son alone. At page 22.7 of the Stewards' transcript, Bob Taylor stated: "No, he is a mutual friend. After, when Adrian told me about his first episode about him stripping him off and searching for a wire and that, this is the first time I'd ever seen Lindsay Harper, I rang him up and I said Lindsay, for God's sake man, like Adrian didn't take your money and just back off, mate. I said I've trained for a well known committeeman and this has gone a bit stupid and he said don't talk to me over the phone, if you want to see me come round here. That's the only contact I've ever had with him". This conversation was confirmed by Harper when he stated at page 108.7 of the Stewards' transcript: "I wasn't sure if [it] was Bob Taylor that rang me or not, but yes a man". Chairman: "You got a call from a man purporting to be Bob Taylor?" Harper: "That's correct". Mr Sheales has referred to the Stewards to Mr Taylor's negative police record, his general unsavoury conduct and alleged drug use. Points recognised and accepted to varying degrees by Taylor. Clearly by any common assessment, antecedents not found in model citizens.

(e) *As a result of his personal history, Mr Sheales invites the Stewards to find Mr Taylor as an unreliable, untrustworthy witness whose evidence should be found to be of similar quality. Whilst recognising these points, Mr Taylor's personal antecedents do not of themselves make it inevitable that his evidence should be found to be unreliable or lacking in voracity, voracity (sic) particularly if otherwise supported by corroborating evidence.*

(f) *As a statement of fact at the initial, initial hearing on the 22nd January 2004, Mr Harper refused to answer specific questions in regard to the alleged assault. He informed the Stewards that he had been advised by counsel not to answer questions in relation to the alleged assault. He did, however, he did state, however that he did not assault Mr Taylor but did not elaborate or answer any questions of what happened on the evening on the 29 December 2003. At the resumption of the inquiry on the 1st of April 2004, Barrister Mr Sheales represented Mr Harper. Adrian Taylor, Bob Taylor and Patricia Taylor gave evidence in person and were quite appropriately vigorously cross-examined by Mr Sheales. Their accounts of events leading up to and of the 29th of December 2003 remain consistent with their original evidence. Whilst the evidence against Mr Harper was fully tested by counsel, it remained unwavering. For his part, Mr Harper again refused to answer specific questions in relation to the incident which occurred on the 29th of December 2003. On this point, Mr Sheales advised the Stewards as follows: "I've advised my client that in relation to the night itself, he's happy to answer any other questions, he should exercise his right against self-incrimination", page 102.5 of the Stewards' transcript. The Stewards advised Mr Harper of his obligation under the Rules of Harness Racing to answer questions and asked Harper a specific question about the incident. Harper continued to refuse to answer questions.*

(g) *As a result, the inquiry was adjourned and was followed by various legal proceedings in other jurisdictions which included an unsuccessful attempt at prerogative relief. The Stewards' inquiry resumed on the 27th April 2005 after a break of about twelve months and a number of court appearances. In Justice Steytler's written reasons in relation to jurisdiction he clearly enunciated that under the now Racing and Wagering Western Australia Rules of Racing and under the RWWA Act, there was a clear obligation for a licensed person to attend and answer questions when requested by the Stewards to do so. At the resumption of the Stewards' inquiry on the 27th May 2005 (sic), Mr Harper abandoned without challenge on his own volition his previous claims of right against self-crimination and proceeded to answer specific questions in relation to the evening of the 29th of December 2003. His version of events was essentially that Harper had come to his, sorry, his version of events was that Taylor had come*

to his place on the 29th of December 2003 already badly beaten and Harper had rendered first aid to him. He, Harper, had gone upstairs to get a cigarette and at that time Mrs Pat Taylor had arrived and he, Harper, had been the person that Mrs Taylor had seen at the upstairs window. He did not deny the conversation with Mrs Taylor or the content of it, as reported by Mrs Taylor. He stated that Adrian Taylor had told Harper to tell his mother he was not there and had gone for a ride with other unknown persons. This evidence is in stark contrast to that of Adrian Taylor.

(h) *Mr Drew Taylor, brother of Adrian Taylor, was called to give evidence late in the inquiry on the 27th of April 2005. Mr Drew Taylor is an ex-jockey and a warned-off person for being involved in the nobbling of a horse in 1990. He lives with his mother and father. He was called after Mr Harper gave evidence. The Stewards rang the residence of Mr Bob Taylor and requested of Bob Taylor that Drew attend the inquiry. Drew Taylor attended, then attended the Stewards' hearing forthwith. He was not prepared or forewarned to appear before the Stewards and on arrival at the WATC offices proceeded directly to the inquiry room and gave evidence in the absence of his brother Adrian. Drew Taylor gave evidence that he was with his brother at a girl's place called Debbie, when Adrian received a phone call from Harper to attend his place. Adrian drove him to close proximity of Harper's place, about a kilometre, and then Adrian drove alone to Harper's residence. Drew Taylor then walked back to Debbie's place. Drew Taylor confirmed that Adrian Taylor was fit and well and not suffering any injury. The next time he saw him he was a mess. The evidence of Drew Taylor is consistent with Adrian Taylor at the initial hearing on the 22nd of January 2004. Adrian Taylor at point, at page 7.1 stated: "Yes, actually I had my brother with me who I'd dropped off down the corner". Whilst well aware of the current status and personal antecedents of Drew Taylor, the Stewards do not find his evidence in this regard to be lacking in either conviction or voracity (sic).*

(i) *Miss Jodie Hallows and Mr Darryl Hallows gave evidence in person. Miss Hallows is Mr Harper's partner. Essentially the thrust of their evidence was that Jodie Hallows was not at Harp, Mr Harper's evidence on the 29th of December 2003. The most significant aspect of this assertion would be to suggest that Mrs Taylor was wrong in her evidence when she stated that on the night, night of the 29th of December 2003, when she arrived at Harper's place, she saw a female figure at an upstairs window and assumed that it was Harper's girlfriend, Miss Hallows. The Stewards see this of little significance even if it were the case. Whether it was Miss Hallows, Mr Harper or other person at the window, is of little moment in the overall scheme of things. Apart from Mr Harper telling Miss Hallows that he did not assault Taylor, Miss Hallows stated that they had not discussed the incident. That they could be partners and not discuss an issue of this magnitude being reported in the general press and discussed by the entire racing industry and beyond, is an assertion that is impossible to believe this despite being not of the moment in the determination of the issue.*

(j) *Mr Ray Hoffman made a Statutory Declaration, Exhibit "N", and appeared in person at the Stewards' inquiry. Mr Hoffman is a friend of Lindsay Harper. Mr Harper trains a pacer for his wife. In part, Mr Hoffman stated he'd known Bob Taylor for forty years and essentially Adrian Taylor had rang him on the night of the assault and several days later. He stated that Adrian Taylor had later made an approach to him, Hoffman, and said 5,000 dollars would fix the problem. Mr Hoffman, when questioned, stated that he had not asked Adrian Taylor about his beating and had not discussed the matter with Harper. Mr Bob Taylor said in evidence at page 130.1 of the Stewards' transcript: R. Taylor: "Ray thinks that I know him. I don't, I only met him through Adrian. He came and borrowed a post hole digger one day, but he talks as if I know him, but I, I don't, I don't him". Sheales: "How long do you say was the first time you met him?" R. Taylor: "About six months". Adrian Taylor admitted that he initially rang Hoffman after he was strip-searched by Harper at Harper's residence sometime before the bashing. Page 131.1 of the Stewards' transcript, A. Taylor: "No, that's not the night of the robbery. I rang him the night of, the night I rang him was the night I got strip searched for the wire. I rang him and I was crying." Chairman: "You rang Hoffman?" A. Taylor: "Yep, and*

because I was, he was sort of, like he was Lindsay's friend and I knew him, you know, as a friend as well and I was hoping he could intervene and believe me enough to say well pull this up, you know? And I rang him crying saying mate, you wouldn't believe what they've done to me, they've just insulted me like the worst way". A phone call was also made to Mr Hoffman on the night of the 29th of December 2003 from the Armadale Hospital. On page 132 at point 3 of the Stewards' transcript the following exchange took place: P. Taylor: "Well, I spoke to him on that night from the hospital." Sheales: "Why did you ring him Mrs Taylor?" P. Taylor: "Well because, because I didn't probably ring him, Adrian probably rang him and I spoke to him." Sheales: "Why would you choose to ring?" P. Taylor: "Well why wouldn't we?" A. Taylor: "Because he was the only person that knew us and knew Lindsay." P. Taylor: "Because he was, he was the one that knew what Lindsay was going to do". Adrian Taylor rejects Hoffman's evidence and maintains it was Hoffman that offered him money. At page 143.4 of the Stewards' transcript, Sheales: "Did you tell him that 5000 dollars would fix the problem with the inquiry next day?" A. Taylor: "No, he told me that. He said that we're both, both his friends. He said I could be a little shit head rah rah rah. He offered me the money. I said this has gone too far. I say there's no way Mum and Dad would let me, you know. I'll admit when he said money I said, oh yeah bingo I'll get some money easy. I said to Dad and Dad said, mate, no. He said it's gone too far already. You're going to the tribunal, end of story. Well, that's where it's inaudible, I knew in my own head with the Tribunal the next day, there's no way that money was going to be changing hands, I just couldn't go and shift". Mr Hoffman's evidence infers that Mr Taylor was attempting to use the beating perpetrated upon him as a means by which to blackmail Harper. If Adrian Taylor had made such an elaborate and nefarious attempt of blackmail it is difficult to understand why Mr Hoffman would choose to keep this information to himself and not approach the alleged victim of the blackmail, Mr Harper. Before the Investigator, Mr O'Reilly and the Stewards, Adrian Taylor was specific in evidence and stated clearly his recollections of the evening, of that evening.

(k) *The Stewards also had before them a report by Dr Malenko Kovac of the Armadale Health Services, Exhibit "K", which stated: "I, Malenko Kovac, am a qualified medical practitioner employed at Armadale Health Service. Mr Taylor presented to the Armadale Health Service emergency department at 21.37 hours on the 29th of December 2003. Mr Taylor alleged he had been assaulted by multiple assailants who had punched, kicked and hit him with steel bars. Mr Taylor's injuries were: a 2cm scalp laceration, bruising to the face, abdomen and loins, feet, left ankle and right knee, abrasions to the nose, right ear and neck. Treatment in the emergency department consisted of cleaning and suturing the scalp wound, cleaning of the abrasions, analgesia and neurological observations. X-rays of the face, left ankle and right knee were performed along with CT scan of the abdomen. The injuries were consistent with being inflicted as alleged. The injuries interfered with the comfort of the patient, however, were not a threat to life or limb and unlikely to cause any permanent injury or disability. Mr Taylor was not reviewed in the emergency department again regarding these injuries so I cannot comment on his recovery. Follow-up by his general practitioner was suggested for the removal of the scalp sutures. I declare that this statement is true to the best of my knowledge and belief and that I've made this made this statement knowing that if I tendered it in evidence, I will be guilty of a crime if I have wilfully included in this statement anything which I know to be false or that I do not believe to be true. Malenko Kovac," 12th of the 3rd 04.*

(l) *Clearly, it has been established beyond argument that Adrian Taylor was the victim of a savage assault. Whilst the character of some witnesses could be and has been called into question, the characters of Mr Bob and Mrs Pat Taylor are beyond such scrutiny, scrutiny given what is known of them to a long history of involvement in the racing industry. Formally a jockey, Mr Bob, Mr Bob Taylor is now an open class thoroughbred trainer having a blemish free record over many years. Mrs Taylor has also been involved in the racing industry over a life time and is a licensed stable hand assisting her husband in the training of their team of gallopers. Both, both are highly respected in the racing industry. Mrs Taylor's evidence in the*

main is a repeat of a written police statement she made on the 29th of December 2004, Exhibit "B", made at page 14.7 of the Stewards' transcript. The parents called the police on the night of the assault and the police attended the hospital. She also attended and gave evidence at the Stewards' inquiry and was cross-examined by Mr Sheales.

(m) *It is appropriate and worthwhile repeating Mrs Taylor's evidence. Patricia Lorraine Taylor states: "I am a 59 year old mother of three children, two boys and one girl. Adrian Taylor's my youngest child who is now 32 years of age. I live at an address supplied to police in the suburb of Martin. I've been working with horses for about 33 years. On Monday, 29th of December 2003 at about 8.20 p.m. I was at home and the telephone rang twice and I picked it up and said hello. The person on the other end spoke, he said, Drew I'm on my way home and put the phone down. I knew it was my son Adrian. About two minutes later the phone rang again, I picked it up and Adrian said Drew I'm on the way home from Lindsay's. I was worried for Adrian's welfare and I grabbed my keys and ran to my car. I drove to Lindsay Harper's place on Gosnells Road East. It took me about five minutes to get there. The house is a long drive, there's an outstanding white two-storeyed building. I drove straight in and went towards the house. I saw a woman looking through an upstairs window. The person turned off the light. I saw Adrian's red Ford parked in the, red Ford ute parked in the front of the stairs to the house. I drove back out and parked my car outside the property on the road. I waited in the car for about fifteen minutes. I drove into the drive and parked. I turned my car lights off. I saw a person walking towards me. I could see his cigarette glowing in the dark. I drove my car up to him. As I pulled up I recognised this person as Lindsay Harper. Lindsay Harper is tall with light hair. He is in his 40's. I opened my window and said, where's Adrian? I said this over and over. He said he's not here, he has gone for a ride with a couple of guys. I said I don't believe you, he's in your house. I drove up to the house and stopped behind Adrian's car and put my hand on the horn for about five minutes. I was just about to go up to the house and I tripped on the stair. The main door to the house opened and Adrian came out. Adrian was limping and crying. Mr Harper, Harper came out behind him. I said what have you done to him, you've broken his cheekbone and legs, what have you done to him? Harper went into the house and came back out. Harper said it didn't happen here. I said you run the trots but you're not going to run our lives. Both Adrian and I left the house but Adrian stopped as he was missing his phone. I turned my vehicle round to go back to the house and saw my other son Drew, on foot heading to the house. We both went to the front door and banged on the door. Harper emerged from a side door and Drew went over and the phone was returned. I followed both boys home. Adrian told me that someone had taped his hands together and hit him with a pipe and machete and a baseball bat. The beating took place in a garage or shed. Adrian also stated that these people were going to douse him with petrol and set him alight. Even before I left Mr, Harper's house I could see that Adrian had lots of blood around his mouth and on his neck, head and neck. We were at home for about fifteen minutes. Adrian didn't want to go to the hospital or make a complaint to the police. We arrived at the hospital. I saw red marks on Adrian's back and side. I was really concerned about Adrian's head and face as he was involved in a car accident, car accident and he's got plates in his face. Adrian's face was really swollen around his ear and cheeks. I declare that this statement is true to the best of my knowledge and belief and that I have made this statement knowing that if it is tendered in evidence I will be guilty of a crime if I have wilfully included in this statement anything which I know to be false or that I do not believe to be true".*

(n) *Mr Taylor was present when Adrian Taylor returned home with his mother and brother. He witnessed at first hand the physical and mental state of Adrian Taylor and insisted his son went to hospital. Mr Taylor stated in evidence at page 11.2 of the transcript: "Yeah I didn't, I didn't even know that my wife had got out of bed for this phone call. I was asleep. First thing I knew was Drew rushing into the bedroom and saying, quick Dad they've broken his legs and kicked his teeth in. I jumped out of bed, went out and the car was not, was just pulling up. Adrian was an absolute mess and he said, no, no I can't go to a hospital Dad, I'm too*

frightened they're going to kill me. And I said, you've got to go to hospital mate, because I think they've got, I think you've broken feet and he fell on the ground. If you've got broken bones they won't heal, you've got to go to hospital, you know. He said, well don't, you know, don't tell the police, don't tell anyone, you know, they're going to kill me. He said, and they're coming around to get you because I promised them that you'd give them some money so they're going to pull your effing head off. So we got him to hospital and I rung the police and I said, they said don't worry about it, the hospital will make a report when they see you, see him, you know, if it's as bad as you say. That was the night and I didn't see him until the next day."

(o) *The evidence in, the Stewards found the evidence of Bob and Pat Taylor to be compelling and reliable and therefore accept their evidence in full. Their evidence not only serves to explain some of the incidents on the night in question but significantly, provides the necessary background to the event by concluding many of the exchanges between Harper and Taylor following the theft of the money from Mr Harper's safe. Mr Harper himself has confirmed the frequency and nature of many of these discussions. There has been little if any challenge made against the reporting preceding events that are said to have taken place. These preceding events provide a context for what was said to have occurred on the night in question as they clearly indicate a progressive series of events that ultimately led to what was a logical, even if diabolical, conclusion.*

(p) *Whilst acknowledging Adrian Taylor's antecedents, the Stewards in the case at hand believe his evidence. His injuries were real and the Stewards don't accept his story is a fabrication. The Stewards believe Mr Taylor to be a credible witness. His evidence is corroborated to a varying degree by not only members of his family, which in the case of his parents are people with demonstrated integrity and honesty in racing, but in some aspects by Mr Harper himself. Mr Harper confirms both he and Adrian were at his premises on the night in question. He confirms that there were a series of preceding events following the theft of the money from the safe when Mr Taylor was convinced that Mr Taylor was, Mr Harper was convinced that Mr Taylor was responsible. He made no secret of this from Mr Taylor and in fact reported as much to the police. Not surprisingly, Mr Harper, like anybody in a similar position, was furious that such a large amount of money had been stolen. With his belief that Mr Taylor was responsible clearly that fury would in all likely be directed towards Mr Taylor.*

(q) *These earlier events gave Taylor sufficient concern to make his family aware of them. If Mr Harper's version of events is to be believed, then why would he then turn to Mr Harper in his hour of need following a savage beating, as opposed to anyone else is inconceivable. No acceptable logic exists to explain why Taylor would turn to Harper for aid in the manner suggested. Clearly whatever friendship the two had prior disintegrated due to Mr Harper's conviction that Taylor had abused his trust and stolen from him. If Mr Taylor is to be believed, one would expect in the circumstances of all that happened prior to the night in question, Mr Harper would be the last person Adrian Taylor would go to for help. We therefore, do not accept that Mr Harper acted as the Good Samaritan on the night in question. To accept Mr Harper's version would lead this one single act of extreme compassion at odds with everything that transpired prior and immediately after. It would mean accepting that Mr Taylor had either orchestrated a most elaborate series of events to extort Mr Harper or that following Harper's noble act of compassion, Mr Taylor whilst lying in his hospital bed decided to embark upon this opportunistic attempt of blackmail and had successfully either recruited or either fooled his parents into being a party to it. When giving her evidence particularly in the early stages before the Stewards, Mrs Taylor's raw emotions of fear and anger were undeniable and apparent to the Panel. She was the person who collected Adrian from Harper's on the night in question. A fact confirmed by Harper. The fear and anger so apparent to the Stewards at the inquiry were clearly a result from what she had endured and witnessed that night. There is no suggestion that she was a part to any attempt of blackmail but neither in these circumstances could it be said that she was unwittingly fooled into believing Harper was responsible for what*

had happened to her son. She was the person who was able to experience the emotions of evening in question first hand. She conversed with Harper, saw her son, took action, and took action despite her fears to retrieve her son from Harper's. It is not surprising that when, what could only be high emotion should arise and be so blatantly obvious when she recounts that night. This was and remains real to her and is emotions that can, they are emotions that can only generated through experience. Had Mr Harper been acting as the Good Samaritan as he would suggest, we do not accept that Mrs Taylor would have so misinterpreted what occurred. Her belief, and it is one that is now shared by the Stewards, is that the beating of her son occurred at Mr Harper's residence, that he had organised it and he was an active party to it. Given the manner in which she presented her evidence at all stages of this inquiry, we cannot find her to be mistaken on these points. The weight of all the evidence adds, further supports, further supports her submission.

(r) *While (sic) Mr Harper, placing himself at the scene, confirming also Adrian's presence and that of his mother, goes a long way to corroborating Mr Taylor's version of events. Coupled with all that occurred prior, as already indicated, the evidence becomes, the evidence of Taylor becomes overwhelming. Whilst the Stewards have looked beyond what appears to be obvious and thoroughly considered Mr Harper's version and whilst conscious of the onuses of proof, his version of events remain unsupported, unstant, unsubstantiated and unlikely in the circumstances. It is also recognised that Mr Harper was not solely responsible for the entirety of the injuries to the assault as these assaults were committed in the company of other, of others and by others. Mr Taylor reported that for his part, Mr Harper kicked him repeatedly. The Stewards accept this to be case and therefore are satisfied that Mr Harper did commit assault upon Mr Taylor. It was clearly a revenge beating for what Mr Harper believed to be the theft of his money by Mr Taylor.*

(s) *The charge levelled at Mr Harper is conduct towards anybody employed, engaged or participating in the Harness racing industry, or otherwise having connection with it. Mr Taylor is a farrier. He served an apprenticeship and has a farrier certificate. At the Stewards' inquiry written statements were produced into evidence that Mr Taylor currently shoes horses for harness races, harness trainers Mr Jeff Ball and Mr Reg Phillips for a number of years, Exhibit "M", and has shod Mr Harper's horses in the past. Mr Taylor is a professional farrier. He charges and receives payment, receives payments for his services. The association between Harper and Taylor was born from the harness industry. They had met through the industry and together had been, been involved in it. Their association did not arise from something other than racing. Also Mr Taylor was Harper's, Mr Harper's gardener at his house and training establishment which is licensed and approved by Racing and Wagering Western Australia for Mr Harper to conduct his business of training pacers. In a, in a very real sense Mr Taylor was at sometime an employee of Harper's, employed to work in his training establishment.*

(t) *Under those circumstances, the Stewards find that Mr Taylor was a person employed in the harness racing industry and at the very least, a person having a connection with the harness industry.*

(u) *Given all of the evidence before us, and only after careful and cautious consideration of the evidence, mindful of the principles governing our deliberations, the Stewards do find that Mr Harper assaulted Farrier Adrian Taylor on the evening of the 29th of December 2003 at the residence of 38 Gosneils Road East, Martin and consequently find him guilty as charged.*

Charge 2 – Behaviour Detrimental to the Industry

(v) *Mr Harper was also charged with behaviour detrimental to the industry. At page 157.6 of the Stewards' transcript he was charged as follows: Further the Stewards believe you have a charge to answer under the Australian Rules of Harness Racing 243 which 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 being, while your conduct to farrier Adrian Taylor on the evening of the 29th of December 2003. that conduct being threatening and intimidating, you behaved in a way which is detrimental to the industry. Mr Harper understood the charge and pleaded not guilty.

(w) *With the finding being made that Mr Harper did assault a person employed, engaged or participating in the Harness racing industry, the determination of this charge requires the Stewards to consider is such conduct a matter to conduct (sic) that was threatening and intimidating and whether this behaviour, along with any relevant behaviours that amount, may amount to conduct that was detrimental to the industry. In considering the various elements of the charge, it is beyond question that Mr Harper is a person engaged in the harness racing industry. More than that, he is a high profile person who enjoys the title of one of Western Australia's leading reinspersons. His name is synonymous with harness racing and his actions always receives heightened coverage. That said, even a reinsperson of lesser standing who did what Mr Harper is said to have done, would in all likelihood attract considerable media attention as his actions have now found to be as alleged are unsavoury in the extreme and therefore easily lend themselves to sensationalism by the media. This is exactly why such behaviour is so detrimental to the industry. When any person embarks upon such conduct, the best interests of the racing industry are sadly trodden over or ignored.*

(x) *The beating of Adrian Taylor was front page news appearing in Saturday's edition of the West Australian on the 17th of January 2004. The West Australian Saturday edition has an estimated circulation of 380,000 people. It was certainly public knowledge that, knowledge with follow-up articles appearing in the West Australian on Monday, 19th of January 2004 and 23rd of January 2004. The articles refer to a brutal bashing, an involvement of bikies, and that there was a risk the bikies could be used as muscle to fix the result of races.*

(y) *Whilst Mr Harper is not responsible for the sensationalism of the media, he is responsible for his actions. As a licensed person there is an expectation upon him that he will conduct himself and his affairs in a manner that will not bring the industry into disrepute or not unique, disrepute or to use the words of the Rules, which is detrimental to the industry. Such rules are not unique to the racing code. To any code or organisation that depends upon the confidence of the public or one that wishes to be held in high esteem. Racing with its dependence upon public confidence and the relationship between that confidence and the public's likelihood to support the industry through its investments upon racing, relies heavily upon the maintenance of that confidence for its long and short-term viability. Its registered participants therefore have a responsibility to ensure that confidence is not dented. Mr Harper's actions by orchestrating the assault upon Mr Taylor, and indeed assaulting him himself, are without question highly undesirable actions that bring the industry into disrepute. Not to mention the compounding unsavoury interference of organised crime links, bikies and other similar highly publicly emotive elements. These actions can neither be condoned nor ignored. The ability of Mr Harper to participate in a licensed capacity in the industry is one of privilege and not right. For that reason there are certain expectations are placed upon him, one of which at the outset of his registration is that he is a fit and proper person to become registered, one that will not through his licensing cause detriment to the industry. Overcoming that hurdle at the outset does not render it otiose for the future.*

(z) *As was stated in the findings of fact relating to the actual assault, Mr Harper has committed a most unsavoury and despicable act. There is no doubt Mr Harper's conduct has been destructive, harmful and injurious to the harness industry. To a member of the general public and the betting public whose support is vital to the racing industry, reading such reports would completely destroy their confidence in the harness code of racing and reflect negatively on the racing industry in general. Even in, even in the unlikely event that such matters did not receive the coverage they did in the general press, they are events that are known within the*

racing industry itself and are, all are seriously detrimental to the industry once they become known on any scale.

(aa) *The assault of Adrian Taylor occurred (sic) on at the home of Mr Harper. This was a deliberate, calculated planned attack at the residence and training establishment of a prominent trainer and driver. In all the circumstances, the only available conclusion is that such behaviour is detrimental to the industry. The Stewards find Mr Harper guilty as charged.'* (ST 225-240.)

Both Mr Harper and Mr Sheales then made submissions to the Stewards in respect of sentence. Unfortunately it appears that over 20 minutes of tape recording was lost due to equipment malfunction. The Chairman of Stewards subsequently announced the Stewards' findings on penalties as follows:

The Stewards have considered the matter of penalty in relation to both charges and taken into account your submissions Mr Harper, and those of your counsel, Mr Damian Sheales. It should be noted that the Stewards have considered penalties specific to each charge but acknowledge that the following determination, in parts, applies to both penalty considerations. The Rules are in place to ensure the integrity of the industry and the Stewards are given wide powers and discretion to undertake the onerous task of protecting that integrity which must be maintained at the highest standard to ensure the preservation of the industry's good name and to make sure it continues to flourish. Firstly, these charges are extremely serious. The assault of Adrian Taylor by you, Mr Harper and others was vicious, brutal and pre-meditated. You lured Mr Taylor to your residence and training establishment of which you are the owner and principle, where Mr Taylor was systematically bashed. Mr Taylor was subjected to what amounts to an act of terror. It was a planned, unprovoked attack. You believed that Adrian Taylor was responsible for the theft of 70,000 dollars from your safe. You had reported the burglary and at that time was subject to a police investigation. You planned and chose to pursue your own course of justice. You elected to take the law into your own hands as you saw it. Mr Taylor suffered significant injuries. He was hospitalised and confined to a wheelchair for several days. He had extensive bruising and lacerations and sustained a wound to the head requiring suturing. He was unable to work in the short term. During the sustained assault, Mr Taylor was doused with a liquid which he believed to be petrol. Evidence has revealed that it was in fact water. However, apart from the pain of the physical injuries, the psychological trauma experienced by Adrian Taylor would have been horrendous.

In the Stewards' opinion, a clear message needs to be sent to the racing industry that such conduct cannot and will not be tolerated. You are a licensed trainer/driver. You have been the leading reinsperson in Western Australia for approximately five years and command a high profile in the harness industry. There is a clear obligation to conduct yourself in a responsible manner, both on and off the racetrack. The obligation of all participants is clear and the proper conduct of a professional member of the fraternity is paramount to its success. Your actions have clearly been detrimental to the harness industry. The impact of your conduct has grave consequences for the harness industry and potentially the racing industry as a whole. Your conduct has shamed the harness industry and has smeared the reputation of those involved in it, of which the over-whelming majority participants are hard-working, law-abiding citizens. In essence, it comes down to protecting the very reputation and standing of the racing industry that has enabled it to flourish by ensuring that high standards are maintained, public trust and the efforts of the industry is maintained. The support of the public is vital to the racing industry. Without that support, there is no racing industry.

This act of thuggery by you and others has the potential to destroy that support. The Stewards believe that this incident has already done significant damage to the integrity of harness racing and you must be held accountable for your actions.

In mitigation you have a good record in relation to charges of this nature. Your personal circumstances have been considered. As stated you are the state's leading driver and you derive your income from the trotting industry. You have spent a lifetime in the industry and come from a family synonymous with harness racing. You have two sons, one of which is embarking on a career as a driver in the industry. The range of penalty for assault and behaviour detrimental to the industry at harness racing code extends to fines to disqualifications.

The Stewards have also considered penalties for these type of offences in the thoroughbred code. Whilst differing in the actual wording, improper conduct and conduct prejudicial to the image or interest or welfare of racing are equitable to harness rules. In the thoroughbred code the range of penalty extends from fines to disqualifications. In the case of Mr B. Castle in 1998, stable hand at thoroughbred, was charged on two counts of improper conduct and disqualified for periods of five and six years with the penalties being served concurrently. The circumstances of this case were that Mr Castle, following a race meeting at Kalgoorlie, when in a state of inebriation, after being refused service by Mr and Mrs Lugg, who were the bar managers at the time, physically assaulted both persons. There was no appeal.

In Victoria harness racing in 2000, Driver Mr C. Romanedis was disqualified for eighteen months for assault. The particulars being that he was involved in a physical altercation with another driver. This penalty was reduced to nine months on appeal. The Stewards have also considered the penalties referred to in Mr Sheales' submissions. In all these cases they were what amounted to a spur of the moment reactive conduct.

The assault of Adrian Taylor was premeditated and unprovoked. In the Stewards' view, these offences are unique and at the extreme high end of scale of seriousness. Therefore the penalty must reflect that. Mr Harper without your good record in terms of similar matters and your personal circumstances, the Stewards would have no hesitation in imposing a period of ten years' disqualification for the assault charge. Bearing in mind those considerations and the time that you've been stood-down the Stewards are disqualifying you for a period of seven years for the charge of assault under Rule 231 and period of five years for the charge of behaviour detrimental to the industry under Rule 243. Both penalties are to run concurrently. (ST251-254).

Appeal

Mr Harper lodged a notice of appeal with the Tribunal on 19 May 2005 and made application for suspension of operation of both penalties. I refused the stay application. Mr Harper appeals on the following grounds:

1 *That the Stewards erred in finding at the close of the evidence that the alleged conduct of the Appellant was within their jurisdiction as the totality of the allegations did not arise from 'any aspect of the harness industry, or into anything concerning the administration or enforcement of these rules'.*

2 *The Stewards erred in finding on the evidence that Adrian Taylor was a person 'employed, engaged or participating in the harness racing industry or otherwise having a connection with it'.*

3 *The Stewards erred in finding on the evidence that the conduct alleged against the Appellant was 'detrimental to the industry'.*

4 *In the event that the Stewards were not in error regarding grounds 1, 2 & 3 the Stewards erred in continuing the inquiry after the close of evidence:*

(a) *As Adrian Taylor had refused to report the matter to the proper authorities; and*

(b) *The Stewards, being a specialist body with specialist knowledge regarding racing matters, possessed no expertise regarding the issues being inquired into and determinations to [be] made on the factual matters; and*

(c) *The rules governing Stewards inquiries created unfairness to the Appellant which was incapable of being overcome.*

5 *The finding of fact made by the Stewards as to the acceptability of the evidence of Adrian Taylor were:*

(a) *Erroneous;*

(b) *Against the weight of the evidence;*

(c) *Did not consider material tendered on behalf of the Appellant;*

(d) *Did not give any or sufficient weight to prior inconsistent statements of the witness Adrian Taylor;*

(e) *Took no account of significant contradictory evidence to that of Adrian Taylor's.*

6 *The findings of fact as to the culpability of the Appellant did not seek in anyway to discriminate between assaults/injuries inflicted by the Appellant and those on the version of Adrian Taylor which were inflicted by his (Taylor's) friends who allegedly attended.*

7 *It will be sought at the appeal to introduce new evidence into the proceeding pursuant to s. 11(3) of the Racing Penalties (Appeals) Act 1990 that evidence being from members of the West Australian Police Service as to their dealings with Adrian Taylor.*

8 *The Appellant was denied natural justice in the sentencing process in that after the hearing of considerable submission on behalf of the Appellant, where numerous authorities were cited on the Appellant's behalf, the Stewards relied upon an (sic) authorities both a previous Stewards determination and a Victorian case the existence of which and the details of which the Appellant was never given opportunity to make submissions upon.*

9 *The Stewards erred in finding that offences in the Thoroughbred code are 'equitable to the Harness Rules'.*

10 *The penalty is manifestly excessive.*

In substance there are 9 grounds as purported ground 7 merely foreshadows the intention to seek leave to adduce further evidence in the appeal proceedings.

Appeal hearing

The task of deciding this matter was made difficult by aspects of the approach employed in arguing the matter. Specific grounds of appeal were not signposted during the course of the submissions. At times it was not clear which issue was actually being addressed. Ground 9 was not directly dealt with at all. Some of counsel's comments were less than helpful.

During the appeal hearing counsel for Mr Harper did seek to leave call some further evidence. Despite objection on behalf of the Stewards I allowed Detective Sergeant Marshall of the Western Australian Police Service who had been subpoenaed to be called. Early in

his evidence the Detective Sergeant produced Mr Taylor's criminal record and internal police email regarding the interview of Mr Taylor in hospital. The Detective Sergeant was then examined as to what Mr Taylor told him regarding his visit to Mr Harper's residence on the night he was assaulted. In cross examination it emerged that Mr Taylor told the Detective Sergeant inter alia:

- Mr Taylor was asked by Mr Harper to go to Mr Harper's place by telephone.
- *'... he knocked on the [Harper's] door, someone opened the door. He said someone put a bag over his head. He was dragged out to, I think it was the garage, where he was beaten with bars and fists and put petrol on. He heard Harper's voice, so he knew the approximate position of Harper, but the actual beating was being done by others. That's what he told me'.*
- The damage inflicted on Mr Taylor occurred at Mr Harper's place.
- Mr Harper was present at the time.
- Others were also present at the time.

Detective Sergeant Marshall was briefly re-examined and concluded by stating that '*...he wasn't satisfied that his (Taylor's) credibility was in order*' (T52).

Court of Appeal reasons

Earlier reference is made to the intervening proceedings which took place in the Court of Appeal between the initial and the continuation Stewards' proceedings involving the parties in this matter. Much of the Court of Appeal reasoning is relevant to aspects of the appeal and therefore can usefully to be referred to and quoted in some detail. The President of the Court of Appeal, Steytler P, with whom Justices Wheeler and Pullin agreed, neatly summarises the events leading to the inquiry (paras 2 and 3) and the Stewards' enquiry (paras 4 - 20). As these paragraphs contain a precise summary of the rather complicated and somewhat unusual facts of the case I simply respectfully adopt them as no purpose is served in attempting to summarise the facts or to repeat them here.

At para 26 Steytler P identifies the issues before the Court of Appeal. Only the second and third issues are relevant to the appeal before this Tribunal, namely:

(b) *'Was the subject matter of the continued inquiry beyond the jurisdiction of the Stewards?'*

(c) *'Should the primary Judge have stayed the decision of the Stewards to suspend Harper pending determination of the inquiry?'*

Steytler P's reasons as to jurisdiction greatly assist addressing some issues which need to be decided in this appeal. In those reasons the President canvasses the facts relevant to the inquiry up to that point of time, the argument before the Stewards, the relevant provisions of the *Racing & Wagering Western Australia Act* and Rules of Harness Racing and a number of decided cases on the question of detriment to the industry. His Honour's conclusions, which are particularly relevant to the first ground of appeal, are worth quoting in full:

> *'52 The fact that the Controlling Body is responsible for licensing and for disqualifications in the case of persons convicted of crimes or offences, or in the*

case of those who are not fit to be associated with harness racing, does not detract from, or diminish in any way, the responsibility of the Stewards to inquire into and deal with infractions of the Rules, including, under Rule 243, behaviour (that may or may not amount to the commission of a crime or an offence) which is detrimental to the harness racing industry.

53 *Finally, in this regard, it should not be forgotten that in this case all that the Stewards have so far done is to conduct an inquiry and lay charges. At the time when the inquiry commenced, and was continued, it was unclear what would be the circumstances found. At this stage, it is still unclear what facts may emerge in the course of the hearing in respect of the charges brought.*

54 *What is plain, though, is that there are allegations of a brutal and pre-meditated assault, which must necessarily have had some potential to become publicly known (as it did), conducted upon a young man who had worked on licensed training premises owned by Harper, in circumstances in which that assault is said to have been carried out by a group of persons (the nature of whose association with each other and with Harper is as yet unclear) on Harper's licensed training premises and with his active participation and support. There is also the allegation by Mrs Taylor that Harper attempted to have her participate in a cover-up of the fact that the assault had taken place on his premises. Moreover, there are, as I have said, allegations of an attempt to bribe those who were to give evidence to the Stewards about the assault, in circumstances which have yet to be fully revealed.*

55 *Whether any of these allegations will be proved remains to be seen. It also remains to be seen whether, after full investigation of Harper's alleged conduct (including the circumstances in which it is said to have been engaged in) and of his degree of prominence in the industry, any behaviour which he is found to have engaged in was such as to be detrimental to the harness racing industry. However, it seems to me that there was, and is, at least some potential for a finding of this last kind. That was enough to give the Stewards jurisdiction to embark upon their inquiry. It is also enough to give them jurisdiction to hear the charge which they have laid under Rule 243.*

56 *Similar considerations apply to the charge which has now been brought under Rule 231. There is no doubt, if Taylor's evidence is believed, that he was assaulted. Consequently, the questions which will fall for decision under Rule 231 are those of whether Taylor should be believed and, if so, whether Harper was, in one way or another, a party to the assault and whether Taylor was, at the time, "employed, engaged or participating in the harness racing industry" or had otherwise "a connection with it". The existing evidence in this last respect seems to establish that Taylor had been doing some gardening work for Harper at his stables, that he sometimes shod horses which raced in the harness racing industry and that he is the son of a licensed trainer (albeit, seemingly, one in the horse racing industry). What other facts, if any, will emerge that connect him with the harness racing industry remains to be seen, as does the answer to the question whether those facts, taken together with already known facts, are such as to establish a connection between him and the harness racing industry which is sufficient for the purposes of the rule. However, in my opinion the Stewards had the jurisdiction to embark upon, and to continue, their inquiry. They also have the jurisdiction to consider whether or not the charge which has now been brought under Rule 231 should be found to be proved.'*

Comments on Stewards' reasons for convicting

As already stated the Stewards have gone into a great deal of detail in explaining why they decided to convict Mr Harper of both offences. Before dealing specifically with the merits of each separate ground of appeal I make the following comments on the reasoning process of the Stewards and some of their principal findings which are directly relevant to the grounds:

1 It is clear that the Stewards were mindful of the relevant *Briginshaw* standard of proof which they had to apply (para's (c) and (u) of the Stewards' reasons).

2 The Stewards tackled the reasonably complicated task of evaluating the conflicting testimony both methodically and with considerable care. Unlike this Tribunal, which only had the benefit of hearing the brief evidence from Detective Sergeant Marshall, the Stewards enjoyed the advantage of being present to listen as the witnesses gave their evidence and being able to observe them in the course answering questions. Some of the evidence of the witnesses who were unfavourable to Mr Harper was the subject of rigorous cross examination by Mr Sheales. The Stewards by the end of the process believed Mr Taylor's testimony, namely that he was beaten severely by Mr Harper and others at Mr Harper's house (as spelt out in para's (d) and (p) of the reasons). The Stewards also accepted that Mr Taylor believed he experienced a reprisal beating carried out at '*...the behest and organisation of Mr Harper as he believed that... Mr Taylor...*' was responsible for the theft (para (d)). The Stewards went into considerable detail to explain how and why they reached their conclusions as to the credibility of Mr Taylor and the evidence of other witnesses who supported Mr Taylor's propositions (see for example para's (f), (g), (h), (l), (o) and (p)). In the course of coming to their conclusions the Stewards carefully evaluated Mr Taylor's background including his '*negative police record, his general unsavoury conduct and alleged drug use*' (para (d)). Not having had the benefit of hearing the evidence first hand I can only rely on the transcript of the proceedings. Based on the transcript I am satisfied that nothing has been presented in the course of the appeal which demonstrates the Stewards were not entitled to reach the conclusions which they did as to credibility. It was clearly open to them to accept the Taylor version and to reject the Harper version for the reasons which the Stewards clearly enunciate despite the fact that Detective Sergeant Marshall said he did not believe the version Mr Taylor told him in hospital. Nothing that the Detective Sergeant presented to the Tribunal persuades me to any different conclusion on credibility than the one reached by the Stewards.

3 I do agree with the Stewards' conclusions (at para (l)) that Mr Taylor was the victim of a savage assault and that his injuries were real (para (p)). I endorse the description of the assault as being '*...unsavoury and despicable...*'. I do not believe the good samaritan argument which Mr Harper raised (refer to para (q)). In all the circumstances of the case I am satisfied that argument is fanciful.

4 The Stewards have clearly explained the basis for concluding that Mr Taylor had an involvement in the harness racing industry (refer to para (s)) which I consider properly led to the conclusion that Mr Taylor was a person '*employed in the harness racing industry and at the very least, a person having a connection with the*

harness industry' (para (t)). I am satisfied Mr Taylor's involvement was more than a mere '*connection*' with the industry.

5 As to the second charge I agree that there can be no question that Mr Harper is engaged in the industry, as fully explained at para (w). Clearly, serious responsibilities do and consequences can flow from that engagement. I agree with the Stewards' comments at para (y) as to the responsibility of licensed persons in the racing industry and the importance of maintaining public trust and confidence. Clearly the Stewards are in an ideal position to assess whether undesirable actions do or have the potential to bring the industry into disrepute and what damage may flow from such actions.

6 In para (z) the Stewards have mentioned the compounding unsavoury inference of organised crime links, bikies and other emotive elements. Whilst the evidence before the Stewards did reveal the newspaper reporting of the incident does contain these sensational comments one can hardly hold Mr Harper responsible for what in this case may amount to no more than enthusiastic journalistic licence.

7 Paragraph (z) is worthy of further comment. Whilst I have agreed with the conclusion that Mr Harper committed the act described by the Stewards as '*unsavoury and despicable*' the Stewards go on to assert '*there is no doubt Mr Harper's conduct has been destructive, harmful and injurious to the harness industry. To a member of the general public and the betting public whose support is vital to the racing industry, reading such reports would completely destroy their confidence in the harness code of racing and reflect negatively on the racing industry in general*'. The former and latter conclusions of the full sentence quoted I endorse. There is no evidence to support the intervening proposition. I do not believe the confidence of the general and betting public has in fact been '*completely destroyed*'. Precisely what the tangible net adverse effect on the industry of Mr Harper's conduct was or has been is open to question. This is something that is difficult to prove. The Stewards give no reasons and provide no particulars on which they base the conclusion on this aspect. However, these comments in para (z) are somewhat tempered and brought into an objective conclusion in the final five sentences of the reasons (at the end of paras z and in (aa)).

8 Because of the special role played by and responsibility bestowed on the Stewards coupled with their undoubted experience in matters racing I do not consider it to be essential that there actually be direct evidence presented at an inquiry to establish the net effect of any adverse impact of wayward behaviour. Such is their role that, unlike judges in courts of law, Stewards have much greater freedom to rely on their own expert knowledge and to engage in judicial notice (*Hall v New South Wales Trotting Club Ltd* [1977] 1 NSWLR 378). To this extent, they are similar to mining wardens and may make use of their own general knowledge acquired in the course of their duties of facts generally known in their particular industry and of the character and association to persons engaged in that industry (*Carr v Simnovec* [1980] 26 S.A.S.R 263). Pursuant to s11(3)(iii) of the *Racing Penalties (Appeal) Act* 1990 members of this Tribunal may take into account matters relating to racing within their knowledge or experience or arising out of appeals. Although I am personally satisfied Mr Harper's behaviour has been detrimental to the industry,

> Stewards are undoubtedly in a far better position to assess such a circumstance as a matter of fact. I note that this particular panel of Stewards, comprising as it did the Chairman of Stewards, the Chief Steward Harness Racing and the Deputy Chief Steward Harness Racing, is as strong and as experienced a body of Stewards as could be empanelled in this State to deal with such a case.

Ground of appeal 1

In brief this ground asserts Mr Harper's conduct did not arise from any aspect of harness racing or the administration or enforcement of the harness racing rules.

I accept the proposition of senior counsel for the Stewards that the three Judges of the Court of Appeal were of the view that the conduct in question did arise from an aspect of harness racing or the administration or enforcement of the rules. (T93). Nothing emerged during the course of the continuation of the Stewards' inquiry following the Supreme Court proceedings which changed the status quo so far as the observations of Steytler P on this aspect are concerned. Clearly the Stewards were entitled to investigate Mr Harper's conduct in the context of the Rules. As a consequence of doing so the Stewards quite properly considered whether that conduct was detrimental to the industry and whether Mr Taylor had a sufficient connection with the industry. Their jurisdiction to embark upon and to continue their inquiry in my assessment clearly continued. There is no merit in this ground in my opinion. Nothing had emerged by the close of the evidence before the Stewards to materially change the situation to justify this ground.

Ground 2

In determining whether the finding that Mr Taylor was employed, engaged or participated in the industry or otherwise had a connection with it, which is what ground two asserted was wanting, one again need only refer to the reasons of Steytler P. As quoted earlier at para 56 of those reasons His Honour refers to some of the relevant facts, namely that Mr Taylor gardened for Mr Harper at Mr Harper's stables, sometimes shod horses which raced and is the son of a licensed trainer.

The Stewards had the benefit of two written statements (ex's M and N) of licensed harness racing trainers with the RWWA that Mr Taylor had been employed as a farrier for them over several years including the recent period.

The words of Rule 231 are drawn widely. This is not surprising bearing in mind the nature of the racing industry. Clearly the intention of the rule is to give a measure of control over and redress by the administrators of the sport to protect all persons directly or indirectly connected with it. Circumstances calling for action may on the one hand be blatant, such as a physical incident involving two licensed persons in full public view at a racecourse, or, out of sight and far more remote as was the case here. Despite the relative remoteness in this case there was a sufficient involvement in the industry by Mr Taylor for the Stewards to have properly found that he did fall within the scope of Rule 231. This consequently left open the question of whether Mr Harper's conduct in relation to Mr Taylor should be dealt with pursuant to the Rules. I am satisfied there was no error on the part of the Stewards in this regard.

Ground 3

The third ground asserts that the Stewards erred in finding on the evidence that the conduct alleged against the appellant was '*detrimental to the industry*'. As quoted above, Steytler P found the Stewards had jurisdiction to embark on the inquiry and to hear the charges they laid (para 55). In considering Rule 243 and in reaching those conclusions Steytler P acknowledged that there was little assistance in decided cases. After analysing four cases His Honour concluded the words '*detrimental to the industry*' are both wide and imprecise but must require some industry injury rather than simply damaging to the person misbehaving (para 49). His Honour went on to state '*... in a sport such as harness racing, involving public participation through betting on races, there is plainly a need for those administering the sport to maintain public confidence in its integrity and standards. If a person who is prominent in the harness racing industry engages in conduct which has the potential for being made public and which, if made public, will cause people to lose confidence in his or her integrity or standards (even if the conduct is unconnected with the racing industry), then it may very well be the case that that conduct will, as a consequence, have a flow-on effect as regards the manner in which the harness racing industry itself is perceived. There is consequently no justification for giving Rule 243 a narrow construction of the kind contended for. If a participant in the harness racing industry has a high profile in that industry, as Harper seemingly does, then misconduct by that person which is public, or which has the potential to become so, may, depending upon its nature and seriousness, have a detrimental effect, if only by association, on the industry itself. The question whether it has that capacity is, in each case, one of fact and degree'* (para 50).

I have already concluded Mr Harper was properly found to have invited Mr Taylor to his licensed premises where Mr Harper participated in inflicting serious injury motivated by his desire to punish for what he believed to have been Mr Taylor's theft of his cash. Mr Taylor was unwittingly enticed into an ambush by Mr Harper at Mr Harper's licensed premises due to their involvement with each other. A relationship existed between them. It was founded on their mutual involvement in harness racing. The nature of Mr Harper's conduct towards Mr Taylor was totally inappropriate and undesirable. The seriousness of Mr Harper's conduct was grave. Mr Harper's role and profile in the industry was particularly prominent. The link between the aggressor and the victim has been one of employer and employee. To the extent that harness racing as an industry is greatly dependent on the confidence of the public it is very fragile. The capacity for there to be an adverse impact on such an industry caused by gross misconduct of a high profile participant is rather obvious and to be expected. This was not simply a case of misbehaviour damaging the reputation of Mr Harper. The Stewards did not deal with this matter as though they were deciding whether Mr Harper was '*fit and proper*' as submitted on the appellant's behalf.

The fact that the Stewards may have used somewhat extravagant language, as pointed out in paragraph 7 in my comments earlier, highlight how seriously the Stewards regarded the matter. I am satisfied nothing turns on the fact that little or no actual evidence or quantification of the detriment was presented. For these reasons coupled with my earlier comments I would dismiss this ground.

Ground 4

This ground is in three parts alleging that the Stewards should not have continued with the inquiry after the evidence closed due, firstly to Mr Taylor's refusal to report the matter to the

proper authorities, secondly their lack of expertise in enquiring into and determining a non racing factual matter and finally the unfairness to the appellant of the Rule.

I am satisfied there is no merit in any of the arguments presented in support of this ground. The Stewards legitimately conducted the inquiry pursuant to the powers vested in them under the Rules. That jurisdiction does not depend upon there being a report made to the police. The failure to report has no material relevance. The Stewards are entitled to conduct their enquiries and to elicit such factors they consider relevant and as the participants sought to present. The Stewards must then evaluate that evidence, arrive at the truth and determine whether or not there has been a breach of the Rules. The Stewards have on occasions over the years been confronted with inquiries into a variety of different assault cases. To this extent there was nothing new in the subject matter of that aspect of this inquiry. The Stewards are in a unique position to determine whether conduct is detrimental to the industry. The Rules are there to authorise the Stewards to carry out their duty in furtherance of the sport of racing. The unfairness argument completely lacks substance. The Stewards quite properly exercised the powers vested in them as part of the process of ensuring the sport is properly conducted. Persons licensed to participate must abide by the rules of the sport.

Ground 5

Ground 5 alleges that the Stewards' findings of fact as to the acceptability of the evidence of Mr Taylor were inappropriate for the variety of stated reasons . I have carefully considered this ground from each of the various perspectives presented and am not persuaded that the Stewards fell into any error in the way in which they dealt with the matter. The decision reached in my opinion was one which was properly open to the Stewards. It is supported by some evidence which the Stewards were entitled to accept as credible and is not tainted by the evidence which the Stewards were entitled to reject. The evidentiary factual findings were properly open to the Stewards who had the advantage of hearing the evidence first hand.

Both counsel spent considerable time during the appeal proceedings to refer to the relevant evidence and to argue this ground. Senior counsel responded to the propositions advanced for Mr Harper and offered explanations for all the alleged anomalies in the evidence presented in support of Mr Taylor's side of the story. I am satisfied the response of senior counsel is plausible and I accept it.

In dealing with this ground it is necessary to consider the evidence presented by Detective Sergeant Marshall. That evidence confirms the unsavoury record of Mr Taylor, some aspects of which the Stewards were made aware of. It also reveals Mr Taylor changed his story several times in his discussion in hospital the day after the beating. It would appear Mr Taylor was nervous about making a complaint or laying charges against anybody in relation to the incident. After evaluating all relevant circumstances including Mr Taylor's relationship to the police, the fact that he was unwilling to assist with police enquiries and he was frightened of possible consequences of revealing the true facts to the police as to what happened I am not persuaded the police evidence changes anything sufficiently to warrant returning the matter to the Stewards.

Ground 6

I find there is no merit in the proposition that the fault was due to the fact there was no discrimination between the assaults/injuries inflicted by Mr Harper and those inflicted by others. The Stewards quite properly analysed the role played by Mr Harper in the unhappy affair. The Stewards were not dealing with the roles of any others in attendance.

Ground 8

I consider there is no merit in the assertion in ground 8 that there was a denial of natural justice in the sentencing process because the Stewards relied on two previous cases but did not give the appellant the opportunity to make submissions. Mr Harper and his experienced counsel were afforded every reasonable opportunity to present their case in regard to the sentencing process.

Ground 9

Ground 9 claims an error in finding offences in the thoroughbred code to be '*equitable to Harness Rules*'. In the course of dealing with the cases in relation to Rule 243 argument (detrimental to the industry) Steytler P addresses the decided cases which the parties referred to although it is not clear who actually referred the Court of Appeal to those cases. It is clear is that some of the decisions clearly relate to thoroughbred racing rather than harness racing. The Court of Appeal has not seen fit to comment on the fact that two different codes of racing are referred to in the cases. In the course of his submissions in the appeal counsel for Mr Harper relied on cases involving other codes of racing.

No submissions were made directly targeting this ground. Accordingly, I am not in a position to come to any firm conclusion on the principle inherent in the ground. In the circumstances I am not persuaded the Stewards were in error in their approach.

Ground 10

The final ground asserts the penalty is excessive. Mr Davies QC argued that the question raised by this ground is whether the penalty imposed was within a fair range open to the Stewards. The Stewards imposed concurrent penalties because they were heavily interrelated. According to senior counsel arguably it was open to the Stewards to have imposed the penalties the other way around but that fact did not matter. At the end of the day one has an effective penalty. It is submitted in a relative sense the penalty is not so severe, it cannot be demonstrated that the Stewards were in error in their assessment of the seriousness of the matter and were not wrong to find it was a most serious issue in relation to the image of the industry. The Stewards were dealing with extreme conduct. As they found it to be a '*dreadful mischief to the industry*' the penalty needed to be partly deterrent and partly punitive. I agree with these arguments.

To demonstrate a penalty is inappropriate one needs to show an error such as omitting a relevant factor, a failing to ignore something that is irrelevant or a manifest mistake due to having imposed a penalty outside the range. There has not been demonstrated to be any mistake on the part of the Stewards which meets the description of the first two aspects. The third however is more complicated. Cases are hard to equate. There has been a wide range of penalties imposed for these types of offences over the years as the table set out below indicates.

The Stewards have a wide discretion when it comes to deciding on penalty under the rules. This is apparent both when one examines the various penalties imposed in similar cases and the relevant rule itself. Rule 256 specifies:

*'**Penalties available***

(1) *One or more of the penalties set out in sub rule (2) may be imposed on a person, club or body guilty of an offence under these rules.*

(2) *(a)* *A fine within the limits fixed by legislation or by the Controlling Body,*

(b) *conditional or unconditional suspension for a period;*

(c) *disqualification, either for a period or permanently;*

(d) *warning off, either for a period or permanently;*

(e) *exclusion from a racecourse, either for a period or permanently;*

(f) *a bar, either for a period or permanently, from training or driving a horse on a racecourse, track or training ground;*

(g) *conditional or unconditional suspension of registration for a period or cancellation of registration;*

(h) *conditional or unconditional suspension of a licence for a period or cancellation of a licence;*

(i) *a severe reprimand;*

(j) *a reprimand.'*

I have considered the various penalties imposed in the cases referred to in the inquiry, the Court of Appeal, this appeal and also some other relevant reported (harness) racing cases. Mr Harper's disqualifications are quite lengthy but in my assessment not inappropriate punishment for these serious offences. The punishments are of appropriate periods to communicate the clear message to all licensed participants in harness racing, other active participants in the industry and the community generally that there is no room in harness racing for people to take the law into their own hands by engineering an ambush where they inflict cowardly and callous personal retribution. I agree with Stewards' conclusions the conduct amounted to an act of terror and was '*premeditated and unprovoked*'. It clearly had '*grave consequences for the harness industry and potentially the racing industry as a whole*'.

The following table summarises the cases I have considered and highlights the wide range of penalties that have over the years been imposed for similar offences in the three codes. The full facts and details of some of the cases are not clear or available. In the view of my final comments as to ground 9 I have largely ignored the thoroughbred and greyhound racing decisions and basically include them in the table for the sake of completeness.

Name of case (year)	Racing Code (state)	Facts	Stewards' Penalty	On Appeal
R J Smith (1981)	Harness (Qld)	Committed assault	Warned off for life (relicensed after 9 years)	No appeal
D Maund (1990)	Thorough-bred (SA)	Female apprentice jockey struck after being forcibly escorted out of male jockey quarters	3 months suspension	Dismissed
P Webb (1990)	Thorough-bred (Tas)	Jockey grabbed Steward by tie and pushed him into wall in jockeys' room	Warned off	6 years disqualification
C Luttrell (1990)	Thorough-bred (Tas)	Licensee threw badge at Stewards and abused them	5 years disqualification	Reduced to 15 months disqualification
D Nuttley (1994)	Harness (Qld)	Struck Chairman of Stewards in car park	Disqualified for life	No jurisdiction for Racing Appeals Authority to hear matter
R W McCullagh (1995)	Grey-hound (Vic)	Breeder/trainer assaulted an officer of the board	15 years disqualification	Reduced to 6 months disqualification followed by 6 months suspension and $1000 fine
J Westerlo R Andrew (1995)	Grey-hound (Vic)	Trainers engaged in verbal altercation and brawl	6 months disqualification 6 months disqualification	Dismissed 2 months suspension
K Sneddon (1996)	Grey-hound (Qld)	Assault on Steward near control tower	5 years disqualification and $5000 fine	5 years disqualification

Name of case (year)	Racing Code (state)	Facts	Stewards' Penalty	On Appeal
P Church (1997)	Harness (Vic)	Trainer - assault followed by a violent brawl	6 months disqualification	6 months suspension
J Zielke (1997)	Thorough-bred (Qld)	Licensed trainer assaulted produce merchant with a cricket bat after being issued with a letter of demand for unpaid accounts	3 months suspension	No penalty as no nexus to racing
J Turner (1997)	Harness (Qld)	Altercation between two trainer/drivers at the Rocklea Paceway	$500 fine	Appeal allowed
R Farrell (1997)	Thorough-bred (WA)	Apprentice jockey threw food out of a car at a push bike rider outside confines of racecourse	1 month suspension	Dismissed
B Castle (1998)	Thorough-bred (WA)	Assault by stablehand on racecourse bar staff after refusal of service	5 and 6 years disqualification concurrently	No appeal
J Costa D Hilton (1998)	Harness (Vic)	Wild brawl by trainers in stable area of racetrack	12 months disqualification $2000 fine	8 months disqualification and $1000 fine $1000 fine
J Harvison (1999)	Harness (Qld)	Trainer assaulted Steward, later struck Steward	10 years disqualification	Dismissed
C Romanedis (2000)	Harness (Vic)	Physical altercation with another driver	18 months disqualification	9 months disqualification
W Waltisbuhl (2000)	Harness (Qld)	Tipped another driver out of his cart after the race on the course	6 months disqualification	Driver's licence suspended for 9 months and $1000 fine

Name of case (year)	Racing Code (state)	Facts	Stewards' Penalty	On Appeal
T Vass (2000)	Grey-hound (Vic)	Council workers and stewards went to trainer's property and were defamed and sworn at	3 months suspension	Appeal allowed, not detrimental to the image of greyhound racing - no order as to costs
R H Williams (2002)	Harness (Vic)	Conduct detrimental - drove a Ford V8 at high speed onto the training track to intimidate	5 years disqualification and $2000 fine	Dismissed
C Sciberras J Maragos (2002)	Harness (Vic)	Participants fought after a spitting competition in ring, threats, helmets involved, punching	3 years disqualification 12 months disqualification	12 months disqualification 3 months disqualification
P Stampalia G Elliott (2002)	Harness (WA)	Unlicensed participant in a melee at a racetrack Licensed participant in a melee at a racetrack	Warned off for 6 months 6 months disqualification	Dismissed Dismissed
T Bull (2002)	Harness (WA)	Assault on person who complained of use of stock whips on horses	6 months disqualification	Dismissed
T Dolahenty (2003)	Harness (NSW)	Conduct detrimental - threats - not audible by the public	6 months disqualification	Appeal upheld - conviction quashed
J Glover P Simcoe (2004)	Harness (NSW)	Conduct - fighting - jostling for watching position, abusive and threatening words uttered to wife of Glover - king hit on Simcoe and ensuing fight down flight of stairs	6 months disqualification 6 months disqualification	Dismissed Dismissed

Name of case (year)	Racing Code (state)	Facts	Stewards' Penalty	On Appeal
K Schweida (2004)	Thorough-bred (Qld)	Fisticuffs - at trackwork	$5000 fine	Reduced to $4000

The premeditated nature and unprovoked aspect of Mr Harper's conduct distinguishes this case from most of the cases referred to in the table. Those aspects of Mr Harper's conduct, coupled with his standing, place this case in a significantly more serious class than many of the others. I see nothing wrong with the Stewards' description of this case being '*unique and at the extreme high end of the scale of seriousness'.* For those reasons 7 and 5 years disqualification respectively in my opinion are within the range of penalties which are appropriate to be imposed.

Conclusion

For these reasons I would dismiss the appeal as to the two convictions and both penalties and would confirm the decision of the Stewards.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

Seal of Racing Penalties Appeal Tribunal of WA