

DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: BRADLEY GRAHAM

APPLICATION NO: A30/08/656

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR A MONISSE (MEMBER)
MR R NASH (MEMBER)

DATE OF HEARING: 13 SEPTEMBER 2006

DATE OF DETERMINATION: 15 NOVEMBER 2006

IN THE MATTER OF an appeal by Bradley Graham against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 19 June 2006 imposing a six month disqualification for breach of Rule 175 (gg) of the Rules of Thoroughbred Racing.

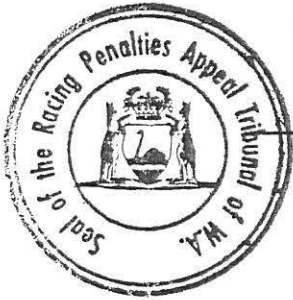
Mr A Papamatheos appeared for Mr Graham.

Mr R J Davies QC represented Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

By unanimous decision of the Tribunal the appeal against penalty is dismissed.

During the course of the hearing of the appeal the Tribunal was informed by senior counsel on behalf of the Stewards that there was no desire to break up the Graham family and that Mr Graham could visit his family residence a few times each week at night. As the Tribunal's decision was arrived at on the basis of that concession it is recommended that, in the event that

Mr Graham makes an application seeking visitation rights, the Integrity Assurance Committee of Racing and Wagering Western Australia should consider the matter on its merits.



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DAN MOSSENSON, CHAIRPERSON

On 19 June 2006 the Racing and Wagering Western Australia ('RWWA') Stewards of Thoroughbred Racing conducted an inquiry into a report received from RWWA principal investigator Mr P O'Reilly that licensed trainer Mr Bradley Graham, falsely reported to the Stewards that DEAD EYE DICK had bled during training on 26 April 2006. Mr Graham held a B Class Trainer's licence. He had been training for some 18 years.

Mr Graham was charged with having made a false statement to the Stewards that DEAD EYE DICK had suffered a bleeding attack at his training establishment on 26 April 2006.

Rule 175 (gg) states:

'The committee of any Club or the Stewards may punish any person who makes any false or misleading statement or declaration in respect of any matter in connection with the administration and control of racing.'

Mr Graham was charged with a breach of that rule in that he had:

'...made a false statement to the RWWA Stewards that DEAD EYE DICK had suffered a bleeding attack at your training establishment on Wednesday the 26th April 2006.'

Mr Graham pleaded guilty. In speaking to the penalty, Mr Graham invited the Stewards to impose a fine rather than a suspension. Training was his full time job. Mr Graham admitted his error and there was no excuse for lying to Mr Hensler and to the Stewards. Mr Graham supplied the Stewards with some financial information as to his personal circumstances. He expressed remorse.

The Stewards' inquiry was a relatively short affair. At the completion of it, the Stewards adjourned to consider the matter before announcing their particularly detailed reasons for imposing 6 months disqualification.

THE APPEAL

At the commencement of the appeal proceedings leave was granted to amend the grounds of appeal as follows:

- '1 *The penalty was excessive in all the circumstances and failed to take adequately into account;*
 - 1.1 *The Appellant's admission of the offence at an early stage and co-operation with the Stewards.*
 - 1.2 *The Appellant's immediate plea of guilty.*
 - 1.3 *The Appellant's financial circumstances and the effect of a period of disqualification on him.*

- 2 *The penalty imposed was excessive compared to penalties imposed by the Stewards for similar offences in the past.*
- 3 *The sentence was excessive having regard to the sentence imposed on the co-offender Harris.'*

Mr Papamatheos advanced a strong argument why the penalty was excessive. In so doing he addressed a wide range of matters. These included the affect of the penalty on Mr Graham's future, the inherent nature of the offence and seriousness of the conduct compared to other offences, Mr Graham's cooperation with the Stewards, the background circumstances to the commission of the offence, the lack of concessions by the Stewards due to the various mitigating factors and the severity of this penalty compared with penalties for other offences.

By way of response Mr Davies QC, argued that this was a very straightforward matter involving the deliberate misleading of the Stewards. It was not 'a federal case'. The role which Mr Graham played compared to his co-offender Mr Harris was addressed. Mr Harris who was Mr Graham's licensed stable hand, had also made a false statement in relation to DEAD EYE DICK to Mr O'Reilly. A schedule of cases was referred by senior counsel to show the circumstances in which disqualification was appropriate. It was argued misconduct which otherwise would go undetected had to be treated very seriously. The Stewards need to rely on the veracity of the reports and information supplied to them by licensed industry people. According to senior counsel bleeding is a very serious matter in racing. The Stewards must rely on the honesty of trainers in relation to bleeding situations. In this case, a false report had been given to the Deputy Chairman of Stewards. It had taken a very long interview to extract the ultimate admission of misconduct by Mr Graham.

To put these conflicting arguments into some perspective it is desirable to quote in full the Stewards' reasons for their determination of the penalty, namely:

'.. Stewards have carefully considered all matters in relation to the question of penalty taking into account your submission. Stewards recognise your level of involvement in the industry and your dependence on it for your livelihood. You've been licensed for twenty years. You have one prior conviction of giving misleading evidence to a Steward's Inquiry in 1993 and you were fined the sum of one thousand dollars.

We also recognise that by pleading guilty to the charge, you have effectively fast tracked this Inquiry and provided for a full disclosure of all of the elements relating to the offence

itself. This has made the Stewards task easier, both in terms of efficiency of procedure but more importantly in its primary task of determining the true circumstances of an offence in order that an appropriate penalty can ultimately be determined. This entitles you to, and we apply a considerable mitigation particularly in the circumstances of cases such as this that might otherwise have been difficult to detect. Whilst recognizing and applying this principle of mitigation, its worth, its worth need (sic) to be appreciated by the context of the overall situation of this case which saw you choose in your initial submissions to Deputy Chief Steward David Hensler on two occasions and Mr O'Reilly and Mr Hensler in a video interview to make inaccurate statements that has the potential to mislead the Steward.

...

A circumstance made worse by the fact that you had the assistance of others, orchestrated by yourself, to support a version of events that suited your ends but were not a truthful representation of the matter. That you abandoned your attempts to mislead must be recognized, however that needs to be done so within the context of the other available evidence which was likely to strongly suggest your version of events was not a reliable reflection of the truth. Nonetheless the Stewards recognize that your ultimate confession is deserving of mitigation and would otherwise have imposed a far greater penalty had you made the, maintained the (sic) approach initially embarked upon by you.

The Stewards take very seriously the offence you have committed which can only be described as a reprehensible and a deceitful act committed by a person who was in a position of trust. The relationship between an owner and trainer is one of significant trust. Owners, who are the lifeblood of the entire industry, invest considerable sums of money in their stock that they are entrusted to the care and management of trainers. The current and future earning potentials of their investments rests heavily in the hands of the trainer who with proper care and attention can ensure that this potential is maximised. Many circumstances outside of anybody's control can serve to destroy or lower this potential. That somebody could deliberately commit an act that served to impinge on, upon such potential is a most deplorable act. Whilst a relationship between owners and trainers can break down for any number of reasons, this can in no way condone actions such as those committed by you.

....

Your actions offend the professionalism and high esteem that the trainers within the racing industry strive to portray. The occurrence of bleeding in horses has significant

repercussions for its future racing and sale options. It is endorsed upon horses' registration papers as an eternal warning to anyone contemplating having anything to do with the horse. It detracts from its viability and value in a most significant way that is well appreciated in the industry. So much so that it is far more likely, although just as serious that bleeding attacks would be unreported to preserve the horses worth as a racing or sale proposition. False reports like yours obviously apply the reverse. They in effect serve to apply a significant and far reaching punitive action upon owners who are entitled to far more from the person they entrusted the care of their horse to.

It is likely your actions have significantly detracted from your own image to prospective owners, which is a price you must pay. Unfortunately such negatives are not entirely confined to you personally. This breach of trust committed by you has the potential to bring into disrepute the industry and discourage owners, or at least give them cause for concerns, about entrusting their charges to the care of trainers. It essentially creates a fear that potentially may be used to restrict owners from exercising their rights in regard to their animal if they have to be concerned about the unscrupulous actions of their trainer in the event that they have a dispute with them. These disputes, which arise on occasions, must be resolved through proper channels and not subject to the system being manipulated through the commission of deliberate acts of retribution such as yours.

Your actions cannot be described as spur of the moment or unplanned to attract mitigation as a heat of the moment matter might do. There was a deliberate and planned event when you decided to contact the Stewards some six days after the last time the horse raced and report an attack of bleeding you knew had never occurred. So intent were you on exacting retaliation on your owners that you were quite prepared to mislead the Stewards on several occasions and upon initial questioning by the Principal Investigator. This conduct was carried forward to a formal video interview.

Your conduct strikes at the very heart of the proper control of the issue of bleeding in horses. The occurrence of bleeding in a horse is a most serious welfare issue for both horse and rider with respect to future racing. In recognition of this the rules impose an important specific onus upon trainers to report any occurrence of bleeding. The proper control of this matter is based upon the honest and correct reporting of bleeding in horses by trainers. The trainer is in the best and at times the only position to know when

a horse has bled. The issue of welfare demands that no risk be taken with reports of bleeding and as such these reports must be taken on face value with the restrictions within the relevant rules thereafter applied. There is no margin for Stewards to second-guess reports such as yours and not apply the restrictions. The Stewards consequently accepted your report as truthful in good faith in recognition of your experience and status as a trainer and also your positive standing in the industry. It goes without saying, that in matters of this kind, Stewards rely heavily on the truthfulness of the licensed persons. Your actions have detracted from the proper control of this important matter.

Under all these, under all of these circumstances it is evident to the Stewards that a penalty of substance is required in order that it not only suits your circumstances and the circumstances of this offence, but that it also serves as a deterrent to others. A clear message must be delivered that actions like these have no place within our industry and will not be tolerated.

The Stewards do accept that you are genuinely remorseful for your actions. Whilst credit is given for the manner in which you have ultimately handled this matter it does not overcome the seriousness of the event itself nor does it eliminate the need for a penalty to be imposed.

The Stewards have considered the provisions of AR.196 which details the powers to punish by way of fine, disqualification, suspension or reprimand. Given the circumstances it would be inappropriate to discharge this matter by way of reprimand. The Stewards have given serious consideration to the imposition of a monetary punishment. Such punishment would allow you to continue to enjoy the privileges of your registered status without restriction. In effect, your serious and malicious breach would not impinge your ability to continue within the industry, industry, if only a fine was imposed. When actions are deliberate and strike at the basis of control in a serious manner such as this, we do not believe that a fine of any value would adequately serve as either a general or specific deterrent, nor would it be an appropriate penalty in all of the circumstances of this case. A person who chooses, as you did, to commit deliberate breaches of trusts bestowed in them which have serious consequences and ramifications for others that flow from their actions cannot expect that upon the detection they will be allowed to continue to be registered and continue in their role unaltered.

Whilst a suspension would serve to prevent you from continuing as a trainer for a period of time, upon expiration you would immediately resume your role. Although more onerous than a fine, with repercussions for your registered status, it is less restrictive than a period of disqualification. Disqualification is generally reserved as a penalty for the more serious offences as demonstrated, as a demonstration of the Authorities complete intolerance and unacceptance for a particular act or circumstance. It represents to all in no uncertain terms, that there is no place for persons within our industry who indulge in actions or behaviours giving rise to the offence from which the penalty stems. We find that your actions fall into this serious category deserving of the imposition of disqualification over suspension. For all the reasons mentioned we therefore believe disqualification to be the most appropriate penalty in all of the circumstances. The mitigatory circumstances do not overcome the appropriateness of this form of penalty but do serve to limit the length of disqualification that might wise, might otherwise (sic) have been applied.

After taking into and applying the mitigating factors, the Stewards believe that the appropriate penalty in all of the circumstances is a six month disqualification Mr Graham.'

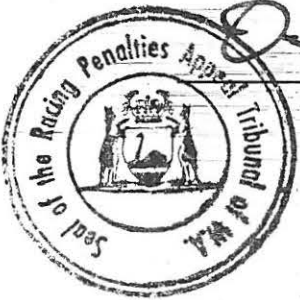
CONCLUSION

In my opinion the reasons delivered by the Stewards cannot be faulted. Indeed, they should be commented on positively and in the most favourable terms. The process of reasoning is very clearly explained. The factors taken in account and the evaluation of each of them could hardly be more lucidly enunciated. The reasons reflect the Stewards undertook a most careful evaluation of all of the relevant facts and circumstances. Mr Graham's background, experience and involvement in the industry is appropriately acknowledged. The plea of guilty is put into context together with Mr Graham's earlier misleading statements. The orchestrated nature of Mr Graham's conduct coupled with the seriousness of the offence are duly and quite properly recognized and commented on in the reasons. The premeditated nature of the revenge are referred to. The breach of trust by this licensed trainer and its serious impact on the owners are carefully considered. The repercussions for the horse and the industry are clearly identified. The significance and need for reliability of reports which are intended to be placed before the stewards are discussed. The impact on the industry and the remorse shown by Mr Graham are both evaluated. The mitigating aspects are not ignored. The reason reveals that as part of the careful adjudication process the range of possible penalties are also evaluated in arriving at the ultimate conclusion.

In the light of these observations I agree with the submissions of senior counsel and adopt them. I am not persuaded that it has been demonstrated that the Stewards fell into any error in arriving at the penalty which they imposed.

I am satisfied the penalty which was imposed was appropriate and despite the submissions to the contrary cannot be described as excessive. All of the relevant factors were properly and carefully evaluated.

For these reasons I would dismiss the appeal.



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DAN MOSSENSON, CHAIRPERSON

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR A MONISSE (MEMBER)

APPELLANT: BRADLEY GRAHAM

APPLICATION NO: A30/08/656

PANEL: MR D MOSSENSON (CHAIRPERSON)
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MR R NASH (MEMBER)

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Mr A Papamatheos appeared for Mr Graham.

Mr R J Davies QC represented Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

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

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



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MR A MONISSE, MEMBER

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR R NASH (MEMBER)

APPELLANT:

BRADLEY GRAHAM

APPLICATION NO:

A30/08/656

PANEL:

MR D MOSSENSON (CHAIRPERSON)
MR A MONISSE (MEMBER)
MR R NASH (MEMBER)

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MR R NASH, MEMBER