DETERMINATION OF

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: CLINTON WADE HALL

APPLICATION NO: A30/08/676

PANEL: MR D MOSSENSON (CHAIRMAN)
MR P HOGAN (MEMBER)
MR A E MONISSE (MEMBER)

DATE OF HEARING: 13 June 2008

DATE OF DETERMINATION: 28 July 2008

IN THE MATTER OF an appeal by Clinton Wade Hall against the determination made by the Racing and Wagering Western Australia Stewards of Harness Racing on 20 September 2007 imposing a disqualification of 5 years for breach of Rule 194 of the Rules of Harness Racing.

Mr T F Percy QC and Ms B J Lonsdale appeared for the Appellant.

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

This is a unanimous decision of the Tribunal.

The appeal against penalty is dismissed.

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

DAN MOSSENSON, CHAIRMAN

APPEAL – 676

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR P HOGAN (MEMBER)

APPELLANT:	**CLINTON WADE HALL**
APPLICATION NO:	**A30/08/676**
PANEL:	**MR D MOSSENSON (PRESIDING MEMBER)** **MR P HOGAN (MEMBER)** **MR A E MONISSE (MEMBER)**
DATE OF HEARING:	**13 June 2008**
DATE OF DETERMINATION:	**28 July 2008**

IN THE MATTER OF an appeal by Clinton Wade Hall against the determination made by the Racing and Wagering Western Australia Stewards of Harness Racing on 20 September 2007 imposing a disqualification of 5 years for breach of Rule 194 of the Rules of Harness Racing.

Mr T F Percy QC and Ms B J Lonsdale appeared for the Appellant.

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

INTRODUCTION

This is an appeal against penalty.

On 20 September 2007, the Racing and Wagering Western Australia Stewards of Harness Racing disqualified the Appellant for 5 years for a breach of Rule 194 of the Rules of Harness Racing ("the rules").

Rule 194 is in the following terms:

"A person who holds or controls drugs unlawfully or which are unlabelled or without a supporting prescription is, if those drugs are capable of being administered to a horse, guilty of an offence".

The particulars of the charge were put to the Appellant at pages 68 to 69 of the transcript of the proceedings of the Stewards' inquiry (T68-69). The particulars were as follows:

"The particulars of the charge are that you, Mr Clinton Hall, a licensed Harness Trainer/Driver are charged under that rule for on the 14th of June 2007 holding without a supporting prescription the drug darbepoietin which is capable of being administered to a horse."

The Appellant pleaded not guilty, but was convicted.

THE GROUNDS OF APPEAL

1. The Stewards erred by categorising the offence as being "extreme" and by imposing a penalty that was at the highest end of the spectrum for this type of offence.

2. The Stewards erred in imposing a penalty that was manifestly excessive in all the circumstances of the case.

   Particulars

   (a) The penalty was excessive having regard to the nature and quantity of the prohibited substance in question.

   (b) The penalty was excessive having regard to the fact that the Appellant had not used the substance on a horse or in a race.

   (c) The penalty was excessive having regard to the fact that apart from having the substance in his possession there were no other aggravating factors that were established by the evidence at the inquiry which would place the Appellant's offence at the highest end of the spectrum for offences of its kind.

3. The Stewards erred by failing to give any adequate weight to the Appellant's youth and prior good record.

4. The Stewards in imposing the penalty of five years disqualification for this offence erred by failing to consider the full range of penalties applied for similar types of offences in Western Australia and in other Australian States and by failing to apply the principle in *McPherson v RPAT* (1995) 79 A Crim R 256.

5. The Stewards erred by failing to allow for, or failing to adequately allow for the substantial period of suspension effectively served by the Appellant prior to the conclusion of the inquiry.

BACKGROUND

The Appellant was a licensed harness trainer and driver. At the time of commission of the offence, he was aged 29, single with no dependants. He is from a family which is prominent in the harness racing industry. He is the manager of the Serpentine tavern, which is frequented by customers with interests in the harness racing industry. At the time of commission of the offence, the Appellant had 1 horse in work. At times, he had up to 3 in work, and he was averaging 3 or 4 drives per week.

On 14 June 2007, the Appellant went to his local Post Office at Serpentine and collected a parcel addressed to him. He took it back to his office, where it was found by Stewards. It was this parcel which contained the drugs in question.

The Postal manager of the Serpentine Post Office, Mrs Foster, was interviewed on video, and that video was played in evidence at the inquiry. Mrs Foster said in the interview (T40):- *"At 8.45 Clint came in and asked if there was a parcel, if a parcel had arrived for him. I said we were just sorting. We hadn't done all the parcels. He said I'm expecting a parcel. It needs to go into the fridge and then he said the parcel was sent from Melbourne express and it should be here today."* Later in the same interview, Mrs Foster said (T40 – T41):- *"That was 8.45 he first came in. I asked him to come back in half an hour. At 10 past 9 he came in, I said we're still sorting. We've had a few problems with the mail, I said, I said perhaps come back in another half hour. Then I put the pick-up card into the post office box and at a quarter to 10 he came in and picked the parcel up."*

THE LOCATING OF THE DRUG

Mr O'Reilly is the Principal Investigator for Racing and Wagering Western Australia (RWWA). Two days before 14 June 2007, Mr O'Reilly received information that a parcel (variously referred to as a parcel/package/envelope/express post box) had been sent to the Appellant from the Eastern States. Mr O'Reilly waited for the package to arrive. On 14 June, he observed the Appellant collect the package from the Serpentine Post Office, nearby to the Serpentine tavern. The Appellant returned on foot with the package to his office at the tavern. Within seconds of the Appellant being in his office, Mr O'Reilly, in company with another investigator, knocked and was allowed entry to the office.

Mr O'Reilly observed on the desk in the office the item in question. He described it as an (Australia Post) express post package, addressed to Clinton Hall PO Box 16, Serpentine. A video interview was then conducted with the Appellant in the office at the tavern. During the interview, the Appellant said that he had no knowledge of the origin of the package. He denied that he was expecting it, and said that he did not know who it was from or why it was addressed to him. The sender details on the outside of the envelope indicated that it had come from a Mr Weightman in Victoria.

The package was opened. The primary "package" was the Australia Post express post envelope, with the addressee, sender and dangerous goods declaration details written visibly on the outside. Inside the envelope there was a post pack box, with no written details. Inside the post pack box were 2 further boxes, with printed information describing their contents to be a prescription only medicine called by the trade name "Arenesp". The contents were more specifically described as being "darbepoiten alfa ready to use syringes". There were also some newspaper sheets as packing material, and a freeze pack to keep the contents cool.

THE NATURE OF THE DRUG

The packets labelled as Arenesp were conveyed for testing at the Australian Racing Forensic Laboratory (ARFL). They were described as 2 boxes of pre-filled syringes. The ARFL in its report concluded that it was not possible to unequivocally confirm the presence of darbepoetin alfa to an acceptable standard. The boxes were then sent to the Australian Sports Drug Testing Laboratory (ASDTL) for conclusive confirmation.

The ASDTL in its report said that Aranesp is the trade name for darbepoietin alfa, 100ug in 0.5mL. The laboratory reported that the syringes tested contained a therapeutic quantity of darbepoietin, approximately consistent with the package label.

Darbepoietin alfa is sometimes referred to as a "blood booster", or EPO. Dr Symons, a veterinarian with RWWA, gave evidence at the Stewards' inquiry. He said that darbepoietin alfa is a relatively new drug. It is produced for humans, not animals. It has a legitimate use in human medicine for the treatment of people with chronic renal failure, and for the treatment of people with cancer undergoing chemotherapy. The drug also has an "illegitimate" use, in both human and animal sports. The drug is a modification of an endogenous hormone produced by mammals which stimulates the production of red blood cells. That in turn increases haemoglobin levels, which increases oxygen carrying capacity, which increases aerobic capacity, thereby allowing the person or horse to race at good speeds for longer.

Darbepoietin alfa is available by prescription only. It is listed in Schedule 4 of the current Poisons Standard under the *Therapeutic Goods Act 1989 (C'Wealth),* and that schedule is applied in Western Australia by schedule 4 to the *Poisons Act 1964 (WA).*

THE INQUIRY

On 14 June 2007, the day of the finding of the drug, the Stewards opened an inquiry. On the same day, the Stewards acted under Rule 183 and suspended the Appellant's licences as a trainer and driver pending the outcome of the inquiry.

The first sitting of the inquiry was on 13 August. The Appellant was questioned. At the end of proceedings that day, the Appellant was charged. There were then 4 more sitting days, before the inquiry concluded with a finding of guilty and imposition of penalty on 20 September 2007.

The charge was one of "holding" a drug without a prescription. It is an offence entirely analogous to an offence of possession. It is not an absolute offence. The Appellant could not be guilty unless he knew that he was holding a drug of some type. His evidence was that he did not know what was in the packet. He did not know that he was holding a drug of any type.

The Stewards found the offence proved. In doing that, they disbelieved the Appellant's evidence.

THE APPELLANT'S COMMENTS IN MITIGATION OF PENALTY

Following the finding of guilty, The Appellant spoke in mitigation of penalty. At T157 – 158. He made the following points:-

- He continued to protest his innocence.
- He did not administer any prohibited substance.
- His horse was subsequently found to be drug free.
- During his suspension he had missed participation in the industry and had found it difficult to face his peers in the industry.
- His record over 14 years was unblemished in that he had only ever suffered minor penalties. He had never brought the sport into disrepute.
- He wished to be able to retain the ownership and management of the Serpentine Tavern (which contains a licensed TAB).

In answer to the Stewards questions concerning possible penalty, the Appellant said at T158 – T160:-

- He was 29 years old and single with no dependants.
- He had one horse in work, and three to four maximum at any time.
- He was from a prominent Harness Racing family.

- He was not in a great financial position to pay a fine.
- The licensee of the Serpentine Tavern is his mother, but he is the manager.
- There is a TAB agency on the premises, and both he and his mother were the agents.
- He did not consider himself to be a high profile trainer.

THE STEWARD'S REASONS FOR DECISION ON PENALTY

The Stewards imposed a penalty of 5 years' disqualification. The Chairman gave lengthy reasons, covering more than 8 pages of transcript (T161 - T169). He began by saying that the Stewards had considered all the submissions carefully, weighing the gravity of the offence against the Appellant's personal circumstances. They considered it to be a most serious matter.

The Stewards were particularly concerned about the nature of the drug. As to that, the Chairman said:-

- *"The administration of a drug of this nature to a race horse can only be for the purpose of obtaining an illegal and unfair advantage over other competitors"* (T162)
- *"It is not something that is easy to obtain and requires a significant level of effort and subterfuge to be procured without prescription"* (T162)
- *"EPO has no legitimate therapeutic use in a racehorse. It is also a substance of great notoriety within the community at large."* (T162)

The Stewards were also concerned about the damage to the image of the industry as a result of the Appellant's actions. The Chairman said:-

- *"In sporting contests that are founded on the basis of fair play, the spectre of EPO does significant damage to that sport's image, integrity and prestige."* (T162 – T163)
- *"The existence of drugs such as EPO, in the hands of registered trainers in our industry, is a substantial detriment to the image the industry strives to maintain in order to ensure its financial wellbeing."* (T163)

As to the facts of the particular offence, the Chairman said:-

"The package containing the two boxes of Aranesp that you were found to be holding was addressed to you. This was not some trivial quantity of the drug but consisted of some 8 syringes. You have no personal need for this substance and it was clearly sent to you in the most dubious of circumstances. They originated from a Mr Rod Weightman, a disqualified Victorian Harness trainer. Mr Weightman received a 5 year disqualification for a positive swab involving the prohibited substance "blue magic". Having established that you knew full well that a parcel of this nature was in transit to you, it remains unknown as to the full circumstances leading up to its dispatch. Parcels like this do not just turn up in trainer's letterboxes or post–boxes. For the reasons indicated in our earlier determination in relation to the charge, you were expecting this package and have not been truthful in your evidence." (T164 – T165).

CONSIDERATION OF THE GROUNDS OF APPEAL

Before the grounds of appeal are considered, it is necessary to point out that the argument on appeal effectively raised a new ground. It was submitted on appeal that the Stewards made an error in imposing a penalty on the basis that the Appellant knew that he had possession of a drug which is in a more serious category. Accepting the finding of guilty, It was submitted that the Stewards should have dealt with the Appellant on the basis that he knew only that he had possession of a

drug "simpliciter". It was submitted that there was no evidence from which the Stewards could draw an inference that he knew he had possession of, or in other words was holding, a drug which was in a more serious category.

The Stewards certainly did find that the Appellant knew that he had possession of darbepoietin alfa, a drug accepted to be in the more serious category. In their findings of fact on conviction, the Chairman said at T151:- *"Mrs Foster was in our opinion a most credible witness and the Stewards accepted her evidence. Having accepted her evidence, it would follow from that you had knowledge of the package's arrival from arrival Victoria and of the contents. From this basis alone, there is sufficient evidence to support the charge laid."* In their findings on penalty, the Chairman said at T164 – T165:- *"Having established that you knew full well that a parcel of this nature was in transit to you, it remains unknown as to the full circumstances leading up to its despatch."*

I accept that the Appellant should not be punished on the basis of knowing that he had the more serious drug in his possession, unless there was some evidence of that fact. In this case, there was abundant evidence of that fact for the purposes of fixing the appropriate penalty. As the Chairman said at T148:- *"Significantly Mrs Foster maintains that you advised her that you were expecting a package from Victoria which was posted two (2) days ago and most notably you said that it required refrigeration."* The Chairman went on to say at T150:- *"As a matter of logic, only the sender who packed the envirofreeze with the drugs could know of the need to keep them cool and if the need for refrigeration was uttered by the receiver before receipt of the package then clearly he must know of the nature of the package being sent by that sender."*

The Stewards also had evidence of a link between the sender of the parcel and the Appellant. The Appellant's phone records were in evidence at the inquiry. As to those phone records, the Chairman said at T153:- *"....they also served to bring to light that there was a possible third party link between yourself and Mr Weightman in the form of David Harding."* At T152, the Chairman said:- *"Ultimately it is revealed that David Harding shares a link to the sender of the parcel and was in communication with both you and Weightman at about the same times." Furthermore, it becomes apparent that David Harding had exchanged numerous phone calls and text messages with you both prior to and immediately after the collection of the package,....."*

In my opinion, there was sufficient evidence for the Stewards to draw the inference that the Appellant knew the precise nature of the drug that he had in possession. Whilst this is not strictly a ground which requires to be dealt with here on the appeal, it nevertheless requires the finding to be made so that the actual grounds of appeal can be clearly dealt with.

1. The Stewards erred by categorising the offence as being "extreme" and by imposing a penalty that was at the highest end of the spectrum for this type of offence.

The Stewards variously categorised the offence as *"most serious"* (T161 and T166), *"extreme"* (T164 and T169), and *"serious"* (T165). They made that categorisation taking into account all the relevant factors, including the nature of the drug, the potential for damage to the integrity of the industry, and the conduct of the Appellant's defence. It must be remembered that this was the first offence of its type within Western Australia, a fact pointed out by the Stewards in their reasons (T168). The Stewards were obliged to decide the level of seriousness, and they cannot be said to be in error unless there was some mistake in the reasoning process. I cannot see that any relevant factor was ignored, or overstated against the Appellant's interests.

This ground also asserts that the Stewards were in error in imposing a penalty that was at the highest end of the spectrum for this type of offence. Whether that depends upon a multitude of factors, more particularly set out in the remaining grounds of appeal. This part of ground 1 adds nothing to the more particular grounds which follow. It does not require separate consideration from those other grounds. I would not uphold ground 1.

2. The Stewards erred in imposing a penalty that was manifestly excessive in all the circumstances of the case.

Particulars

(a) The penalty was excessive having regard to the nature and quantity of the prohibited substance in question.

(b) The penalty was excessive having regard to the fact that the Appellant had not used the substance on a horse or in a race.

(c) The penalty was excessive having regard to the fact that apart from having the substance in his possession there were no other aggravating factors that were established by the evidence at the inquiry which would place the Appellant's offence at the highest end of the spectrum for offences of its kind.

INTRODUCTION TO CONSIDERATION OF PARTICULARS OF GROUND 2

There is no maximum penalty for an offence against Rule 194. Nor is there any (effective) limitation on the type of penalty which can be imposed. In this case, disqualification was imposed. By Rule 256(2)(b), that disqualification can be: *"....either for a period or permanently"*. There have been no previous instances of a breach of Rule 194 in Western Australia. It follows that there have been no breaches of Rule 194 involving this particular drug. Therefore, there is no *"tariff"*, or *"spectrum"* of penalties which was available to the Stewards as an aid to fixing the appropriate penalty in this case. The disposition in this case would serve to set the standard for any offences of a like nature which might be committed in the future. As the Stewards said at T168:- *".....the penalty will serve to set the standards for this type of offence."*

(a) The penalty was excessive having regard to the nature and quantity of the prohibited substance in question.

As to the nature of the drug, it can be categorised as "performance enhancing". It is a modification of an endogenous hormone, the use of which leads to an increase in performance. This type of drug can be distinguished from a therapeutic drug, which would fall into a category of lesser seriousness. Within the rules themselves, EPO is treated in the special category of drugs which may be tested for out of competition. It is one of the drugs listed in Rule 190A. As Dr Symons explained in evidence at T63:- *"....they're specified there because they are the ones that we are most concerned about."* The reason for that was further explained by Dr Symons T62 – T63:- *"...,you can use the drug out of competition and the drug will disappear but the effect, the increased red blood cells will still be evident and give a benefit when the horse races,..."*. Quite apart from the Rules of Harness Racing the drug is treated seriously by legislation. It is available only on prescription, because it is in Schedule 4 to the Poisons Act. All of the indications are that the nature of the drug is such that it should be treated as being in the upper level of seriousness category.

This particular also complains that the penalty was excessive having regard to the quantity of the drug. There was no evidence at the inquiry or here on appeal as to what quantities are necessary or required to achieve the necessary object of enhancing a horse's performance. There was and is no evidence as to treatment regimes on horses. The Stewards did not know, and we do not know, whether this was enough for use on one horse or more. It could be that the quantity was sufficient for further commercial distribution, making this offence in an even more serious category. The Stewards did not draw that inference against the Appellant in this case because there was no such evidence. Equally, no inference can be drawn in his favour on this appeal that this was a quantity which in some way makes the offence less serious.

(b) The penalty was excessive having regard to the fact that the Appellant had not used the substance on a horse or in a race.

The Appellant sought to draw a comparison with other cases in which persons had been disqualified for offences in relation to excessive TCO2 levels. In Lalich (Appeals 368 and 369 delivered 20 November 1997) a penalty of 2 years disqualification was imposed on appeal. That was an offence of presenting a horse to race. In Bettesworth (Appeals 503 – 505 delivered 7 December 2000), a penalty of 2 years disqualification was imposed on appeal. That was for an offence of stomach tubing a horse within 24 hours of commencement of a race.

In my opinion, no useful comparison can be drawn. The fact that the drug had not been used has no relevance, bearing in mind its nature. Possession type offences have been known to the general law for centuries. They are aimed at preventing the person in possession from taking the next step in the process, and committing what might be called the completed offence. Possession offences themselves are substantive offences because the law, in this case the Rules, seek to minimise the damage by preventing the next step from occurring. Possession offences have their own level of seriousness, depending on a number of factors including the nature of the object (drug) in question. Had the Appellant gone on to administer the drug to a horse and present it for racing, he would no doubt have committed another separate offence. What this particular of ground 2 asserts is that the Appellant is less culpable on this one offence because he has not committed two offences. That reasoning does not appeal to me.

(c) The penalty was excessive having regard to the fact that apart from having the substance in his possession there were no other aggravating factors that were established by the evidence at the inquiry which would place the Appellant's offence at the highest end of the spectrum for offences of its kind.

This offence carries a maximum penalty of permanent disqualification. It can be accepted that the maximum penalty is reserved for offences which are in the category of the worst of their type. Obviously, the Stewards did not consider this offence to be in that category, because they did not impose the maximum. In terms of this particular of ground 2, the Stewards did not place the offence *"...at the highest end of the spectrum for offences of its kind."* As noted above, the Stewards categorised the offence as one being *"most serious"* and *"extreme"*.

For all of the above reasons, I would not uphold ground 2.

3. The Stewards erred by failing to give any or any adequate weight to the Appellant's youth and prior good record.

The Appellant was aged 29 at the time of commission of the offence. At T161, the Stewards described him as a "young person". Sometimes youth is a mitigatory factor, but that would normally be in circumstances where a person is immature or lacks adult guidance. That is not the case here. In my opinion, there is nothing in the fact of Appellant's age which mitigates the offence.

In his comments in mitigation of penalty, the Appellant pointed out that his record over 14 years was unblemished in that he had only ever suffered minor penalties. He had never brought the sport into disrepute. The Stewards did not disagree. At T168, the Chairman said: - *"The circumstances of the offence as discussed do not reveal any extenuating circumstances that deter the Stewards from imposing a significant period of disqualification. On the contrary, they serve to support that there is very little before us to mitigate any penalty arrived at as a base tariff for an offence such as this."* At the same paragraph of the transcript, the Stewards continued on to say: - *"Whilst your good record to date must and is acknowledged it cannot of itself overcome the need for significant penalty."*

It seems to me that the Stewards in this case imposed a penalty on an "intuitive synthesis" basis. That is an acceptable manner of arriving at a correct penalty, one which does not require for mitigatory factors to be given specific discounts. What is required is that the Stewards give weight to mitigatory factors, not that they necessarily give specific discounts to the individual factors. That is what they did in this case when the Chairman said at T168 that the Appellant's good record to date was acknowledged.

I would not uphold ground 3.

4. The Stewards in imposing the penalty of five years disqualification for this offence erred by failing to consider the full range of penalties applied for similar types of offences in Western Australia and in other Australian States and by failing to apply the principle in *McPherson v RPAT* (1995) 79 A Crim R 256.

In *McPherson*, Rowland J (with whom Ipp J agreed), said at 261:- *"If there is some reason why penalties for this type of offence should exceed those given in another State when the Rules of Racing seem to be similar, then one might expect that reason to be exposed".* His Honour went on to say at 261 - 262;- *"As no reasons have been delivered by either the stewards or the Tribunal as to what the local penalties are that are usually imposed, then there is an inference that, at least insofar as the Tribunal is concerned, it has failed to consider this issue for itself. If it be the fact that there is a range of penalties which has been imposed in this State, which is greater than those which apply in New South Wales, then it seems to me that both that fact and the reasons for such a large discrepancy should be identified."*

In making the above comments, His Honour was adopting and approving the principle that a penalty must be within the range of penalties commonly imposed for offences of its type. His Honour was also making the point that the range of penalties can be gleaned from similar offences in other States within Australia, assuming the Rules to be the same.

In this case, the Stewards did not refer to a range of penalties, either in this State or in other States. In Western Australia, there have been no offences involving either this Rule or this particular drug. That being so, there is no range of penalties in Western Australia. That is why the Stewards said at T168:- *"It is left for the Stewards to determine a period of time of disqualification given all of the circumstances. This is an important task in any case, never more so than when the penalty will serve to set the standards for this type of offence."*

It appears also that there have been no instances of the drug being detected in a horse in other States in Australia. In answer to a question from the Chairman at T63, Dr Symons said: - *"I'm fairly sure there's been none."*

The fact that there is no range of penalties or "tariff" did not take away from the fact that the Stewards still had to determine an appropriate penalty. They were aware that they were involved in an exercise which would set the standard for other cases which might follow. This ground of appeal does not complain that the Stewards went about setting the standard in an incorrect way, so no useful purpose can be served on this appeal by considering that hypothetical question.

I would not uphold ground 4.

5. The Stewards erred by failing to allow for, or failing to adequately allow for the substantial period of suspension effectively served by the Appellant prior to the conclusion of the inquiry.

As noted above, the Appellant's licences as a trainer and driver were suspended on 14 June 2007, the day of the finding of the drug. The penalty of 5 years disqualification was imposed on 20 September 2007. The appellant had served 3 months suspension.

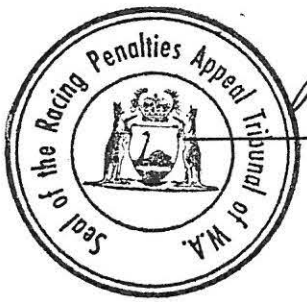
The Chairman said at T169:- *"In arriving at our decision, the Stewards are cognisant of the fact that you have effectively been "stood down" for in excess of 3 months. Whilst you have been prevented from driving in this time, you had transferred your horse McRae's mate into your fathers (sic) care some time prior to the 14th June 2007 and you were still able to freely attend race meetings. In arriving at a penalty the Stewards are fully aware of this "suspended" period".*

Any penalty imposed in respect of a particular offence, be it a suspension or anything else mentioned in Rule 256 ("Penalties available") should be taken into account in fixing the final penalty. The position with this mitigatory fact in my opinion is the same as with the mitigatory fact that the appellant had a good record. The Stewards were not obliged to give a specific discount. What is required is that the Stewards give weight to mitigatory factors, not that they necessarily give specific discounts to the individual factors.

I would not uphold ground 5.

CONCLUSION

For all of the above reasons, I would dismiss the appeal.



PATRICK HOGAN, MEMBER

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR D MOSSENSON (CHAIRMAN)

APPELLANT:	**CLINTON WADE HALL**
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DATE OF HEARING:	**13 June 2008**
DATE OF DETERMINATION:	**28 July 2008**

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Mr T F Percy QC and Ms B J Lonsdale appeared for the Appellant.

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

I have read the draft reasons of Mr P Hogan, Member.

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

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

Dan Mossenson

DAN MOSSENSON, CHAIRMAN

APPEAL – 676

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR A E MONISSE (MEMBER)

APPELLANT:	**CLINTON WADE HALL**
APPLICATION NO:	**A30/08/676**
PANEL:	**MR D MOSSENSON (CHAIRMAN)** **MR P HOGAN (MEMBER)** **MR A E MONISSE (MEMBER)**
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ANDREW MONISSE, MEMBER