

RACING PENALTIES APPEAL TRIBUNAL DETERMINATION

APPELLANT: **DARRYL STONE**

APPLICATION NO: **A30/08/817**

PANEL: MS K FARLEY SC (CHAIRPERSON)
MR AE MONISSE (MEMBER)
MS B ROBBINS (MEMBER)

DATE OF HEARING: 20 SEPTEMBER 2018

DATE OF DETERMINATION: 21 NOVEMBER 2018

IN THE MATTER OF an appeal by DARRYL STONE against a determination made by Racing and Wagering Western Australia Stewards of Thoroughbred Racing imposing penalties totalling \$2750 in fines and a disqualification of four months for six breaches of Rule 175 of the RWWA Rules of Thoroughbred Racing

Mr Darryl Stone appeared in person

Mr Denis Borovica represented the Racing and Wagering Western Australia Stewards of Thoroughbred Racing

1. Following interviews conducted by Racing and Wagering WA Thoroughbred Stewards on 2 November 2017 and 26 November 2017, and following enquiries by Stewards on 30 January 2018, 22 February 2018 and 8 May 2018, Mr Darryl Stone was found 'guilty' by Stewards of six offences against the WA Thoroughbred Rules of Racing ('the Rules'). The first three of those offences arose out of Mr Stone's conduct at the Bunbury race meeting of Thursday 2 November 2017, and the latter three offences arose out of conduct, again at the Bunbury races, on Sunday 26 November 2017. All involved allegations of improper action or improper behaviour, or misconduct against rule 175 of the Rules.

2. On 15 May 2018 Stewards imposed penalties totalling \$2750 in fines and a disqualification for a period of four months expiring on 14 September 2018. The fines and penalties are summarised in the following table.

2 November 2017 Offences

RULE	PARTICULARS	OUTCOME
AR 175 (a)	Improper action – leading horse	\$250 fine
AR 175 (j)	Improper behaviour – to Mr Mead	\$500 fine
AR 175 (q)	Misconduct – bad language	Disqualification - 4 months

26 November 2017 Offences

RULE	PARTICULARS	OUTCOME
AR 175 (a)	Improper action – carrying gear bag	\$500 fine
AR 175 (q)	Misconduct – recording Steward Mead	\$750 fine
AR 175 (q)	Misconduct – recording Steward Brown	\$750 fine

3. On 23 May 2018, Mr Stone appealed against the Stewards' decision.
4. The matter was initially listed for hearing on Thursday 26 July 2018, however for various reasons which are irrelevant to this decision, the matter was not able to be heard before the Tribunal until Thursday 20 September 2018. By this stage, the disqualification imposed upon Mr Stone had expired.
5. It was not clear from Mr Stone's grounds of appeal whether he was appealing against the findings of guilt against him, the penalties imposed upon him, or both. At the commencement of the hearing, Mr Stone clarified for the Tribunal that he was appealing against the findings of guilt entered against him and that he was seeking a rehearing of the matters. This was because he claimed that at the time of the previous enquiries, he was suffering from 'a cognitive impairment' and was unable to properly put his defence to the allegations before the Stewards.

6. In essence, Mr Stone contended that the charges against him should not have proceeded as he had entered into 'a contract' with Mr S N Jerrard, a Deputy Steward at the Bunbury racecourse, that enabled him to perform duties at the two race meetings which would otherwise only have been able to be performed by a licenced person in accordance with the RWWA Act and the relevant rules. Mr Stone contended that he had found himself unable to adduce the appropriate evidence of this 'contract'.
7. This Tribunal of course has the power to send matters back to the Stewards for rehearing, pursuant to section 17(9)(b) of the *Racing Penalties (Appeals) Act 1990*. A rehearing can only be ordered after determination of the appeal in favour of Mr Stone.
8. For the reasons which follow, I am of the view that the appeal should be dismissed. The Tribunal is therefore not able to grant Mr Stone's request for a rehearing. In any event, the Tribunal is of the view that any rehearing would inevitably result in the same outcome for Mr Stone. Although our reading of the various transcripts do not suggest that there was any 'contract' between Mr Stone and Mr Jerrard, or any other Steward for that matter, the fact of the matter is that even if Mr Stone had felt well enough to properly put his case in relation to that contract, it is not possible to 'contract' out of the Rules and there was ample evidence that Mr Stone, even on his own admission, was in breach of those rules.
9. A history of the matter is perhaps useful in understanding my decision.
10. Up to approximately March 2015 it would appear that Mr Stone held a licence, that being a permit to train, and that Mr Stone had held that licence for a number of years.
11. In the Magistrates Court in December 2014 and February 2015, default judgements were entered against Mr Stone by other participants in the racing industry in the sum of just under \$5000.
12. Following those judgements, and as a result of enquiries by Stewards as to what Mr Stone intended to do about those judgements, he voluntarily relinquished his trainers' licence and became, for the purposes of the legislation and the rules, an unlicensed person. This occurred on 31 March 2015. The judgement debt remains unpaid.
13. Sometime in July 2017, Mr Stone's wife, Mrs Alison Stone, was granted a permit to train.
14. It would appear, that notwithstanding that Mr Stone after March 2015 ceased to be a licensed person, he was still very much involved in the racing industry in support of his licensed wife.

15. At the hearing on 20 September 2018, Mr Borovica, representing the Stewards, tendered to the Tribunal a letter written to Mr Stone, dated 20 October 2017.
16. On 20 August 2007 the RWWA Integrity Assurance Committee (IAC) resolved to adopt a policy in relation to determinations of whether a person is "suitable, appropriate or a fit and proper person" to hold a licence. In that policy document, one of the "relevant matters" to be taken into account is:

'(j) ...whether the person has failed to pay an amount or such other account for which the person is or was liable for as confirmed by an order of a Court or Magistrate having jurisdiction in such matters.'
17. At some time prior to 20 October 2017, Mr Stone made application for a Stable Hand Licence within the Thoroughbred Code.
18. Notwithstanding a supportive report of an interview between Mr Stone and Steward Mr Chris Brown, RWWA rejected Mr Stone's application. Reasons were provided in a letter dated 20 October 2017 which was tendered by Mr Borovica at the hearing of this matter.
19. This letter would have left Mr Stone in no doubt that he was an unlicensed person after 20 October 2017. He no doubt had the experience and the skills around horses to qualify, but consideration of matters within the licensing policy had resulted in his failing to become relicensed in another capacity. His rights of appeal were explained in that letter.
20. Mr Stone told the Tribunal that, at many race meetings, unlicensed people ('even mothers with babies in prams') transgress into licensed only areas and Stewards would take no action. Stewards of course retain some discretion in their application of the Rules.
21. There was however no evidence led before the Tribunal or before the Stewards that Stewards had been aware of or permitted Mr Stone to lead or saddle a horse, as he did on 2 November 2017, or to carry gear associated with racing, as he did on 26 November 2017.
22. It was those actions which of course led to Mr Stone becoming frustrated or angry with Stewards, and resulted in his other charges.
23. At the Stewards' Inquiry on 30 January 2018, evidence was led that, prior to the race meeting of 26 November 2017, Mrs Stone had emailed Steward Mr Brad Lewis seeking permission for

an unlicensed person (namely Mr Stone) to stand in the stall with Tommy Two Guns (see p93 TS). Permission was denied. It was denied because Mr Stone was not licensed and could not be in a licensed area.

24. The position could not have been made clearer to Mr and Mrs Stone. Only an appropriately licensed person may take part in the racing industry pursuant to the Rules. Mr Stone was not such a person on either 2 November or 26 November 2017.
25. In relation to the offences of 2 November, Mr Stone admitted that:
 - a. he had saddled and lead the horse Tommy Two Guns in the vicinity of the stalls area at Bunbury Turf Club, and at the time was an unlicensed person; and
 - b. he told Steward Mr Mead to take the horse, and said words to the effect of "you idiots won't give me a licence".
26. Mr Stone denied that he called Mr Mead a "fat little cunt". Steward Mr Vickers and strapper Ms Mitchell told Stewards he did use those words.
27. In relation to the charges arising on 26 November 2017, Mr Stone told Stewards:
 - a. that he carried a gear bag into the stall area; and
 - b. that thereafter he did attempt to enter the Stewards' room, and that he did record both Mr Mead and Steward Mr Brown, on his mobile phone.

Mr Stone pleaded 'not guilty' to each of the charges laid against him on the basis that his behaviour was not improper or did not constitute misconduct.

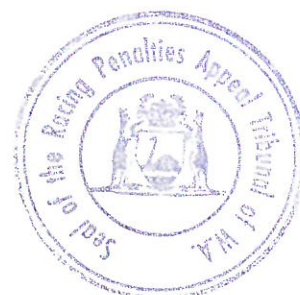
28. Mr Stone claimed at the hearing of the appeal that his "cognitive impairment" at the time of the inquiries had prevented him from adducing evidence that in effect, gave him permission to perform the duties of a licensed person on the track.
29. In fact, evidence adduced at the inquiries indicated strongly to the contrary. Mrs Stone had by email requested permission from Steward Mr Lewis for Mr Stone to be allowed into the stall area to be with Tommy Two Guns. That request was specifically denied.
30. Steward Mr Jerrard who conducted the inquiry on 2 November 2017 confirmed with Mr Stone he "(wasn't) to be handling horses on licensed premises".

31. I am satisfied that no evidence could be led that would establish these Stewards had given Mr Stone any permission to do what he did on 2 November or on 26 November.
32. In any event, in performing those two tasks on those two days, Mr Stone was clearly performing tasks that would ordinarily be carried out by licensed individuals under the Rules. Of itself, Stewards were justified in finding that his actions were improper, notwithstanding that on 2 November Mr Stone may have had genuine concerns as to the horse Tommy Two Guns' behaviour. Those concerns may have properly been taken into consideration in mitigation of penalty, but made the actions themselves no less improper.
33. It is clear that, thereafter, Mr Stone lost his temper with the Stewards and behaved toward them in a manner that clearly constitutes misconduct.
34. Mr Stone was a licensed person in the Thoroughbred Racing Industry from 1989 until July 2017 when he voluntarily surrendered his licence.
35. He applied unsuccessfully for a Stable Hand Licence in September 2017. An interview was conducted on 11 September with Mr Stone by Steward Brown.
36. In his report of 22 September 2017, tendered at the hearing of the appeal by Mr Stone, Mr Brown noted that Mr Stone had admitted taking horses to the Bunbury track by himself while unlicensed, but was told by Mr Jerrard that he could not do this "in which he has since obeyed." Mr Brown noted that he "strongly advised" Mr Stone that, as an unlicensed person, he was not to take horses to the track, which according to Mr Brown was acknowledged by Mr Stone.
37. Mr Brown's report concludes "if Mr Stone is granted a Stable hand licence, he needs to be reminded and strongly advised that he cannot take horses to track work or race meetings without Mrs Stone being present."
38. Mr Stone could have been under no misapprehension that he was not permitted to handle horses at a thoroughbred race meet, or otherwise to participate in the industry, without an appropriate licence. An application for such a licence has been denied.
39. Notwithstanding his unlicensed status, Mr Stone would also have been aware that he was bound by the RWWA Act and therefore by the Australian Rules of Thoroughbred Racing (see s 34 (a); s 45 (6)(f) RWWA).

40. AR 175 (a) states, in terms of who may be penalised “any person who, in their (the Stewards’) opinion, has been guilty of any dishonest, corrupt, fraudulent, improper or dishonourable action or practice in connection with racing.”
41. AR 175 (j) states that “any person guilty of improper or insulting behaviour at any time towards ...Stewards...in relation to his duties” may be penalised.
42. AR 175 (q) allows a penalty to be imposed upon “any person who, in their (the Stewards’) opinion, is guilty of any misconduct, improper conduct or unseemly behaviour.”
43. AR 175 (a) and (q) are particularly broad in the types of conduct, which may attract a penalty. In some instances, behaviour may be of such a nature that it may offend several of the subsections of Rule 175.
44. The admitted behaviour of Mr Stone on 2 November or 26 November is clearly covered by the Rules under which he was charged. The Rules clearly apply to Mr Stone. He breached them. Even if, as Mr Stone claimed, Mr Jerrard had advised him that he could (effectively) breach the Rules, by appearing at trackwork and race meetings with horses, such advice would have been incorrect. The breaches would still have occurred.
45. It is not possible to “contract out” of the applicable Rules. In any event I am of the view that there is no evidence that such a “contract” existed.
46. Mr Stone advised the Tribunal that his appeal was solely as to conviction. It is therefore unnecessary to consider the penalties imposed by Stewards in this case.
47. The appeal must be dismissed.

Karen Farley

KAREN FARLEY SC, CHAIRPERSON



RACING PENALTIES APPEAL TRIBUNAL
REASONS FOR DETERMINATION OF MR ANDREW MONISSE
(MEMBER)

APPELLANT: DARRYL STONE

APPLICATION NO: A30/08/817

PANEL: MS K FARLEY SC (CHAIRPERSON)
MR AE MONISSE (MEMBER)
MS B ROBBINS (MEMBER)

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Mr Darryl Stone appeared in person

Mr Denis Borovica represented the Racing and Wagering Western Australia Stewards of Thoroughbred Racing

I have read the draft reasons of Ms K Farley SC, Chairperson.

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

A E Monisse

ANDREW MONISSE, MEMBER



RACING PENALTIES APPEAL TRIBUNAL
REASONS FOR DETERMINATION OF MS BRENDA ROBBINS
(MEMBER)

APPELLANT: DARRYL STONE

APPLICATION NO: A30/08/817

PANEL: MS K FARLEY SC (CHAIRPERSON)
MR AE MONISSE (MEMBER)
MS B ROBBINS (MEMBER)

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Mr Darryl Stone appeared in person

Mr Denis Borovica represented the Racing and Wagering Western Australia Stewards of Thoroughbred Racing

I have read the draft reasons of Ms K Farley SC, Chairperson.

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

BC Robbins

BRENDA ROBBINS, MEMBER

