

DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: **BRADLEY COOK**

APPLICATION NO: **A30/08/746**

PANEL: **MR D MOSSENSON (CHAIRPERSON)**
 MS K FARLEY (MEMBER)
 MR R NASH (MEMBER)

DATE OF HEARING: **5 November 2012**

DATE OF DETERMINATION: **5 February 2013**

IN THE MATTER OF an appeal by Mr Bradley Cook against determination made by Racing and Wagering Western Australia Stewards of Greyhound Racing convicting him of breaches of Rules 86(d) and (e) of the Racing and Wagering Western Australia Rules of Greyhound Racing and imposing two concurrent periods of 12 months disqualification.

Mr B Cook represented himself.

Mr D Borovica represented the Racing and Wagering Western Australia Stewards of Greyhound Racing.

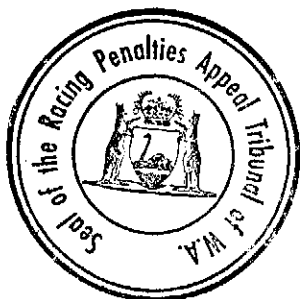
The following orders are made:

1. The appeal against conviction under rule 86(d) is dismissed.

2. By a decision of the majority of the members of the Tribunal, chairperson D Mossenson dissenting, the appeal against conviction under Rule 86(e) is upheld.
3. The 12 month disqualification penalty imposed by the Stewards on the appellant is confirmed, ending on 2 May 2013.

D. Mossenson

DAN MOSSENSON, CHAIRPERSON



THE RACING PENALTIES APPEALS TRIBUNAL

**REASONS FOR DETERMINATION OF MR D MOSSENSON
(CHAIRPERSON)**

APPELLANT: **BRADLEY COOK**

APPLICATION NO: **A30/08/746**

PANEL: **MR D MOSSENSON (CHAIRPERSON)**
 MS K FARLEY (MEMBER)
 MR R NASH (MEMBER)

DATE OF HEARING: **5 November 2012**

DATE OF DETERMINATION: **5 February 2013**

IN THE MATTER OF an appeal by Mr Bradley Cook against the determination made by Racing and Wagering Western Australia Stewards of Greyhound Racing convicting him of breaches of Rules 86(d) and (e) of the Racing and Wagering Western Australia Rules of Greyhound Racing and imposing two concurrent periods of 12 months disqualification.

Mr B Cook represented himself.

Mr D Borovica represented the Racing and Wagering Western Australia Stewards of Greyhound Racing.

BACKGROUND

On 1 May 2012 the Racing and Wagering Western Australia (**RWWA**) Stewards of Greyhound Racing opened an inquiry into two matters relating to the conduct of Mr B Cook. Mr Cook had been an owner/trainer of greyhounds for some six or seven years. One of the issues being investigated related to the stake money which the Victorian owner of the

greyhound COCCOLICIOUS claimed was owing to him by Mr B Cook in Mr Cook's capacity as trainer of COCCOLICIOUS. Mr Robert Maher had made a written complaint to the RWWA Stewards that \$2,137.50 of the greyhound's prize money had been outstanding for some months and Mr Cook was refusing to pay it. The other matter which concerned the Stewards arose out of the same issue but related to an interview that was conducted between Mr Cook and Mr M Kemp, Deputy Chief Steward, on 28 March 2012 at Cannington. Mr Cook had reaffirmed to Mr Kemp that he had made payment of the stake money in question but did not wish to produce any bank details to verify it. Although Mr Kemp had given Mr Cook seven days to produce some documentary evidence of payment from the bank, Mr Cook had failed to do so and had not contacted Mr Kemp in the interim.

During the inquiry Mr Cook stuck to his story that Mr Maher had already been paid. At the same time, Mr Cook steadfastly refused to produce any documentary evidence to verify the payment. This situation eventually led the Stewards to lay two separate charges against Mr Cook. The first was for an alleged breach of Rule 86(e) of RWWA Rules of Greyhound Racing. That rule reads:

"being an owner, trainer, attendant or a person having official duties in relation to greyhound racing refuses or fails to attend or to give evidence or produce a document or other thing at an inquiry held pursuant to these Rules when directed by the Controlling Body, Stewards or the committee of a club to do so;"

The particulars of this charge were:

"... that, you Mr B Cook an Owner Trainer with Racing and Wagering Western Australia failed to provide to the Stewards by 1pm on the 3rd of May 2012, documentary evidence clearly indicating that 2 by \$1,000.00 deposits were made into Mr Robert Maher's account on the 24th and 25th February 2012 as directed by the Stewards on the 1st May 2012."

(failing to produce charge).

The second charge was laid under Rule 86(d) which reads:

"being an owner, trainer, attendant or person having official duties in relation to greyhound racing, makes a false or misleading statement in relation to an investigation, examination, test or inquiry, or makes or causes to be made a falsification in a document, in connection with greyhound racing or the registration of a greyhound;"

The particulars of this charge were:

"... on the 1st May 2012, you Mr B Cook an Owner Trainer with Racing and Wagering Western Australia, made a misleading statement to the Stewards by stating that you had paid Mr Robert Maher \$2,000.00 by way of 2 \$1,000.00 payments on the 24th and the 25th February 2012 when you had not."

(making a misleading statement).

Mr Cook pleaded not guilty to both charges. In regard to the failing to produce charge, Mr Cook responded by stating to the Stewards that were he to comply with the request and produce the documentary evidence of the alleged payment that this conduct would amount to a breach of the law by him. Once the charge was laid Mr Cook did not elaborate on what he had previously stated to the Stewards in relation to this matter. The Stewards therefore could only evaluate the statements which Mr Cook had made earlier in the proceedings, namely that he lacked permission from his parents to supply any information from their account.

As to the misleading statement charge, Mr Cook claimed it went beyond the Stewards' powers and would be a breach of criminal and Commonwealth law to disclose the information sought. Mr Cook was questioned as to why he had made two \$1,000 payments to Mr Maher subsequent to the alleged misleading statement in question in which he had claimed to have previously already settled the debt. Mr Cook raised by way of explanation the fact that he believed Mr Maher had a personal vendetta against him. Whilst their relationship may in fact have deteriorated it would appear reasonable to conclude that at least in the early part of their association, their relations were somewhat cooperative and accommodating. Mr Maher had told the Stewards during the course of the inquiry that the dog involved was registered in both his own name as well as Mr Cook's name. The reason for this was the fact that Mr Cook, not being a public trainer, "... the

only way the dog could race is if you are on the papers as an owner" (T42). It would appear in this way the implications of Local Rule 15I were avoided. Mr Cook was operating as an owner trainer. This particular type of privilege to train is available under the Local Rule 15I which states "... if the person trains greyhounds which that same person owns wholly or partly, but an owner trainer is not authorised to train any other greyhound". With the passage of time, the relations apparently soured when Mr Maher had failed to send over another greyhound for Mr Cook to train after Mr Cook had made room available for it in his kennels.

Throughout the proceedings Mr Cook was only prepared or able to rely on an SMS which was on his mobile phone as his method of proving payment. However, the SMS did not show a date when the transaction occurred. Mr Cook refused to produce a bank statement or other documentary evidence of payment. As no other proof of the payments which were allegedly made on 24 and 25 February was forthcoming the Stewards only had this undated text message to evaluate together with Mr Cook's word on which to rely.

The Stewards proceeded to convict in relation to both charges. As to the first charge the Stewards stated *inter alia* in their reasons:

"Your defence that we are requesting something that is against law and we are asking you to break the law does not find favour with us. You are a registered person who agreed to be bound by the Rules that govern greyhound racing. You owed a debt that related to greyhound racing in that it was stake money owing from the earnings of the greyhound COCCOLICIOUS. Our request was fair and reasonable and entirely within our powers and jurisdiction. The order could be compiled with through a number of options." (T96)

As to the second offence they stated *inter alia*:

"A simple bank statement or bank trace and receipt from you would reveal whether or not your assertion was in fact truthful. You have however failed to provide such evidence. The information contained on your mobile telephone by way of a text message has failed to adequately prove anything either way. The text messages you show us on your phone lacked detail, most importantly the date the transfer was executed and the authenticity of or whether these text messages even relate to this payment is not clear to us. Certainly the bank statement Mr Maher provided to us carries far greater clarity and certainty than

the text messages you have shown us.” (T97)

“ . . . We do not even know that your parents are in fact the account holders of the relevant account as by virtue of your claims, nothing you say in relation to the account can be verified.” (T98)

“You have advised us that your father cannot be contacted and will not come to the inquiry for cross examination. The email produced lacks detail other than to possibly verify your statement that you father does not want us to view his bank statements. Again we cannot verify the authenticity of the email.” (T98)

“Mr Maher in turn has provided his bank statements to the Stewards which you examined at the inquiry. These statements left no doubt in the Stewards minds as to what transactions had taken place. There were certainly no records that showed deposits of \$1000.00 on the 24th and 25th of February 2012. We do accept that the Commonwealth Bank statements tendered at this inquiry (Exhibit number 3) by Mr Maher are true and correct copies of the account that you supposedly deposited the money into.” (T98 & 99)

“We have carefully considered all of the evidence which leads us to conclude that you did mislead the Stewards by stating that you had paid Mr Maher \$2000.00 by way of..., 2 \$1000.00 deposits on the 24th and 25th of February 2012, when you had not, and therefore find you guilty as charged.” (T100)

The outcomes were communicated to Mr Cook in a letter dated 15 May 2012 from the enquiry chairman. By way of punishment Mr Cook was disqualified for 12 months for each offence. These penalties were ordered to be served concurrently. Mr Cook appealed in respect of both in the following terms:

“I believe I have not committed offences charged with and furthermore believe I have been asked to provide information to the Stewards I don't have permission to and wish to challenge their right to request that also the harshness and prior penaltys (sic) leading up to the disqualification.”

The appeals to the Tribunal against the two convictions and the respective penalties were included in the one appeal notice and were dealt with by the Tribunal simultaneously.

MR COOK'S PROPOSITIONS

During the course of presenting his arguments at the appeal hearing Mr Cook protested his innocence in relation to both convictions somewhat robustly. In so doing he relied mainly on the following propositions:

- That he had been incorrectly charged.
- The Stewards had directed him to do something which was beyond their power, namely to produce an unwilling third party's bank records.
- It was against the law to produce a confidential bank statement without the agreement of the owner of the account.
- The Stewards do not have power to deal with an unregistered person as their powers don't extend beyond a registered person.
- Being only an owner/trainer, unlike a public trainer, Mr Cook was not required to divulge personal information which would expose a person's assets.
- The person to whom it was alleged the money was owed was not honest or a person of integrity.
- Certain evidence was not taken into consideration by the Stewards.
- That the punishment meted out was unfitting.

These arguments which the appellant presented were in large measure a repetition of what had previously been stated and relied on in the proceedings before the Stewards. In substance nothing new or different was presented to the Tribunal by Mr Cook during the appeal proceedings in his attempt to exonerate himself.

STEWARDS' RESPONSE

Mr Borovica took the Tribunal to numerous passages in the transcript of the Stewards'

proceedings with a view to exposing Mr Cook's complete lack of credibility. Mr Borovica asserted the passages which he was referring to clearly established that Mr Cook had changed his story during the course of the inquiry regarding the bank account which was claimed to be the source of the funds from which the debt was paid. Initially Mr Cook described the bank account from which the alleged payment was made as being "his own account" (T13, 14, 15, 17, 19). Further, in relation to it he claimed there was a limit placed on it of \$1,000 which is why he made the two transfers of \$1,000 (T12). However, without any explanation, elaboration or clarification at all, from the middle of T19 the Stewards were told it was "not my account", but rather "It's under my families' (sic) name". The assertion that the relevant account was his parents was then repeated on a number of occasions (T26, 33 and 45). Mr Cook stated although he had access to his parents' accounts and the family accounts, his parents had flatly refused to produce any documentary evidence or otherwise cooperate in relation to the inquiry process due to Mr Cooke's parents' antipathy for the racing industry. Mr Cook asserted that as a consequence his hands were tied and that he would risk being cut off by his family were he to go against their wishes. He stated:

"I can't give permission for somebody else's account, I can't show you information from somebody else's account, I can't do it. Legally I am not allowed to, if my parents took me to court over it, I would lose, for showing information that I have no right to show" (T22)

Subsequently during the proceedings, Mr Cook reverted to his earlier proposition that it was his account (T46, T49 and T52). Again, this about-face unfolded without any explanation or clarification.

I have already acknowledged the Stewards did not accept the SMS as being a proper basis for a defence due principally to the fact that it had no date on it. The Tribunal had no alternative but to take all of the comments regarding the SMS on face value as the SMS was not shown to the Tribunal.

Another aspect which was pursued by Mr Borovica to support his lack of credibility

proposition was the fact that Mr Cook had endeavoured to depict Mr Maher as being a "crook". Yet, despite that assertion by Mr Cook, the appellant had sought to convince everyone that he had in fact repaid the debt on a second occasion following the first alleged payment. In the light of this Mr Cook had "painted himself into a corner early in the proceedings and he kept on painting" to the point where his story simply went too far and his version simply became unbelievable, according to Mr Borovica.

The Victorian owner had been called to give evidence at the Stewards' inquiry. Mr Maher had prior to that already produced his bank statement to the Stewards which revealed no payment had been made into it by the appellant as alleged. Nothing of substance was achieved by the line of questioning which Mr Cook engaged in with Mr Maher. None of the answers extracted in any way advanced Mr Cook's cause. Nothing at all emerged from this process to suggest Mr Maher was not telling the truth.

In the course of his argument Mr Borovica emphasised two particular aspects. One was the fact that Mr Cook's approach had simply been a deliberate attempt to defy the Rules and that it had gone on for some four months. The other was the importance of the stake money. Payment of stake money was said to go to the heart of the industry. It was claimed to be tantamount to stealing when it was not passed on. The Tribunal was told that owners who invest and send their dogs around the country need to know that the Rules are being properly enforced by the external jurisdictions.

THE ISSUES

The ground of appeal as worded and Mr Cook's case as argued challenge the scope of the functions and roles of the Stewards. The appeal involves consideration of the extent of the Stewards' powers under the Rules. In essence, Mr Cook has questioned the authority of the Stewards. The central issue arising is whether the Stewards exceeded their powers in requesting the information which was initially sought by Mr Kemp and later invited to be produced at the inquiry. Did the Stewards as a consequence venture beyond their

jurisdiction in this particular case or were they authorised by the Rules and therefore justified to seek proof of the alleged payment to Mr Maher?

THE RULES

One of RWWA's functions is "to control, regulate and supervise racing in the State (s35(i)(a) *Racing and Wagering Western Australia Act 2003* (WA)) and "to foster the development, promote the welfare and ensure the integrity of . . . racing" (s35(i)(b) of the Act). RWWA appoints Stewards and may make rules as to their powers and duties (s45 (2) (j & k) of the Act).

Stewards of all three racing codes are appointed for their expert knowledge and experience of racing and their ability to administer and control the running of the sport. They are charged with the duty of supervising and controlling lawful racing. This involves organising and policing a wide range of the activities of each of the respective codes involved in the conduct of the racing industry. Each code has its own separate set of Rules. Whilst there may be some significant differences in various details or aspects peculiar to each code by virtue of the differences associated with the animals involved, in broad principle they have much in common. In all three codes the Stewards are expressly vested with sufficient power and authority to maintain ongoing order, ensure racing takes place with integrity, standards are maintained, there is proper behaviour on the part of all participants, information and feedback is supplied whenever requested of licensed persons and any defaulters are appropriately punished. Lawful racing could not continue to be conducted and the industry could not hope to remain healthy and vibrant if this situation did not prevail.

The Rules of Greyhound Racing squarely place the role and responsibility for the conduct of race meetings in the hands of the duly appointed Stewards (Rule 20). For race meetings to be properly conducted, the powers vested in the Stewards clearly must extend beyond the immediacy of the actual running and controlling of races. That is why the Stewards are

vested with much wider powers to inquire into anything in connection with a meeting under their control (Rule 20(3)(a)), to obtain any documentary evidence regarding a meeting and to control, regulate and inquire into anything associated with a meeting. Further, in order to be able to properly undertake these responsibilities the Rules not surprisingly make it an offence for a licensed person to fail to cooperate with the Stewards. The Stewards are quite deliberately and specifically empowered under the Rules to conduct investigations into matters and to enforce the Rules with punishments for breaches. Rule 95 gives the Stewards a wide discretion when imposing a penalty including the power to impose a fine, suspend, disqualify, cancel registration or warn off as the Stewards see fit. If they were not vested with these extensive powers they would not be able to perform their important duties and the racing industry almost certainly would fall into disrepute and eventually become unworkable. In view of the mercenary elements and other temptations involved, with time and without the situation being restrained, improper practices would likely lead to chaos in the industry.

The strong powers which the Stewards enjoy are necessary to allow them to exercise and maintain control. By properly exercising those powers it provides order and certainty for all elements involved including the betting public, owners, trainers, breeders and indeed RWWA itself. It is a necessity for the duly appointed Stewards or someone to be endowed with such powers in order to control and regulate the industry. It could not function otherwise.

CONVICTION

Upon receipt of the complaint by Mr Maher regarding the failure to pay the stake money was made, the Stewards were duty bound to take the matter seriously and to address it once satisfied it was bona fide. They were obliged to seek an answer or explanation from Mr Cook. Mr Kemp quite properly enquired of Mr Cook in relation to the matter. On being told the debt had been paid into Mr Maher's account Mr Kemp received confirmation from Mr Maher that the account number supplied by Mr Cook was in fact his. Mr Cook was then

asked to produce something that would satisfy Mr Kemp that payment had been made. This was a proper request which had to be repeated due to non-compliance. It was only at that stage Mr Cook was given the final seven day deadline in which to comply.

Mr Cook maintained for a time during at the Stewards' inquiry and throughout the appeal hearing that payment had been made to Mr Maher out of the parents' account. Further, he claimed he was disallowed from accessing the account and therefore could not produce the documentary evidence of moneys going out of the account to pay Mr Maher. Mr Cook did not raise the argument, which could be said to flow as a matter of logic, that to convict in relation to the misleading statement as to the payment out of that account would mean there could be no record to produce. Rather, Mr Cook resolutely maintained from start to finish the payment was in fact made. This stance was steadfastly maintained both when he was before the Stewards and later before the Tribunal. There was no attempt to produce proof other than the SMS which the Stewards considered enjoyed flimsy probative value. A redacted version of the statement might have been produced. If Mr Cook's parents did not wish to attend to give evidence then a statutory declaration from the account holder was another possibility. Something short of one of the parents appearing at the hearing to corroborate Mr Cook's story, was a reasonable possibility, if indeed the payment had been made out of the parents' account. If however, as was asserted at times, payment in fact had been made from Mr Cook's own account, then clearly there was no impediment to producing reliable evidence to prove that.

On the basis of the approach adopted by Mr Cook at the time of his interview, throughout the Stewards' inquiry and at the appeal hearing, there would have to be credible documentary evidence in existence in respect of the alleged payment to Mr Maher of the type being sought by the Stewards. Mr Cook failed or refused to produce any such evidence. The fact that the Stewards eventually concluded no such payment had been made at the time of their inquiry is incongruous in this context. Despite that, I do not believe this anomaly exonerates Mr Cook from the failing to produce charge. Mr Cook did not argue that his failing to produce conviction was in respect of what the Stewards

concluded was a non-existing payment which meant the charge was either inappropriate or the conviction invalid. Mr Cook clearly did not seek to rely on the proposition that if no payments had been made in February 2012 there could be no relevant documentary evidence in existence. This proposition was not a ground of appeal. Nor was it raised in the course of argument. But even if it had been, I consider it should carry no weight as Mr Cook throughout alleged payment had been made and endeavoured to rely on an SMS which he claimed related to his parents' bank account. I am satisfied there was sufficient evidence before the Stewards for them to have justified their conclusion to convict in relation to this matter.

Further, the propositions which Mr Borovica put to the Tribunal regarding the lack of credibility were perfectly reasonable. It was inappropriate to conclude anything different particularly as Mr Cook failed to react or respond to the attack on his credibility in any way. In the absence of even a token rebuttal, I was left in no doubt the Stewards simply had no alternative but to reach the conclusions which they did as to credibility. Further, I am satisfied the Stewards properly concluded the money in question had been owing by Mr Cook to Mr Maher both at the time of the interview and until some time after the Stewards' deliberations.

The lengthy period of disqualification imposed in relation to the making of the misleading statement not only is an appropriate penalty to be imposed on Mr Cook but it also sends an appropriate message to the industry. It confirms the fact that Stewards have been vested with the authority to seek information in relation to the conduct of racing from licensed persons. Equally those persons have an obligation to cooperate honestly by responding in a timely manner. This obligation fell squarely on Mr Cook in his capacity as an owner/trainer. Anyone who interferes with the Stewards' legitimate activities, do so at their own peril. Failure to cooperate in respect of the reasonable requirements of Stewards in the performance of their duties under the Rules cannot be tolerated. In the case of a breach it is clearly necessary for substantial punishment to be meted out in order to maintain control of the sport and ensure the ongoing welfare of the racing industry.

I am satisfied it was appropriate for Mr Cook to be charged in relation to both offences. Having received the complaint regarding outstanding stake money, the Stewards were empowered to request proof of payment. Nothing which they sought or did was against the law as asserted by Mr Cook. Mr Cook was not entitled to shelter behind his so called limited licence as he asserted.

Nothing emerged which cast any doubt on Mr Maher's integrity. As already stated, the opposite must be concluded in relation to Mr Cook's credibility. In light of Mr Maher's complaint and Mr Cook's response, all relevant considerations were addressed by the Stewards. The documentary evidence which was properly requested was never produced by the appellant. The Stewards were clearly misled by Mr Cook's assertion that Mr Maher had been paid. The so called second payment which was made by two instalments after 25 February to Mr Maher simply makes no sense and widens the credibility gap.

For these reasons I would dismiss the appeal in relation to the two convictions.

PENALTY

The Stewards have a wide discretion when it comes to determining the penalty in a case of this nature. No error has been demonstrated to have occurred in the sentencing process. Nothing irrelevant was taken into account. The penalties which were imposed were not out of the range so as to reflect a manifest error. In the case of **Julien** (Appeal 554) a false statutory declaration resulted in a penalty of 18 months being imposed. In the case of **Evans** (Appeal 350) the two year penalty was reduced to 12 months on appeal for failure to give evidence at a Steward's inquiry. In Mr Cook's case this was not the first time he had failed to comply with directions or orders of the Stewards. On this occasion it could be said the Stewards tempered the outcome by giving Mr Cook the benefit of a concurrent penalty.

Nothing has been demonstrated to establish that the Stewards were in error in reaching the conclusions which they did as to the appropriateness of disqualifying Mr Cook for periods of 12 months from the date the offences occurred. If this type of behaviour were to be

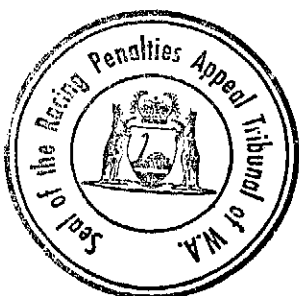
lightly punished it would serve to communicate an inappropriate signal to participants in the industry that there is the ability to compromise the role of the Stewards in the performance of their lawful duties. Were this to occur the whole industry would suffer as a consequence. Not only would the Stewards be prevented from properly performing their duties but the betting public as a consequence would lose confidence. Owners too would have their confidence shaken in their relationships with their trainers if Mr Cook's behaviour were to prevail unpunished. The flow-on effect would be most harmful to the state of a sport which is not just dependent on the betting public but also depends on people being willing to invest in breeding and acquiring greyhounds for racing and placing them in the hands of others to train them.

Punishing for an offence by way of disqualification is appropriate where a lawful direction is ignored and the authority of the Stewards is improperly challenged. Mr Cook's record and his obstinate refusal to cooperate are aggravating factors. The Stewards were led down different garden paths regarding the bank accounts out of which the payments to Mr Maher were allegedly made. This misconduct continued for quite a lengthy period during which many hours of Stewards' valuable time was dissipated. An eastern state's owner was seriously inconvenienced by the appellant's behaviour. The image of the industry was adversely impacted upon. I consider the twelve month disqualifications are appropriate in the light of all of these aggravating factors.

For these reasons I would confirm the penalties imposed by the Stewards.

D. Mossenson

DAN MOSSENSON, CHAIRPERSON



THE RACING PENALTIES APPEALS TRIBUNAL

REASONS FOR DETERMINATION OF MR R NASH
(MEMBER)

APPELLANT: **BRADLEY COOK**

APPLICATION NO: **A30/08/746**

PANEL: **MR D MOSSENSON (CHAIRPERSON)**
 MS K FARLEY (MEMBER)
 MR R NASH (MEMBER)

DATE OF HEARING: **5 November 2012**

DATE OF DETERMINATION: **5 February 2013**

IN THE MATTER OF an appeal by Mr Bradley Cook against the determination made by Racing and Wagering Western Australia Stewards of Greyhound Racing convicting him of breaches of Rules 86(d) and (e) of the Racing and Wagering Western Australia Rules of Greyhound Racing and imposing two concurrent periods of 12 months disqualification.

Mr B Cook represented himself.

Mr D Borovica represented the Racing and Wagering Western Australia Stewards of Greyhound Racing.

BACKGROUND

Brad Cook was until his disqualification on 15 May 2012 a registered Owner/Trainer bound by the RWWA Rules of Greyhound Racing.

Mr Cook was found guilty of breaching Rule 86(e) and Rule 86(d) by the Stewards following an Inquiry and hearing held on 3 and 10 May 2012 into a complaint made by a greyhound owner, Mr Robert Maher, that he had failed to pay to Mr Maher the sum of \$2,000 being

stake money owed to him in respect of stake winnings won by the greyhound, COCCOLICIOUS.

Rule 86(e) provides that:

'a person shall be guilty of an offence if the person- ... being an owner, trainer... refuses or fails to attend or give evidence or produce a document or other thing at an inquiry held pursuant to these Rules when directed by the Controlling Body, Stewards or the committee of a club to do so;'

The particulars of the charge against Mr Cook under Rule 86(e) were as follows:

'[that he] failed to provide to the Stewards by 1pm on 3rd May 2012, documentary evidence clearly indicating that 2 by \$1,000 deposits were made into Mr Robert Maher's account on the 24th and 25th February 2012 as directed by the Stewards on the 1st May 2012.'

Rule 86(d) provides that:

'a person shall be guilty of an offence if the person- ... being an owner, trainer ... makes a false or misleading statement in relation to an investigation , examination, test or inquiry....'

The particulars of the charge against Mr Cook under Rule 86(d) were as follows:

'[that he] on 1 May 2012 made a misleading statement to the Stewards by stating that[he] had paid Mr Robert Maher \$2,000 by way of 2 \$1,000 payments on the 24th and the 25th February 2012 when [he] had not.'

Having found him guilty in respect of both charges, the Stewards imposed a penalty of 12 months disqualification of Mr Cook's licence as an owner/trainer commencing from 3 May 2012. The disqualification accordingly expires at midnight on 2 May 2013.

Mr Cook appeals to this Tribunal against both of his convictions and the penalty imposed.

CONVICTION UNDER RULE 86(d)

In my opinion the appeal against the conviction under Rule 86(d) should be dismissed for the reasons that follow.

In early March 2012, Mr Cook was spoken to by Mr Kemp, Deputy Chief Steward, about an allegation from Mr Maher that Mr Cook had failed to pay stake money owing to him. Mr Cook

told Mr Kemp he had paid the stake money to Mr Maher by transferring it to his bank account. After further speaking with Mr Maher, Mr Kemp on 21 March 2012 again spoke with Mr Cook who reaffirmed that he had made the payment but was unwilling to give his bank details to Mr Kemp. Mr Kemp told Mr Cook he needed something from Mr Cook's bank confirming that payment had been made. Having received nothing from Mr Cook, Mr Kemp interviewed him on 28 March 2012 advising him that he needed to be satisfied that the payment had been made. He confirmed with Mr Cook that this should be done by 3 April 2012. Mr Kemp did not hear from Mr Cook by that date. By letter dated 24 April 2012 the Stewards wrote to Mr Cook informing him that they were going to conduct an Inquiry into the matter on 1 May 2012.

At the Inquiry held on 1 May 2012, Mr Cook again told the Stewards that he had made two payments of \$1000 to Mr Maher. He said that he had the 'information' to show to Mr Kemp at the track (T11).

Mr Maher gave evidence to the Inquiry and said that he was communicating with Mr Cook via Facebook and was told by him that he had deposited the money on Tuesday 28 February 2012. He produced a typed extract of the message. He said on 2 March 2012 he told Mr Cook that he still had not received the money in his account. He said he received nothing back from Mr Cook and discovered that the Facebook account had been deleted when he tried to contact him again on 6th March 2012. Mr Maher provided copies of his bank statements for the relevant period which did not show any deposit made by Mr Cook for the amounts he had claimed he had deposited.

Mr Cook told the Stewards he had made the transfer of funds by two \$1000 transfers respectively on 24 and 25 February 2012. At T13 he said he had a limit of \$1000 "*on my account*" (T14). He continued in his evidence to refer to making the transfer from 'my account' at T14 and T15. He said he did the transfer from his iPad using an 'App' which gave him access to his account to transfer money (T16). He was asked if anyone else was present when he made the transfer and answered that "*No one else sees my bank details*".

He was asked to provide copies of his 'bank details'. He was prepared to show an undated SMS message from the Commonwealth Bank on his phone purporting to acknowledge a payment made to Mr Maher's account number. This was of limited evidential value since he had made payments at earlier times to Mr Maher in respect of stake monies and there was no way of knowing whether the SMS related to an earlier payment or the payments he was asserting had been made on 24 and 25 February 2012.

It was at this point in the proceedings, when being pushed to provide proper verification of the payments, that Mr Cook first raised that he "*did not have permission to show hard*

copies" of bank statements. He claimed that the bank would not, despite his request, confirm that the two transfers made had gone into Mr Maher's account. The Stewards understandably had difficulty accepting that a bank would refuse to provide confirmation of payments where there was a claim that the intended payee had not received the money.

When asked again whether he could produce a copy of his bank account statement to show the money had been transferred, he said that he could not do so because the payment had in fact been made from an account which belonged to his parents. He said he had permission to use his parents' account but did not have permission to show any details about the account (T19). At T21 he said that his parents manage all his assets and in return he has use of their bank account '*to do with how I want.*' Despite that fact, he claimed that his parents had refused to give the account information, and were not required to do so because they were not subject to the RWWA Rules. On that basis Mr Cook said he was not able to provide the Stewards with the information they sought.

When pressed on the matter, Mr Cook said that if it was his personal bank account he would provide the information (T22).

The Stewards decided to give Mr Cook a direction to produce to their satisfaction documentary evidence clearly establishing the two payments were made. They required that information by 1.00 pm on 3 May 2012. On being given that direction Mr Cook protested that he could not comply with it as he had no authority to access and provide information in respect of his parent's bank account.

Mr Cook did not comply with the direction. This is the subject of the charge under Rule 86(e) which is considered below.

The Inquiry resumed on 10 May 2012. Mr Cook produced a copy of a Commonwealth Bank Receipt showing that he had made a payment of \$2,000 into Mr Maher's account at 12.34 pm on 3 May 2012. Mr Cook said he made the payment in good faith '*to try to get the matter sorted*'. He still maintained that the payments on 24 and 25 February 2012 had been made and that if the problem could not be sorted out with the bank, then his parents may take legal action.

He produced an email from his father, Colin Cook dated 7 May 2012 which stated:

To whom it may concern

I understand that the Stewards Committee of WA Greyhounds Association has requested my bank statement information for an inquiry. I hereby advise that this request is unacceptable and I will not be providing any such details.

Regards

Colin Cook

Mr Cook said that his father had been informed that the money was for the payment of stake money and that there was a dispute as to whether it had been paid. He said (at T65) that his father would not come before the Inquiry to answer questions because his father did not consider greyhounds a legitimate industry. He said that his parents considered that anything to do with gambling was a sin. It was then put to him that they had allowed him to pay gambling stake money out of their account and he responded by saying '*they owed me some money and that was a mistake I made...*' (T65).

Mr Cook advised that his father was not contactable by telephone at that time.

When asked which of his accounts stake winnings were paid into, he said it was not his parents' account but rather an account he had in his name with the United Credit Union. He agreed that his bills are generally paid out of his United Credit Union account and agreed with the suggestion that the use of his parents' account on the occasion in question was '*a once off transaction*'. This evidence is difficult to reconcile with evidence he gave earlier in the Inquiry that he had use of his parents' bank account '*to do with how I want*'.

The Stewards then charged Mr Cook with making a misleading statement to the effect that he had made the two payments to Mr Maher on 24 and 25 February 2012 when he had not. Mr Cook denied the charge and said that he had not made any statement which was misleading. He maintained the position that he had put to the Stewards in the Inquiry.

After deliberation, the Stewards found Mr Cook guilty of misleading the Stewards as charged.

On appeal, Mr Cook's primary contention was that the Stewards had not taken his evidence into consideration. He also contended he was directed to "do things" that were not open to the Stewards to direct. This second part of his argument is relevant to the charge under Rule 86(e) and is considered below.

Mr Cook was not able to demonstrate in his presentation of the appeal that the Stewards had not taken his evidence into account. It was clear that the Stewards carefully considered the evidence he had given and had reached the conclusion that his evidence was not believable and that he had misled them in relation to the payments he claimed he'd made to Mr Maher on 24 and 25 February 2012.

In my view, bearing in mind the Briginshaw standard, the decision of the Stewards was justified. Mr Cook's evidence and explanations were hard to believe and had all the

appearances of being contrived. In my view, there is no demonstrated error in the Stewards' finding that Mr Cook was guilty of the charge under Rule 86(d) which finding, I respectfully suggest, was entirely justified on the evidence.

CONVICTION UNDER RULE 86(e)

In my opinion the appeal against the conviction under Rule 86(e) must be allowed for the reasons which follow.

Mr Cook's evidence to the Inquiry was to the effect that he was unable to produce any bank documents that verified two \$1000 payments had been made to Mr Maher's bank account because those accounts belonged to his parents and they had refused him authority to produce the relevant account records or extracts.

At the conclusion of the hearing on 1 May 2012, the Stewards gave a direction to Mr Cook pursuant to Rule 86(e) requiring that he provide [by 1.00 pm on 3 May 2012] *"to the Steward's satisfaction, documentary evidence clearly indicating that 2 \$1000 deposits were made into Mr Maher's account on 24th and 25th February 2012."* He was advised that failure to provide such documentary proof will result his licence being suspended at that point in time.

Mr Cook did not provide documents of the kind directed by the Stewards and was accordingly notified by the Stewards in a letter dated 4 May 2012 that as of 3 May 2012 his trainers licence was suspended under Rule 92(5)(c).

The Inquiry resumed on 10 May 2012, Mr Cook produced to the Stewards an email from his father in which his father stated that he did not give permission for the provision of his *'bank statement information'* to the Inquiry.

The Inquiry Chairman at the time made the following point [at T62] about the direction given by the Stewards:

'It's not specifically asking for your bank statements but it is actually asking for proof of payment, whatever that may be, it may well be a bank statement, but it may be a deposit slip it may be anything else documentary evidence'

Mr Cook's position was that he had produced everything he was able to produce to the Inquiry and that he was not able to produce relevant bank documents (T66, T70).

The Stewards after hearing Mr Cook's submissions charged Mr Cook under section 86(e), alleging that he had failed to *'provide.... documentary evidence'* clearly indicating the two

payments of \$1000 were made into Mr Robert Maher's bank account on the dates specified as directed by the Stewards. Mr Cook pleaded not guilty to the charge.

The Stewards, after hearing further evidence and submissions from Mr Cook, proceeded (at T97) to find him guilty of failing *"to provide the Stewards, documentary evidence which would clearly indicate that 2 by \$1000 payments were made into Mr Maher's account on 24th and 25th February as directed by the Stewards on 1st May 2012."*

There is no question that Mr Cook, in compliance with the Rules, attended before the Stewards and gave evidence as required by the Stewards in respect of the matters under inquiry. What he said he was unable to do was provide documentary evidence to support his claims about having made the payments to Mr Maher because he had no control over the bank account from which the payments were made, which account belonged to his parents. Further, he said his parents had refused to give him authority to provide information in respect of their bank accounts for the purposes of the Steward's Inquiry. Mr Cook's parents were not subject to the RWWA Rules and had no obligation to provide documents or information that belonged to them.

In my view the obligation imposed on licensed persons under Rule 86(e) *'to attend and give evidence or produce a document or other thing at an Inquiry held under the Rules..'*, cannot be construed to impose an obligation to give evidence or produce documents which will satisfy the Stewards of a particular factual matter in issue. A licensed person can only give evidence of facts they know and can only produce documents that exist. They cannot be directed to, in effect, prove a matter to the Stewards' satisfaction. However, that is what the Stewards directed Mr Cook to do in this case, namely to 'produce documentary evidence' that clearly established that the payments were made to Mr Maher on the dates asserted by Mr Cook. In that respect the charge was fatally flawed and did not in my view comply with the requirements of the Rule.

Additionally, it is my view that a direction by the Stewards under Rule 86(e) to produce a document, must necessarily be a document that is identified as one that the licensed person has control over or otherwise has the capacity to produce. That was not established to be the case here. First, the Stewards did not by their direction (or by the terms of the charge) identify a specific document that was required to be produced. Secondly, the only evidence the Stewards had was that documentation of the kind they were seeking was not in the custody or control of Mr Cook and he was unable to procure authorisation for the release of such documents (namely bank records/statements) from those persons whose authority was required for their production. At the hearing of the appeal it was conceded by the Stewards that documents of the kind being directed to be produced may not be in existence. For

those reasons as well, the appeal against the conviction under Rule 86(e) ought to be allowed.

Accordingly, I would dismiss the appeal against conviction of the charge under Rule 86(d) but would allow the appeal against conviction of the charge under Rule 86(e).

SENTENCE

Mr Cook was sentenced to 12 months disqualification of licence in respect of each offence. The Stewards comprehensive reasons are set out in their letter to Mr Cook dated 15 May 2012.

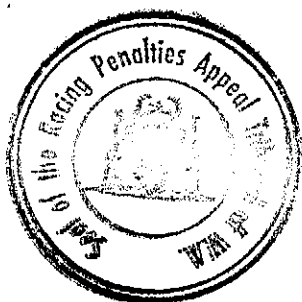
In their sentencing comments the Stewards made the point that misleading Stewards at a formal inquiry was a very serious matter. It is conduct that, if serious enough, can effectively amount to a repudiation of a licensed person's agreement to be bound by the Rules and of that person's acceptance of the authority of the Stewards as the regulators of the Racing Industry.

In my view the misleading of the Stewards in this case, especially when one considers what can only be described as a sustained and elaborate attempt at deception, was very serious. Having regard to the sentencing precedents referred to, particularly the matter of Evans, I find no error in the Stewards' imposition of a penalty of a 12 month disqualification.

Given that I have upheld the appeal in respect of the conviction under Rule 86(e), the concurrent penalty imposed in respect of that conviction falls away. Having regard to the fact that the gravamen of the offending was fully captured by the charge under Rule 86(d), I do not see any reason for reducing the total penalty imposed simply because the conviction under Rule 86(e) has fallen away.



ROBERT NASH, MEMBER



THE RACING PENALTIES APPEALS TRIBUNAL

**REASONS FOR DETERMINATION OF MS K FARLEY
(MEMBER)**

APPELLANT: **BRADLEY COOK**

APPLICATION NO: **A30/08/746**

PANEL: **MR D MOSSENSON (CHAIRPERSON)**
 MS K FARLEY (MEMBER)
 MR R NASH (MEMBER)

DATE OF HEARING: **5 November 2012**

DATE OF DETERMINATION: **5 February 2013**

IN THE MATTER OF an appeal by Mr Bradley Cook against determination made by Racing and Wagering Western Australia Stewards of Greyhound Racing convicting him of breaches of Rules 86(d) and (e) of the Racing and Wagering Western Australia Rules of Greyhound Racing and imposing two concurrent periods of 12 months disqualification.

Mr B Cook represented himself.

Mr D Borovica represented the Racing and Wagering Western Australia Stewards of Greyhound Racing.

BACKGROUND

I have had the opportunity of reading a draft determination and reasons for determination of both the chairperson Mr D Mossenson and member Mr R Nash.

In so far as those reasons explain the background to the bringing of this appeal by Mr Bradley Cook against the determination made by Racing and Wagering Western Australia Stewards of Greyhound Racing convicting him of breaches of Rule 86(d) and (e) of the Racing and Wagering Western Australia Rules of Greyhound Racing and imposing two concurrent periods of twelve months disqualification, I agree with the content of both Mr Mossenson and Mr Nash's summaries.

Likewise, in relation to the conviction of Mr Cook pursuant to Rule 86(d) I agree with the determination made by both Mr Mossenson and Mr Nash that that appeal against conviction should be dismissed for the reasons outlined by them and I have nothing to add.

In relation to the appeal against conviction for the breach of Rule 86(e) of the Racing and Wagering Western Australia Rules of Greyhound Racing, I agree with Mr Nash that the appeal against conviction must be allowed.

The Rule in relation to which Mr Cook was found in breach states "*being an owner, trainer, attendant or a person having official duties in relation to Greyhound Racing refuses or fails to attend or to give evidence or produce a document or other thing at an enquiry held pursuant to these Rules when directed by the controlling body stewards or the committee of a club to do so*"; the particulars of the charge were: that Mr Cook, an owner trainer with Racing and Wagering Western Australia, failed to provide to the stewards by 1.00 p.m. on 3 May 2012 "*documentary evidence clearly indicating that two by \$1,000 deposits were made into Mr Robert Maher's account on 24 and 25 February 2012 as directed by the stewards on 1 May 2012*".

In fact, Mr Cook had already given evidence, in compliance with the Rules, that he was unable to produce documentary evidence to support his claims about having made the payments to Mr Maher because he had no control over the bank account from which payments were made, which account belonged to his parents. He later provided an email from his father in which his father stated that he did not give permission for the provision of his "bank statement information" to the enquiry. In fact, given the way this matter proceeded it would have been highly improbable that Mr Cook could have provided to the stewards any "documentary evidence which would clearly indicate that two by \$1,000 payments were made into Mr Maher's account on 24 and 25 February 2012".

I agree with the reasons for determination of Mr R Nash that a direction by the stewards under Rule 86(e) to produce a document, must necessarily be a document that is identified as one that the licensed person has control over or otherwise has the capacity to produce. When the direction was given by the stewards for Mr Cook to provide documentary

evidence, the stewards were well aware that the documentation they were requesting was not in the custody or control of Mr Cook and that he would be unable to procure authorisation for the release of those documents. For this reason, I am of the view that the appeal against conviction under Rule 86(e) ought to be allowed.

Having made this finding, it is unnecessary for me to comment in detail upon the further finding by Mr R Nash that the obligation imposed on licensed persons under Rule 86(e) cannot be construed to impose an obligation to give evidence or produce documents which will satisfy the stewards of a particular factual matter in issue. Mr Nash concludes that that is what the stewards directed Mr Cook to do in this case and that in that respect the charge was fatally flawed and did not in his view comply with the requirements of the Rule.

I would not have found that the stewards could not impose an obligation pursuant to Rule 86(e) to give evidence or produce documents which would satisfy the stewards of a particular factual matter in issue. There are a number of different scenarios in which the stewards may require licensed persons to produce documents which have such relevance to factual matters in issue as may "satisfy" the stewards one way or another in relation to a particular factual matter in issue. The difficulty in this matter was that the documentation required to be produced was not evidence which could be provided by Mr Cook without the cooperation of those with authority over that documentation (and who were in no way compellable pursuant to the Racing and Wagering Western Australia Rules of Greyhound Racing). In any event, it appeared to be the case from the hearing of the enquiry that the stewards did not believe Mr Cook that any payment whatsoever had been made on either 24 or 25 February 2012 and that their direction pursuant to Rule 86(e) to produce documentary evidence indicating that those payments were made was simply an exercise in requesting the production of documents that they believed simply did not exist. As such, the direction to produce added little to, and certainly was consequent upon, their (legitimate) finding that Mr Cook had mislead them.

Having found that the direction under Rule 86(e) to produce must necessarily be a document that is identified as one the licensed person has control over or otherwise has the capacity to produce, it is unnecessary for me to comment on those matters further.

In relation to sentence, insofar as I have upheld the appeal in respect of the conviction under Rule 86(e) I agree with the reasons for determination of Mr R Nash in relation to sentence and have nothing to add.



KAREN FARLEY, MEMBER

