

## Appeal decision

---

**Hearing Date:** 24 February 2016

**Decision Date:** 8 March 2016

**Code of racing:** Thoroughbred

---

**Appeal panel:** Mr P James (Chair) and Mr G Casey and Mr D Kays

**Appearances:** Mr Matthew Tutt, Solicitor, appeared on behalf of Mr Bradshaw and Mr J Williamson, Stipendiary Steward, appeared on behalf of the Stewards

**Decision being appealed:** Disqualification of Trainer's Licence for a period of twelve (12) months – AR64G(1)

**Appeal result:** Appeal upheld

---

This is an appeal to the Racing Disciplinary Board in respect of a decision by Racing Queensland Stewards from an enquiry in respect of the horse Moringa's Mo Jo being stomach-tubed within twenty-four (24) hours of the start of a race when it was engaged on Sunday, 14 April 2013 at the Sunshine Coast Turf Club.

AR64G(1) as it then was reads as follows: -

*"No person without the permission of the Stewards may stomach-tube, attempt to stomach-tube, cause to be stomach-tubed or be a party to the stomach-tubing of a horse within 24 hours of the appointed starting time of:*

- (a) a race in which it is engaged to be run;*
- (b) an official trial or jump-out in which it is engaged to be run.*

*For the purposes of this rule "stomach-tubed" and variations of that term means any application to a horse of a naso-gastric tube.*

We have read the transcripts and submissions on behalf of the Stewards by Mr Williamson and also the submissions by Mr Tutt on behalf of the appellant Mr Bradshaw.

### Constitution of the Stewards' Panel

The Stewards conducted their inquiry into the appellant's conduct over three (3) separate days. These days were as follows:

- (i) 14 April 2013 (Day 1) – at Sunshine Coats Turf Club
- (ii) 9 May 2013 (Day 2) – at Racing Queensland Offices
- (iii) 13 January 2016 (Day 3) – at Racing Queensland Offices

The constitution of the Stewards' panel differed at all three inquiries. On Day 1 the Stewards' panel consisted of (using surnames only) Quick, as Chairman, Williamson, Gillard and Hackett.

On Day 2, Williamson, as chairman, Aurisch and Gillard. Day 3 comprised of Williamson, as chairman, and Aurisch only.

It was submitted that the different constitution of the steward panels over the three separate days caused the whole of the proceedings before the Stewards to miscarry. Put simply, the proceedings before the Stewards ought to be a nullity as the proceedings before the Stewards were unfair and contrary to principles of natural justice.

Until the final summing up by Mr Williamson before this Board no explanation was given as to the differently constituted Stewards' panels. It was further noted that the period that elapsed between Day 1, 14 April 2013, and Day 2, 9 May 2013, was relatively short whereas the final decision and the disqualification of the appellant was not made until 13 January 2016, some considerable time later.

It is also noted that the reconvened inquiry on 13 January 2016 only came about as the appellant who had evidently been suffering from ill health had sought to obtain a licence as a stable hand.

It is evident from the transcript that the appellant has either been disqualified or on a forfeit list for a period of two years and nine months (that is from 9 May 2013 to 23 February 2016).

In the appellant's endeavours to obtain a stable hand's licence he is presently not able to do so and because of the events of April 2013 he remains disqualified by Racing Queensland.

### Delay

It has been further submitted by the appellant that the delay in finally determining the present matter cannot rest solely with the appellant.

Exhibit 30 is a letter dated to 27 May 2013 from Racing Queensland to the appellant advising him that should he fail to respond to the letter the Stewards may proceed to hear the matter in his absence. For reasons unknown to the appellant at the time of the appeal

the matter was not heard in his absence. However had it been his disqualification would have ended, on or about June 2014.

Arising from the submissions made in this matter are some very important principles concerning composition of Stewards' panels and the rules of natural justice for the hearing of disciplinary proceedings before Stewards.

It is a matter for the record that Mr Aurisch joined the panel after the first hearing day on 14 April 2013 and did not hear the evidence or indeed was not a member of the panel on the first day of the hearing, namely on 14 April 2013.

It is also relevant to these proceedings that he was present on 13 January 2016 when the final decision of disqualification was made and he obviously had a significant input into the final decision making process although not being present when that crucial evidence by the appellant was given on the first day of the hearing, namely on 14 April 2013, which evidence the Stewards preferred in coming to their final decision.

Subsequent to the first day of the hearing there was unchallenged evidence produced by Mr Bradshaw which was not accepted or preferred by the Stewards in arriving at their final decision. They had relied on the evidence given by Mr Bradshaw on the first day of his hearing. As stated previously, on the first day of the evidence Mr Aurisch was not present to hear this evidence although he was involved in the final decision making on 13 January 2016.

It is also worthy of note that the consent of the appellant, to the reconstructed Stewards' panel was not sought or given in respect of Mr Aurisch being present on Day 2 or on the final determination of this appeal on Day 3.

#### Changes of Personnel

Forbes in the rules of natural justice and I quote as follows: -

*"Changes in the personnel of a Tribunal during the hearing should be avoided particularly when evidence is taken viva voce... but serious difficulties may arise if someone joins or rejoins the Tribunal after the hearing has commenced. Normally the person under inquiry is entitled to be judged by duly appointed officers, all of whom have heard and considered the case as a whole..."*

*The text in Forbes continues as follows and I quote: -*

*"In Pettitt v South Australian Tattersall's Club (1930) SASR 258 the hearing occupied two sessions. Early in the second session one member of the Tribunal withdrew when his impartiality was questioned, and was replaced with another person who had not heard the oral evidence taken at the first session. Piper J held that the ensuing expulsion was void. The committee which ultimately decides what is to be done must have heard the whole case. No-one should join a Tribunal without the consent of all parties after a viva voce hearing begins."*

In coming to our decision we also rely on a decision in respect of an appeal by Mr David Keep, which decision was given on 15 April 1992 by the Racing Appeals Authority in respect of a Greyhound Racing appeal by the honourable chairman WJ Carter QC.

This case also involved a reconstituted Stewards' panel whereby a Mr Wallace who had not heard the earlier days' (3) evidence sat on the resumed hearing. It was held in the above case that the proceedings before the Stewards were wholly irregular and conducted in a manner contrary to the rules and to the requirements of the principles of natural justice and further that the rules are binding on the Stewards as they are on the licensee. That appeal was also upheld.

This Board finds that essentially the Stewards vitiated the enquiry process by: -

- (a) Changing the composition of the panel at the Day 2 and Day 3 inquiries; and
- (b) Exacerbating that matter by not informing the appellant and seeking his approval of the intended change in panel personnel.

In particular in relation to a member of the panel being added, who had not been present on the first day of the hearing of this appeal, which was in breach of the rules of natural justice.

This Board therefore upholds the appeal and remits Mr Bradshaw's application for a stable hand's licence to the Registrar pending resolution of the forfeiture element concerning this appeal.

Further right of appeal information: The Appellant and the Steward may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **28 days of the date of this decision**. Information in relation to appeals to QCAT may be obtained by telephone on (07) 3247 3302 or via the Internet at [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au)