

**GREYHOUND AND HARNESS RACING APPEALS TRIBUNAL
NEW SOUTH WALES**

TRIBUNAL: JUDGE B. R. THORLEY

ASSESSOR: MR A. G. MULLINS

APPEALS OF MR ROBERT CLEMENT AND MRS JANE CLEMENT

DECISION

Mr Robert Clement, who used to carry on the business of a harness racing trainer and driver in the Tamworth area, came before the stewards in January 2007 and was charged under Rule 227, it being alleged that he had offered an improper inducement to a driver engaged in a race at Tamworth to adopt certain race tactics which would have been, if followed, to the advantage of Mr Clement and his connections. He was found guilty of this charge and subjected to a period of disqualification of twelve months. He appealed to this Tribunal, and that appeal was dismissed on 4 May 2007. There were, however, some remarks made at that time to which we will make reference later in these reasons.

The stewards obviously became aware of suggestions that the consequences of an order for disqualification were not being observed by Mr Clement. Based upon that, in the earlier hours of the morning of 30 August 2007 they journeyed to the area outside Tamworth where he had conducted his business of a harness racing trainer and there made surveillance of what they could see, and indeed took by a video recording machine a record of what they observed.

We understand that subsequent to the order for disqualification which had been confirmed by this Tribunal, Mr Clement had vacated the area at Tamworth where he had conducted his training activities and had sublet those to another trainer, namely, Mr Anthony Missen. As at 30 August 2007 the horses which were present in that area were purportedly being trained by Mr Missen. At some time before 30 August Mr Clement did in fact move back into a cottage in the vicinity of that training area, but it is not suggested that that interfered with the tenure of Mr Missen in those parts of the area upon which the training activity was being conducted.

On the morning of 30 August 2007 the stewards observed that Mr Clement was himself engaged in tending to the care of horses and, further, that he had taken them in a combined jog exercising on the training track which was upon this area. The stewards interviewed him at the scene and an audio recording was made of that interview.

Mr Clement admitted that he was in fact doing that which they had observed and asserts that he was generally co-operative with the stewards. He also does not dispute that this was not the first occasion when he had journeyed down to the training area and had, in one way or another, contributed to the training program of those horses which were, it is claimed, being trained by Mr Missen.

So the stewards opened a further inquiry. This time, in relation to Mr Clement, they charged him under Rule 259(1)(h) with participating in harness racing whilst he was a disqualified person. Upon this charge, he was found guilty and subjected to two years disqualification, which, it was directed, would run cumulatively upon the disqualification which had previously been confirmed by this Tribunal.

The stewards also charged Mrs Clement. She was charged under Rule 245, the particulars of the allegation against her coming down to an allegation that she persuaded her husband to breach the terms that were applicable to his disqualification. She pleaded guilty to this charge and was subjected to three months disqualification. We shall return to her position and the details of this charge later in these reasons.

The man Missen to whom we have referred, who was present at the time of the stewards' arrival, also was charged under Rule 245, and that charge was particularised into one of allowing Mr Clement to reside at the training premises and to have access to the horses. Missen also pleaded guilty and he was subjected to nine months disqualification. He has not appealed in any way against the stewards' orders. However, both Mr and Mrs Clement have appealed to this Tribunal, but only against the severity of the orders which have been severally imposed upon them.

At the hearing before this Tribunal Mr Orlizki, solicitor, has appeared on behalf of the Authority, but each of Mr and Mrs Clement appeared for themselves. No further witnesses were called, and the matter was dealt with by submissions, largely emanating from Mr Clement.

He commenced his submissions by directing the Tribunal's attention to what he claimed was a lack of parity between the two years disqualification imposed upon him and the measure of disqualification or other sanctions which have been imposed on other persons who have been found guilty of a breach of the same rule, and in particular with the orders made in the case of a Mr Simon Bigeni. Mr Clement also asserted that it should have been recognised that he was present that morning in the training area tending to these horses purely in the interests of the welfare of them. This, he claimed, resulted from concern voiced by his wife that there may have been within the horses under the care of Mr Missen some symptoms indicating equine influenza and that he, with his extensive knowledge of standardbred horses, should examine them to ascertain whether or not any such infection was evident. Hence, it is claimed, his attendance there was motivated purely by the welfare of the horses.

We have to say that we do not doubt that Mrs Clement did indeed suggest to her husband that he look at the horses in order to give his opinion as to whether or not there had been

any outbreak of equine influenza. Indeed, the very way in which he had coupled the horses during their exercise would support this view. But we are not persuaded that that was the sole purpose of his attendance at the training track on that morning. We have no doubt that he was there doing some of the work that might normally, and should otherwise, have been done by Missen, as indeed he had in fact so contributed on other occasions since the date of his disqualification.

The third matter which he would raise for our consideration is concern with the impact of the orders which he has now to face both in social terms in the Tamworth area and, in particular, fiscal consequences upon him and his family. We certainly would acknowledge that there has been considerable impact in these ways. We are ever mindful when orders for disqualification are made that these consequences will flow, and we are not surprised that they have so flowed in the case of Mr Clement.

However, when we dismissed the appeal from the original charge deriving from the offer to corrupt a fellow driver we said:

" The charge at stake is of course of the most serious quality. It is the sort of charge that might well result in a penalty not only of disqualification of twelve months but in an order in the nature of a warning off. "

We further said:

" ... we are of the view that that which has been proven to our satisfaction could well have resulted in the imposition of a much harsher penalty than that which was in fact imposed. Indeed, if the matter were clearly before us afresh, that is the result that might have ensued. But, given the fact that there has been no appeal against the leniency of the penalty imposed by the stewards, we are not minded to investigate whether or not we should consider increasing the penalty. "

We make the comment that if ever there was a warning to a trainer or driver in relation to the seriousness in which we held his conduct, then those words would exemplify it. Notwithstanding that warning, Mr Clement committed the breaches which we have outlined. It is true that he has, in the course of the last stewards inquiry, and to some extent here before this Tribunal, acknowledged that his past history can, at least in part, be attributed to the influence that was held over him by the person who was nominated on page 26 of the instant transcript. One would be forgiven for thinking at one stage that the acknowledgements which were contained on page 26 might have led to a recognition and an admission on the part of Mr Clement as to the truth of that which had occurred in Tamworth back in September 2006. However, such was not forthcoming. Indeed, Mr Clement still maintains that he did nothing wrong at Tamworth. We think this is on his part an untenable position, and again a failure on his part to recognise what really is at

stake, and it demonstrates an attitudinal pose with which we have considerable difficulty.

His reference to the decision in the case of Bigeni and to other cases we find of no particular assistance. Bigeni is the only matter which has come before this Tribunal, and indeed in that case this Tribunal said, in August 2007:

"Therefore to flout any decision of the stewards imposed in their endeavours to maintain that essential integrity must be seen as a serious matter by people involved in the industry. "

In that case the period of twelve months imposed by the stewards was confirmed. Once more, there was no appeal against the inadequacy of that order by the Authority. The other matters to which Mr Clement made reference we do not find helpful at all in comparison.

In the result then, whilst we fully understand the impact of the orders which have been made and which are continuing to be experienced by Mr Clement, we do not think that the stewards fell into any error in imposing a period of two years cumulative upon the previous disqualification.

The appeal by Mr Clement is dismissed, and the stewards' findings and orders are confirmed. His appeal deposit is forfeit.

The case of Mrs Clement, however, does present with some differences. She is, as we have pointed out above, charged with persuading her husband to breach his disqualification by requesting that he exercise horses at the property of the trainer Mr Missen. Whilst it is true, as we have already pointed out, that she did suggest to him that on that particular day he ought to look to see whether or not there was any evidence of equine influenza, and that exercising horses in tandem was one way of making such a diagnosis, and whilst we accept that that is capable of coming within the definition of persuading, really, her involvement in that which was done by her husband is not of any great moment. He would have been down there, we think, whether she had so persuaded him or not.

Mrs Clement is not a person registered by the Greyhound and Harness Racing Regulatory Authority. She was in fact registered with Racing NSW as a thoroughbred trainer and rider. Her disqualification by this Authority has of course been adopted by the thoroughbred authority and has deprived her of her employment. She has been a material contributor to the family income.

The fact that she is not licensed does not avoid for her the application of the harness racing rules; quite clearly her conduct is such that she must be found to be

bound by them. Nonetheless, she is not a person who normally has any involvement other than that which flows from being the wife of one who was a registered harness racing trainer and driver.

So, in lieu of the stewards' order, it is the Tribunal's view that her disqualification should come to an end at an earlier date than that appointed by the stewards, in order that she may then re-apply to the thoroughbred board for restoration of her licences and hence her capacity to earn money and contribute to the family income.

For that purpose then, her appeal is dismissed, but in lieu of the stewards' order, there is substituted a period of disqualification which will expire six weeks from the date of its imposition by the stewards.

Since she has been partly successful in her appeal, it is directed that a moiety of her appeal deposit be refunded to her.

B. R. Thorley, Judge
9 January 2008