

GREYHOUND AND HARNESS RACING APPEALS TRIBUNAL

TRIBUNAL: B. R. THORLEY, JUDGE

**Assessors: Mr A. G. Mullins
Mr K. Russell**

APPEAL OF Mr ROBERT CLEMENT

DECISION

This is an appeal by Mr Robert Clement against his conviction under a charge laid under Rule 227 and the penalty that was imposed of a period of disqualification of twelve months. It derives from the running of the sixth race at Tamworth on 15 September 2006. This was a race over 1,980 metres in which there were some nine starters. It is sufficient for the purposes of these reasons to refer to but three of these starters. The first was Frostbitten, the ultimate winner of the race, driven by driver Peter Wellington and trained by Mr D. Finley. The second horse at stake was Gavale Bromac NZ, driven by driver Mr P. Missen and trained by the Appellant Mr Robert Clement and of which the owner was a Mr Michael Achurch. The third was Delta Blue Jean NZ, which was driven and also trained by the Appellant, and was owned by Ms N. Skopen, who, the Tribunal understands, is the domestic partner of Mr Michael Achurch.

After the running of the race the stewards on duty on that day opened an inquiry into the tactics adopted by driver Missen (in charge of Gavale Bromac NZ). It should be here mentioned (although further reference will be made to this matter) that Delta Blue Jean started as favourite, Gavale Bromac NZ was the second favourite, and Frostbitten was the third favoured horse in the race. The stewards did not conclude their inquiry that day into the tactics of driver Missen and continued it at the next race meeting in the area, which was on 21 September at Dubbo. At the conclusion of that inquiry, the stewards issued a report which was critical of the tactics adopted by driver Missen, who was informed that the evidence presented on his behalf was inaccurate and unacceptable and that if an improvement was not noticeable in the future, action would be taken against his licence.

On the day of the meeting at Tamworth on 15 September driver Peter Wellington arrived at the Tamworth race track together with his ex-wife, named Julie, and immediately set about the task of unloading the horses which were in his charge and which were competing that day. At about that time he asserts that he was approached by the Appellant and offered \$500 to ensure that the horse Frostbitten not take the lead when competing in the sixth race. To that suggestion he responded in effect that he had not had

an opportunity of speaking to the trainer Mr Finley and he gave no responsive answer to the offer.

He then alleges that at a point of time between the fifth and sixth races at Tamworth, and before he had moved to go down to the marshalling area to take charge of Frostbitten in that race, he was once more approached by Clement and again offered the sum of \$500 for the same result. He declined the offer. There would have been a significant period of time which would have elapsed between the actual time when that second offer was made and the time when the race in fact commenced, that time being occupied by his need to move down to the marshalling area, to get him onto the sulky, to take the horse out onto the track and to engage in whatever preliminary manoeuvres were thought necessary in order to join in the chase up to the mobile start. It was sufficient time for anybody so inclined to place bets by mobile telephone on the result of the race.

We have viewed a video of the race in question which was of considerable interest to us. Frostbitten was able to obtain the lead very early from the mobile start. The early stages of the race were conducted at a pace, no doubt dictated by Frostbitten, which could almost be described as leisurely. It maintained its position in front for the entirety of the running of the race. There was no serious challenge to it from either the first or second favoured horses.

The evidence before the ultimate inquiry also reveals that Mr Wellington had told his trainer Finley of the quality of the approach he says he had from Clement. Whether Mr Finley was the source of further dissemination of that is not known, but at all events Mr Whitton was present on the following night at a social function in Armidale when he heard rumours of the fact that there had been an offer by the Appellant to Wellington to adopt the tactic which is alleged. He communicated with Wellington the following day and asked him whether there was truth in this rumour. Whitton says that Wellington told him in effect that the rumours were correct. Whitton then says that he spoke to Clement and confronted him with an inquiry about the matter, to which Clement is said to have replied: yes, they had a "fat day" at the Tamworth meeting (this is, implying that they had a very successful punting result), and conceding there had been an unsuccessful approach to Wellington to forsake the lead in the race.

At this point of time neither Wellington nor Whitton had approached anybody in authority. However, on the Monday morning (that is, 18 September) Whitton says he rang the office of the Greyhound and Harness Racing Regulatory Authority and spoke to the Chairman of Stewards, Mr James Perry, and informed him that there were such allegations. But we are not sure of the precise detail that he supplied to Mr Perry in this regard, although on page 20 of the transcript he does make reference to Clement "offering drivers money". This of course does not identify the race or the driver in question.

Wellington himself at the meeting at Dubbo on 21st inst. did repair to the chairman then present, namely Mr Bottle, and once more told him that he was concerned about nefarious practices, but again did not identify, as we understand it, the names of the persons involved. The information before the Tribunal is that Mr Bottle said he would look into it, and indeed we apprehend, but without any contribution from Mr Bottle, that

there were some further inquiries made since Clement himself was called in by Bottle for at least what might be described as an informal interview.

This Tribunal has no knowledge of what then occurred until the Chief Executive of the Authority, Mr Coughlan, communicated with Mr Wellington by telephone to inquire whether these allegations were still being maintained. He was told yes. Thereupon, it appears that Mr Coughlan directed the opening of a more focussed inquiry into the running of that race. This opened at the Tamworth racecourse on Friday 12 January 2007. At that stage the stewards, Messrs Paul and Adams, took evidence from both Mr Wellington and Mr Whitton to the effect that we have already outlined. The Appellant was not present at that exercise. They continued their inquiry, again at Tamworth, on 24 January 2007, when Mr Clement was in attendance. They provided Mr Clement with a copy of the transcript taken at the hearing on 12 January and told him that if he was at a disadvantage they would afford him time to read it and to ask any questions that he wished. Also called on that occasion was Ms Tracey Bell, who was present in the vicinity of the conversation had between the Appellant and Whitton to which we have already made reference.

At the conclusion of that hearing the stewards charged the Appellant under Rule 227, which provides:

"A person shall not give or offer any money or other inducement improperly to anyone employed, engaged or participating in the harness racing industry."

They particularised that charge by reference to the particular race meeting at Tamworth on 15 September 2006 and to the offer of inducement to driver Wellington not to contest the lead on his drive Frostbitten. To that charge the Appellant pleaded not guilty, but he was found guilty and subjected to the penalty which we have already set out.

It is inherent in the way in which this inquiry was conducted, and an important constituent of the approach taken by the stewards, that they were suggesting that once Wellington had refused to accept the inducement, thereby indicating that he would seek to take the lead in the race, the Appellant had communicated that fact to his connections, who then determined to back Frostbitten to win the race, against the interests of the two horses that he (Clement) had starting in the same race. For that purpose then, the stewards made inquiries of the various bodies that take bets.

The starting prices TAB-wise for the race, as appears on page 39 of the transcript, reveal that the winner, Frostbitten, paid \$8.20 for a win and \$2.80 for a place, the favourite, Delta Blue Jean, was paying \$2.70 and \$1.50, and the second-favourite, Gavale Bromac, was paying \$4.00 and \$1.90. There were no bets of any significance located on the totalisator operating in New South Wales. However, two bets of significance on Frostbitten were found in the records of corporate bookmakers. With International All Sports there was a bet recorded of \$3,170 upon Frostbitten credited to a Mr Schultz. In the records of the corporate bookmaker Sporting Bets there is a bet of \$2,000 upon Frostbitten credited to a Mr Cambey.

There is, it seems, a strong suspicion on the part of the stewards that the real punter was Mr Michael Achurch who in turn had arranged to have these bets placed in the names of his agents. However, there is no evidence before this Tribunal of any connection between people of those names and Mr Michael Achurch. They are, however, very significant bets, particularly in the context of a meeting at Tamworth, and indeed all the more so in respect of a race of no particular significance in the harness racing calendar. Of course, both those bets would have paid the bettor handsomely at odds a little over 7/1. Moreover, there is no evidence before the stewards, and hence before this Tribunal, as to what time it was when those bets were effected. No doubt bets from the Tamworth track could have been achieved very rapidly by telephone by persons whose capacity to so gamble was recognised by those corporate bookmakers, and could well have been achieved between the time of the final refusal by Wellington and the time when the race actually started. But it is pure guesswork as to when it was that these bets were recorded. At the most it is, to say the least, but a suspicious circumstance.

At the hearing before this Tribunal viva voce evidence was given by Wellington and Whitton, and they have been cross-examined by solicitor Mr Bunton, who appeared for the Appellant. The Appellant himself gave evidence before this Tribunal, and in turn he was cross-examined by Ms Needham, of counsel, for the Authority. There were some suggestions made in the grounds of appeal that there had been some sort of denial of justice by way of procedural irregularity in the stewards inquiry in that the prime evidence from both Wellington and Whitton at the opening of the stewards inquiry at Tamworth was taken in the absence of the Appellant. Whether or not that was even arguable, having regard to the course adopted at the continued inquiry on 24 January, is no longer to the point since every opportunity has been afforded to the Appellant at the hearing before this Tribunal. We do not propose to say anything further about any issue of that quality.

The whole issue here really comes down to a question of fact. 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. It being a charge of that quality, all of the authorities require the tribunal of fact dealing with the charge, be it the stewards or be it this Tribunal, to recognise that before such a charge can be sustained the quality of proof required must reflect the seriousness of the charge and the likely consequences to follow. We certainly recognise that.

If the evidence of Wellington and of Whitton is to be accepted, it follows as night to day that the Appellant is guilty of the charge laid. The Appellant himself gave evidence, as we have said, and has flatly denied that there were any conversations of any like quality at all between him and either Wellington or Whitton. Yes, there were conversations between them, and indeed on the occasions assigned by both Wellington and Whitton, but such conversations as were had, he says, were purely social conversations in the context of the industry when they exchanged greetings and otherwise spoke about local matters of interest.

Why then, it is argued, is it that Wellington and Whitton would make such serious allegations against the Appellant? The Appellant says the answer to him is that they are both jealous of the extent to which he (Clement) has succeeded in the Northern Tablelands and associated areas. He was, he tells us, not only the leading driver but also the most successful trainer. Whitton comes from a family which would wish to inherit that title as successful trainer. Wellington, who does most of his driving for the Whitton stable, would wish to become the most successful driver in that area. Moreover, says Clement, there had been other factors in the past which have led to a measure of discord. One concerns allegations that Wellington made concerning tactics adopted during some prior race when he allegedly was incommoded by Clement's driving. Further reference is made to the fact that the ex-wife of Wellington, Julie, was prior to being married to Wellington in fact the girlfriend of Clement himself and that there remains discord because of the existence of those broken relationships.

Wellington and Whitton, on the other hand, deny having any such emotive responses towards Clement. Whitton himself has undoubtedly, on the evidence, been subjected to threats about coming to Sydney to give evidence before this Tribunal. He informs us, and we accept, that there have been at least two occasions when he has received telephone calls which have threatened not only his own safety but also the person and dignity of members of his immediate family. One of those phone calls has in fact been monitored by the local police in Armidale who are this time continuing their investigation into it. Indeed his attendance before this Tribunal has been one which has required special arrangements to be made by the Greyhound and Harness Racing Regulatory Authority in order to secure for him comfort in his security.

Criticism has also been made about the failure on the part of the Authority to call some witnesses. This includes the failure to call the trainer Mr Finley, to whom some version had been given by Wellington, at least after the first alleged approach by the Appellant and perhaps more at a later point of time. The failure to call either of the stewards Perry or Bottle was the subject of criticism. The failure to call the ex-wife Julie and the inability, it is claimed, of Ms Tracey Bell to give evidence of any quality which implicates the Appellant are also the subject of comment.

We note these points, all of which deserve our consideration. We also note that the Appellant has not himself called Mr Michael Achurch, who was in fact present at the meeting at Tamworth on 15 September and against whom there was this undercurrent of suggestion that he was the person who was responsible for the betting plunge on Frostbitten. We are aware of course that Mr Michael Achurch has himself been before this Tribunal in recent time and is currently disqualified in relation to another event.

Mr Achurch, the evidence reveals, is a person well experienced in betting in large amounts. The Appellant speaks of "coups" that "we" have had. Mr Achurch's sworn evidence of what bets he had on this race would have been of much interest. There is no explanation of why he was not called.

We have weighed all of these matters. There has been considerable debate within the Tribunal between we three who sit here and constitute it. In the result, we are greatly

impressed by the fact that not only has Whitton come forward in circumstances of what are undoubtedly real threats to him, but both Wellington and Whitton have made allegations of a quality which, in our experience, is not the usual expectation within the harness racing industry. We are firmly of the belief that far too often participants in the industry shrug their shoulders and do not report matters which ought to have been reported to the investigating authorities, even matters as serious as the current allegation. Whilst we recognise the force of the arguments advanced earnestly by Mr Bunton, in the end result we are persuaded that the allegations made by Wellington and the admission said to have been made to Mr Whitton by the Appellant are credible and acceptable to the extent necessary to discharge the onus of proof that lies upon the Authority.

This appeal basically has simply got down to a question of whom we believe and whether we believe them sufficiently. In the result, we do. Hence the appeal will be dismissed. We do, however, make the comment that we think the investigation could have been more thorough than it was. Perhaps there are lessons to be learned from this experience.

As to the question of penalty, Mr Bunton did make some faint suggestions that we might reduce the penalty to one of suspension, if only to enable the Appellant to continue with his horse transport business which he carried on, as distinct from his involvement in the racing industry. Far from indeed accepting this argument, 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. The penalty imposed was, at the least, appropriate. The order of the stewards is confirmed. It will date from the date of its imposition by the stewards.

The appeal deposit is forfeit.

B. R. Thorley, Judge
4 May 2007