

RACING PENALTIES APPEAL TRIBUNAL DETERMINATION

APPELLANT: MR PHILLIP JOHN DUGGAN
APPLICATION NO: 24/5156
PANEL: MR PHILLIP GLEESON (PRESIDING MEMBER)
MS NATALIE SINTON (MEMBER)
MS KELLY ZHANG (MEMBER)
DATE OF HEARING: 25 October 2024
DATE OF DETERMINATION: 11 December 2024

IN THE MATTER OF an appeal by PHILLIP JOHN DUGGAN against a determination made by the Racing and Wagering Western Australia Stewards of Harness Racing to disqualify him for a period of six months each for two charges, to be served concurrently, for breaches of Rule HRR 213(b) and HRR 218 of the Rules of Harness Racing

Mr Phillip Duggan and Mr David Hannay represented the Appellant.

Mr Denis Borovica and Mr Chris Courtland represented the Racing and Wagering Western Australia Stewards of Harness Racing.

1. For the reasons that follow, the Appellant's appeal against the penalty imposed is dismissed.
2. On Friday, 26 July 2024, Racing and Wagering WA investigators conducted a stable inspection at 487 Orton Road, Oakford. This stable is the registered training facility for Mr Phillip John Duggan (**Mr. Duggan** or **the Appellant**).
3. During the inspection, the investigators observed a wooden plank with multiple nails protruding from it to be hanging from a divider within a horse walker (**the device**). Further, a traceability audit revealed the recent deaths of three horses. One of those horses, TRUNKEY FETCH, had died in the paddock after racing poorly on 23 July 2024 and subsequently falling ill.
4. After an inquiry by the Stewards held on 7 August 2024, Mr Duggan was charged with two offences under the Rules of Harness Racing:
 - a) Charge 1 – Breach of HRR 213(b): That Mr Duggan as the licensed trainer had in his possession a thing on his stable property at 487 - 493 Orton Road, Oakford, namely a board with nails protruding through it which he attached to a horse walker, positioning it behind a horse inside the walker, which is a thing capable of inflicting suffering on a horse.

- b) Charge 2 – Breach of HRR 218: That Mr Duggan, the trainer of TRUNKEY FETCH, was a person having responsibility for the welfare of that horse, who failed to care for that horse properly by failing to seek veterinary treatment after the horse was found to be suffering from illness on return to his stables after a race meeting on 23 July 2024.
5. At the Stewards inquiry on 7 August 2024, Mr Duggan pleaded guilty to both charges.
6. By letter dated 14 August 2024, the Stewards notified Mr Duggan that they had imposed penalties of disqualification of Mr Duggan’s licence for 6 months for each offence, to be served concurrently for a total of 6 months. Such period to commence 14 August 2024 and expire on 14 February 2025.
7. By Notice of Appeal dated 19 August 2024, Mr Duggan appealed against the penalties imposed on the following grounds:
 - a) That the evidence was not correctly taken into consideration, and
 - b) Some evidence was not available by the date of the hearing.
8. The Appeal proceeded only on the question of penalty.
9. In addition to the material considered by the Stewards, the Appellant asked the Tribunal to also consider a letter of support prepared by Tom Bryant dated 24 October 2024. The Appellant made a copy of the letter available to the Tribunal and the Stewards did not oppose the admission of the letter into evidence. Accordingly, the Tribunal has admitted and considered the letter in addition to the material before the Stewards.
10. Mr Duggan argues that his 6-month disqualification is excessive.
11. A penalty will only be manifestly excessive if it is shown to be plainly unreasonable or unjust. The range of penalties customarily imposed for certain kinds of offences is of relevance, but each case turns on its own facts and circumstances.
12. The discretion conferred on the Stewards is of fundamental importance and this Tribunal will not substitute its own opinion merely because it would have exercised the discretion differently: See generally, *Houghton v State of Western Australia [No 2] [2022] WASCA 7, [224] to [228]*.
13. In addition to considering the Tom Bryant letter dated 24 October 2024, Mr Duggan asked the Tribunal to place weight on the following when considering his penalty for use of the device:
 - a) Mr Duggan’s own evidence was that in 13 years using the device no horses had been punctured or harmed.
 - b) There were no visible injuries to horses observed by the investigator on Friday, 26 July 2024.
 - c) Witnesses which Mr Duggan had asked to give character evidence had all stated that they had not observed Mr Duggan to mistreat horses.

- d) Although the horse walker's design specifications included electrification of parts of the bays within the walker, Mr Duggan had never utilised that design feature on the advice of his veterinarian.
 - e) However crude his homemade device appeared, it should be considered a preferred method of educating the horses within the walker bays and should be considered in fact a step taken by him in mitigation of potential greater harm to horses if he had used the walker as designed.
 - f) The fact that Mr Duggan had used his best endeavours to alleviate the symptoms of TRUNKEY FETCH in circumstances where he was fatigued and had concluded veterinarian care was unavailable to him.
14. The fact that the evidence suggests no horse has yet come to harm from the device cannot offset the fact that the device always carries the risk and capacity to do so.
15. Dr Caroline McMullen gave uncontested evidence to the Stewards that even though Mr Duggan's device had not yet been demonstrated to harm any horse, the potential remained for it to cause serious injury and even life-threatening illness. Consequently, it was her conclusion that it was a poor choice of substitute for educating horses within the walker despite the cessation of electrification.
16. Mr Duggan's own acknowledgement of the continued risk of the device is best captured in this exchange before the Stewards on 7 August 2024 where he describes the device as the "better of two evils".

CHAIRMAN *Okay. So the, obviously the board, do you think it's an appropriate to be putting in to a walker?*

DUGGAN *It's not an appropriate thing but it's the better of two evils, it's better than having electricity on both sides of the horse of that bay, there's only one bay that's ever electric and I can, I can't prove nothing, but I will guarantee any horse that's been hurt in a walker, 95% of them would have come from the second bay, it's nose would have touched it.*

17. The additional evidence to the Tribunal reinforces that Mr Duggan has a long history in the industry without evidence of mistreatment of animals.
18. It is evident to the Tribunal, however, that the Stewards did in fact consider the following in mitigation, when determining an appropriate penalty for Mr Duggan's two charges:
- a) Mr Duggan's long history in the industry and the fact that his record is unblemished by any allegations or charges of mistreating animals.
 - b) Mr Duggan's early guilty plea and professional manner by which he conducted himself at the inquiry.
 - c) Mr Duggan's attempt of remediation of TRUNKEY FETCH's symptoms with Berg Oil.
19. This case represents another example where the evidence and submissions indicate that the need for personal deterrence of Mr Duggan himself were likely not a major factor in the Stewards consideration of penalty. However, personal deterrence is only one factor to be

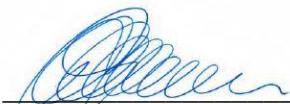
considered. General deterrence in cases like this is a significant factor, given the public interest in the maintenance of high standards of animal welfare in the racing industry.

20. The Stewards made the following observations at paragraph [4] and again at paragraph [8] of their reasons for penalty which accompanied their letter to Mr Duggan dated 14 August 2024:

“Industry Veterinarian Dr Caroline McMullen outlined the potential injuries from pricks to penetrating tissue injuries as well as potential further consequences of resulting infections. Matters of animal welfare are viewed very seriously by Stewards and the racing industry in general. As this incident involves a thing capable of inflicting harm to a horse it falls within the purview of an animal welfare matter. The industry is allowed to operate with what is called a ‘social license’ by the public and the industry only exists on the provision that the industry and those in charge of its regulation have the utmost duty to ensure socially acceptable welfare standards are maintained to the highest levels...

...In relation to the second charge under HRR 218 concerning the horse TRUNKEY FETCH. It is difficult to understand the exact details of the illness and condition of this horse and what occurred over its final hours from the facts at hand, but from your opinion of suspected internal bleeding, colic or a twisted bowel was one that was supported by Dr McMullen’s prediction at the inquiry and one the Stewards find as most likely. Whatever was the cause of the horse’s death, it was obviously ill, suffering from a condition that needed treatment. It was put forward by Dr McMullen that the horse would have likely been in some considerable pain in the lead up to its death that morning which is a poor outcome to the situation. We do not find your treatment of Berg oil (a treatment of wood tars, turpentine and methylated spirits) was sufficient, although we see it as some attempt to treat the animal.”

21. In arriving at a suitable penalty, the Stewards have looked for guidance from past comparable cases and considered the facts of Mr Duggan’s case within the context of the range of possible penalties that could be imposed.
22. The Stewards considered that periods of disqualification for 6 months were appropriate for each charge but then directed that Mr Duggan serve them concurrently.
23. In the circumstances, the Tribunal is not persuaded that there was any error in the process by which the Stewards arrived at the ultimate penalty of 6 months disqualification. The penalty imposed has not been shown to be plainly unreasonable or unjust.



PHILLIP GLEESON
PRESIDING MEMBER



NATALIE SINTON
MEMBER



KELLY ZHANG
MEMBER

