APPEAL NO. 802

RACING PENALTIES APPEAL TRIBUNAL DETERMINATION

APPELLANT:	**GREGORY FRANCIS JOHN BOND**
APPLICATION NO:	**A30/08/802**
PANEL:	**MR J PRIOR (PRESIDING MEMBER)** **MS K FARLEY SC (MEMBER)** **MR R NASH (MEMBER)**
DATE OF HEARING:	**7 SEPTEMBER 2017**
DATE OF DETERMINATION:	**7 FEBRUARY 2018**

IN THE MATTER OF an appeal by GREGORY FRANCIS JOHN BOND against the convictions and penalties of six months disqualification and twelve months disqualification to be served concurrently for breaches of Rules 209 and 243 respectively of the RWWA Rules of Harness Racing imposed by the Racing and Wagering Western Australia (RWWA) Stewards of Harness Racing.

Mr T F Percy QC with Ms J Byrne of Equitas Lawyers represented Mr Bond.

Mr RJ Davies QC represented the RWWA Stewards of Harness Racing.

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1. By unanimous decision of this Tribunal, the appeal by Mr Gregory Bond against the conviction under Harness Racing Rule 209 is upheld.

2. By unanimous decision of this Tribunal, the appeal by Mr Gregory Bond against the conviction under Harness Racing Rule 243 is dismissed.

3. By unanimous decision of this Tribunal, the appeal by Mr Gregory Bond against the penalty for breach of Rule 243 is upheld. The penalty of twelve months disqualification for breach of Rule 243 is substituted with a fine of $18,000.

John Prior

JOHN PRIOR, PRESIDING MEMBER

Seal of the Racing Penalties Appeal Tribunal of WA

APPEAL NO. 802

RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR R NASH (MEMBER)

APPELLANT:	**GREGORY FRANCIS JOHN BOND**
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INTRODUCTION

1 Gregory Bond, the Appellant, is a licensed trainer under the Racing and Wagering Western Australia Rules of Harness Racing (Rules). He trains approximately 45 horses at a property at Forrestdale in partnership with his wife.

2 On 2 August 2017 he was disqualified for an effective period of 12 months after being found guilty by the RWWA Stewards ("Stewards") of two charges under the Rules.

3 The charges arose out of a very disappointing run by the horse FIFTH EDITION, which was trained by Mr Bond, in Race 1 at Gloucester Park on Friday 2 December 2016. FIFTH EDITION was the pre-race favourite and Mr Bond had spoken positively about the horse's prospects on TAB Radio prior to the Race. However, in the Race the horse hung in badly and ran poorly losing a lot of ground towards the end. The Stewards subsequently received information that despite the horse's pre-race favouritism and Mr Bond's positive commentary on TAB Radio:

a. he had been made aware earlier in the week that the horse had hung and cross fired at its last training run,
b. he had made personal bets on the Race that did not include FIFTH EDITION, and
c. he had apparently contacted the owner of the horse, Mr Gartrell, to advise him of the horse's last training performance on the Tuesday before the Race and cautioning him to 'beware'.

4 Mr Bond was spoken to about the performance of the horse by Chief Steward Harness, Carl Coady, in a telephone call on 5 December 2016. During the telephone call, according to a note prepared by Mr Coady (which became Exhibit 2 in the Stewards Inquiry), Mr Bond told Mr Coady that the horse had worked well on the Saturday, a week before the Race, but on the Tuesday before the Race the horse had hung and not performed as well in its track work, albeit he did not entertain any concerns going forward. He told Mr Coady he had said on Radio that he thought the horse would be very competitive. He said he had told the owner of the horse, Mr Gartrell, that the horse had performed well on the prior Saturday but had hung on the Tuesday and, given it was a short price favourite, he didn't believe it was worthy of a bet.

5 Significantly, for the purposes of this appeal, Mr Coady also noted that:

"Mr Bond said he did have an investment on the race that being a First Four which he placed at the Gloucester Park track. With his bet, Mr Bond was of the belief that he did have his horse FIFTH EDITION NZ in the bet. He outlaid $100 on the investment."

6 As a result of subsequent investigations, which were assisted by the detail Mr Bond had provided to the Stewards about the First Four bet he had made, the Stewards discovered that Mr Bond had placed a First Four bet but that the bet did not include the horse FIFTH EDITION in the first four runners.

7 The Stewards conducted an inquiry in to these matters which commenced on 2 March 2017 and continued on 12 April 2017. After the Inquiry the Stewards determined to charge Mr Bond with charges for breach of the Rules, being charges under Rules 209 and 243.

8 The charge under Rule 209, was a charge of providing false information. Rule 209 provides:

Rule 209- False Information

"A person employed, engaged or participating in the harness racing industry shall not knowingly or recklessly furnish false information to the Controlling Body, the stewards or anyone else."

9 The particulars of the charge were that Mr Bond did knowingly furnish false information to the Stewards, namely that during a phone call with the Chief Steward, Mr Carl Coady, on 5 December 2016 [he] stated that [he] had included [his] runner FIFTH EDITION in a first four bet on Race 1 at Gloucester Park on 2 December 2016 when that was false."

10 The second charge was under Rule 243, being a charge of behaviour detrimental to the Industry. Rule 243 provides:

Rule 243- Behaviour detrimental to the Industry

'A person employed, engaged or participating in the harness racing industry shall not behave in a way which is prejudicial or detrimental to the industry.'

11 The particulars of the charge under Rule 243 were that Mr Bond –

'...behaved in a way that was prejudicial to the industry as set out in the matters below:

a. Prior to Race 1 at Gloucester Park on 2 December 2016 in which FIFTH EDITION a horse trained by [Mr Bond] was drawn to compete [he was] aware from comments made [to him] by the Driver Mr R Warwick of the horse hanging and cross firing when he drove it in track work on Tuesday 29 November 2016;

and

b. On TAB Radio on the morning of the race meeting, [Mr Bond] spoke positively as to the prospects of the horse in the race including indicating it was the best of the night for the Bond team but omitted to make any reference to the matter brought to [his] attention by Mr Warwick in relation to the horse hanging and cross firing at track work on Tuesday 29 November 2016;

and

c. Expressed to the owner of the horse, Mr Gartrell in a phone call to be (sic) beware given this matter that [he] was aware of from Mr Warwick;

and

d. In relation to this race [Race 1], he had multiple bets, by way of First Four with multiple combinations and a Quadrella, which deliberately did not include FIFTH EDITION at all.'

12 The matter came before the Stewards again on 16 May 2017 in order to deal with the charges. Mr Bond, who was represented by Mr Percy QC, pleaded NOT GUILTY to both charges.

13 At the hearing before the Stewards, Mr Bond through his counsel, contended that the second charge was duplicitous but that objection was not maintained on appeal to this Tribunal. After hearing further evidence from Mr Bond and a number of witnesses called by Mr Bond, the Stewards adjourned the proceedings to consider the matter.

14 The Stewards subsequently published their decision in respect of the charges on 12 June 2017 finding Mr Bond guilty on both charges. The Stewards provided detailed written reasons for decision ("Reasons") which accompanied their letter of 12 June 2017.

15 The matter was reconvened before the Stewards on 4 July 2017 for submissions in relation to penalty. After that hearing the matter was again adjourned so that the Stewards could deliberate on the matter of penalty. By letter dated 2 August 2017, which was accompanied by detailed written reasons ("Penalty Reasons"), the Stewards announced that they had determined to impose the following concurrent penalties on Mr Bond:

- Charge 1 (Rule 209) Disqualification of 6 months;
- Charge 2 (Rule 243) Disqualification of 12 months.

The disqualifications were ordered to commence immediately.

APPEAL

16 Mr Bond filed a Notice of Appeal with this Tribunal on 2 August 2017.

17 The matter came on for hearing before the Tribunal on 7 September 2017. At the conclusion of the hearing, the presiding member, Mr Prior, ordered that the Appellant, Mr Bond, be granted a stay in respect of the penalty pending the Tribunal's determination of the matter.

CHARGE 1

Stewards Decision

18 The Stewards found Mr Bond guilty of Charge 1.

19 In the course of their Reasons, the Stewards acknowledged that they were to apply the civil standard of proof to their deliberations subject to the requirements of Briginshaw v Briginshaw [1938] HCA 34. That meant that the Stewards were to assess whether the charge was made out on the balance of probabilities. In determining whether on the evidence that standard had been satisfied, the Stewards were required to recognise that '[t]he seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal.'

20 As the High Court expressed the position in Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd [1992] HCA 66; (1992) 110 ALR 449, the significance of Briginshaw is that the seriousness of the matter and of its consequences does not affect the standard of proof, but goes to the strength (or quality) of the evidence necessary to establish a fact required to meet that standard.

21 The Stewards at paragraph 5 of their Reasons identified that the onus of proof rested with them.

22 In considering the charge, the Stewards were required to consider:

- Whether Mr Bond had made a statement that the runner FIFTH EDITION was included in his First Four bet; and
- Whether he made that statement knowing that it was false.

23 It was said by the Stewards in their Reasons that it was common ground that the statement made by Mr Bond about the bet he had made was false. Although that

observation by the Stewards is understandable in light of the closing submission made by Mr Bond's counsel to the Stewards on 16 May 2017 at transcript page T340, I do not think it can correctly be said that that was common ground. The common ground was that Mr Bond did not have a bet on the horse FIFTH EDITION despite what he had said to Mr Coady.

24 The evidence of what Mr Bond said to Mr Coady on 5 December 2016 is set out in Mr Coady's written report which became Exhibit 2. The report was not to the effect that Mr Bond said he had included FIFTH EDITION in the bet; rather it was that he <u>believed</u> that he had included FIFTH EDITION in the bet when he spoke to Mr Coady. This is specifically referred to in the Reasons at paragraph 13.

25 Mr Coady had left the service of RWWA by the time the Stewards' Inquiry commenced and, accordingly, was not a compellable witness. Mr Coady's evidence of what was said to him by Mr Bond, was what he wrote in the report which became Exhibit 2. We were advised by Mr Percy QC during the Tribunal hearing that they had tried to call Mr Coady as a witness but had not been successful because there was no mechanism to compel him to appear. During the hearing Mr Davies QC, for the Stewards, said that Exhibit 2 was a conflation of two phone calls between Mr Bond and Mr Coady. There is nothing in Exhibit 2 that distinguishes, in terms of what was said about the bet made by Mr Bond, what was specifically said in the first and second phone calls.

26 Despite the evidence of Mr Coady which was contained in the written report he had prepared, the Stewards in their Reasons at paragraph 14 quoted from the evidence of Mr Styles, a RWWA Steward and Form Analyst, which was to the effect that Mr Coady had reported that Mr Bond had said he had included FIFTH EDITION in the bet, not that he believed he had. In giving that evidence, Mr Styles was reading from a written report dated 27 January 2017 prepared by himself and Mr Criddle, Senior Investigative Steward. That report became Exhibit 10 in the Stewards Inquiry. It is noteworthy that in

that report, on the second page, Mr Styles refers to speaking to Mr Bond on 6 December 2016, being the day after Mr Bond had spoken with Mr Coady. Mr Bond was asked by Messrs Styles and Criddle about the First Four bet and whether he had put his runner FIFTH EDITION in the bet. The report then reads:

a. 'Mr Bond stated that originally he thought he did, but that he was led to believe by Mr Carl Coady that he hadn't included the horse in the bet.'

27 A transcription of the interview between Mr Styles, Mr Criddle and Mr Bond on 6 December 2016 was tendered as Exhibit 3 in the Stewards Inquiry. At page 2 of the interview Mr Bond was asked about whether he had placed a bet on FIFTH EDITION and towards the end of that page is the following question and answer:

a. STYLES: Now did you put your horse FIFTH EDITION in that bet?

b. BOND: No, I don't believe I did. I thought I did. But no I was led to believe I hadn't.

28 The above question and answer was quoted in the Reasons at paragraph 15. It is also consistent with Mr Bond's evidence to the Stewards Inquiry at transcript pages 86, and 96 to 99. In answering questions during the Inquiry, Mr Bond said that when he was spoken to by Mr Coady he was under the impression that he had included the horse FIFTH EDITION in the bet.

29 Mr Bond, when he was being interviewed by Messrs Styles and Criddle, said that when he had spoken to Mr Coady, he wasn't sure if he had included the horse in the bet. [Reasons at para 15, page 6].

30 In their Reasons at paragraphs 20 and 21, the Stewards analysed the First Four bet and concluded that it would have required considerable 'consideration and thought'. In addition, they noted that Mr Bond had also excluded the horse from another bet he made being a quadrella (which bet was not the subject of the charge, but was relevant

to a consideration of the surrounding features and circumstances). The Stewards noted that the bet had been placed three days before Mr Bond had been questioned about it [Reasons at para 22]. They also noted that it was not common for Mr Bond to leave his own horse out of a First Four bet entirely when the horse was the race favourite.

31 The Stewards commented in paragraph 28 of the Reasons that the conversation with Mr Coady was for 17 minutes during which they found he had not expressed any uncertainty about the horse not being included in the bet. The Stewards concluded that there was no rational reason for Mr Bond to have stated, without any expression of uncertainty, that his horse had been included in the bet.

32 Mr Bond, through his counsel, put to the Stewards that in considering the likelihood of him knowingly giving false information to the Stewards, they needed to have regard to:

- the long period of time Mr Bond had been in the Harness Racing industry and his reputation for previously doing the right thing;
- Mr Bond's good character with a reputation for honesty which meant it was less likely he would have deliberately and consciously lied to the Stewards;
- the fact that Mr Bond ran a large training operation and a large earth moving business and the bet under consideration was, in the context of Mr Bond's business activities, a relatively minor matter; and
- the fact that the Stewards had not charged Mr Bond with providing information recklessly but had alleged it was knowingly false, which set a high bar in terms of the quality or strength of proof to reach that conclusion.

GROUNDS OF APPEAL-CHARGE ONE

The Stewards reversed the onus of proof

33 The Appellant's submissions suggest that the Stewards engaged in a form of reasoning which was analogous to that discussed in Palmer v R (1998) 193 CLR 1. In

this respect the Appellant makes reference paragraphs [34] and [35] of the Steward's reasons.

34 Having closely read those paragraphs in the context of the Reasons, I do not consider that they equate to a Palmer situation where an accused is being asked to speculate about the motives a complainant may have to say something which is a lie or untrue. The statements made by the Stewards which are complained of, are essentially of a rhetorical nature made to illustrate why they did not accept Mr Bond's evidence. They need to be considered in the context of the entire reasoning process of the Stewards which, in my view, shows that the Stewards did not reverse the onus of proof.

35 The Reasons, in my opinion, do not reveal that the Stewards reversed the onus of proof, and accordingly this ground is not made out.

Insufficient evidence to justify the conviction

36 The evidence of what Mr Bond said to Mr Coady comes from Mr Bond and the note made by Mr Coady. Mr Coady was not available to give evidence at the hearing.

37 Mr Coady's note, being Exhibit 2, is that when he spoke to Mr Bond he said 'he did have an investment on the race that being a First Four bet which he placed at the Gloucester Park track. With that bet [he] <u>was of the belief</u> that he did have his horse FIFTH EDITION NZ in the bet. He outlaid $100 on the investment." (my underlining).

38 Mr Bond's evidence was also that when he was first spoken to by Mr Coady he said he believed he had included FIFTH EDITION in the bet.

39 The charge alleges that Mr Bond knowingly furnished false information to the Stewards, namely that he stated that he had included his runner FIFTH EDITION in a First Four bet on Race 1 at Gloucester Park on 2 December 2016 when that was false. In fact the evidence was <u>not</u> that he had told Mr Coady he that he <u>had</u> included his

runner FIFTH EDITION in a First Four bet, but rather that he believed he had included FIFTH EDITION in the First Four bet. To state that he believed he had included FIFTH EDITION in the bet is materially different, in my view, from stating that FIFTH EDITION had been included in the bet.

40 It is significant that Mr Coady's note (on which Charge 1 hangs) refers to all of the details of Mr Bond's First Four bet as stated facts, save for whether or not FIFTH EDITION was included in the bet which was, in contrast, referred to as a state of belief.

41 It was put to this Tribunal during the hearing of the appeal, that the report of Mr Coady (Exhibit 2) was a conflation of two conversations between Mr Coady and Mr Bond. It was said that during the first conversation Mr Bond had been emphatic that FIFTH EDITION had been included in the First Four bet, whereas it was only after he was alerted in the second conversation that the Stewards had found the bet and FIFTH EDITION wasn't in it, that he expressed it as a state of belief. The report itself only speaks of one conversation commencing at 3.25 pm and ceasing at 3.35pm. There is nothing in it which supports the assertion that Mr Bond had made an emphatic and certain statement of fact to Mr Coady that FIFTH EDITION was included in the First Four bet when they first spoke.

42 As I have noted above, this point was not specifically addressed by the Appellant's counsel when he made his final argument to the Stewards at the hearing on 16 May 2017. However, it was a matter that Mr Percy QC did refer to in oral argument to this Tribunal on 7 September 2017 during the appeal.

43 It is questionable, in my view, whether providing information about a person's state of belief falls within the intended scope of "furnishing false information to the Stewards' within the meaning of Rule 209. However, assuming that it does, it is not the offence with which Mr Bond was charged.

44 Mr Bond clearly admitted that he had had a bet, provided the details of it being a First Four bet, advised that the amount of the bet was $100, and stated where he had placed the bet. By providing that information, he enabled the Stewards to track down the bet.

45 Mr Coady was absent from the hearing through no fault of Mr Bond. Therefore, it was not possible to get any insight from him as to how Mr Bond communicated during the conversation and in particular, whether it could be said he spoke emphatically about his belief of the inclusion of FIFTH EDITION or had expressed it with a degree of reservation. Mr Coady's evidence in that regard was, in my view, critical to an assessment of whether Mr Bond knowingly provided false information to the Stewards. The lack of that evidence cannot operate against Mr Bond.

46 A conclusion of dishonesty, given the gravity of the consequences flowing from such a finding, dictates the strength of the evidence necessary to establish such a finding. The fact that Mr Coady was not available as a witness to be questioned and cross-examined detracted from the quality of the evidence adduced in support of the charge.

47 In my view, the appeal against conviction should be upheld on this ground for the following reasons:

- contrary to the manner in which the charge is particularised, the evidence in Exhibit 2 was that Mr Bond's statement to Mr Coady was expressed as a statement of his belief, rather than purporting to furnish a statement of fact, about whether FIFTH EDITION was included in the First Four bet (which stands in contradistinction to each of the other aspects of the bet which he expressed as statements of fact); and
- given the absence of Mr Coady, the quality of evidence required in order to make out such a serious finding against Mr Bond, namely that he knowingly furnished false information to the Stewards, was not present in this case.

48 Accordingly, I would uphold this ground of appeal.

Failed to take into account good character

49 Evidence of good character goes to both the assessment of the credibility of a person charged and also to his propensity to commit an offence: Attwood v The Queen [1960] HCA 15.

50 The Stewards did not specifically refer to the good character evidence in reaching their decision as to whether they found that Mr Bond had knowingly given false information to Mr Coady in relation to the bet he had placed. That was a significant omission given the case centred upon the Stewards' assessment of Mr Bond's credibility and the likelihood of him deliberately providing false information to Mr Coady. It needed to be specifically addressed, especially when it was a factor that had been emphasised by Mr Bond's counsel in his concluding oral submissions to the Stewards in respect of charge 1. The omission suggests that the Stewards did not consider the relevance of the established good character of Mr Bond in reaching their decision [See Fleming v The Queen [1998] HCA 68 at [30]]

51 Good character was a significant factor in assessing the likelihood of Mr Bond knowingly misleading the Stewards. It makes it more likely that when he responded to Mr Coady's question, he would conduct himself consistently with his established good character and would be less likely to knowingly furnish false information

52 In considering whether it was deliberately dishonest as alleged, the Stewards should have expressly had regard to Mr Bond's long standing good character and reputation in the industry.

53 The fact that they did not expressly have regard to his good character in their Reasons (in contrast to their Penalty Reasons) was a significant omission which justifies the

presumption that they did not have regard to it [Fleming v The Queen (1998) 197 CLR 250 at [30]].

54 The failure to have regard to good character evidence will not necessarily lead to a conclusion that the Stewards erred in finding the Appellant guilty of charge 1, if it is the view of this Tribunal that despite that omission the Stewards, their decision was correct after taking into account the good character evidence.

55 In my view this ground of appeal is also made out, and I consider that the failure to have regard to good character, in combination with the matters to which I have referred to in relation to ground 2, reinforces my conclusion that the appeal against conviction on charge 1 should succeed.

PENALTY FOR CHARGE 1

56 In addition to the appeal against conviction, the Appellant separately appealed against the penalty imposed in respect of charge 1. Given I would allow the appeal against conviction, it is not necessary for me to address this ground of appeal.

CHARGE 2

Background

57 The essence of charge 2, under Rule 243, was that Mr Bond had acted in a manner that was prejudicial to the industry by having spoken positively of FIFTH EDITION's prospects on public TAB Radio broadcast without giving any cautionary warning to the public that the horse had hung and cross-fired at its last training session, which failure occurred in circumstances where he had provided that information to the owner of the horse and had personally made a First Four bet on the race which did not include the horse in the first four placings.

58 In their Reasons, the Stewards refer to the dictionary definition of 'prejudicial' as something which is detrimental or has a tendency to do harm.

59 As I read it, the offence under Rule 243 is of broad compass. There is no reason to confine the scope of conduct (or behaviour) that has the capacity to prejudice or cause detriment to the harness racing industry. The Stewards adopted an objective test by reference to what a fair minded observer, appraised of all the facts, would think. Would that fair minded observer's confidence or trust in the industry reasonably be diminished? If so, then the conduct or behaviour can be said to be detrimental or prejudicial to the industry.

60 It is not necessary, in my view, to require that there be evidence of the industry having undergone some quantifiable or assessed detriment or prejudice. Prejudice and detriment to an industry as a whole are not readily capable of proof. To adopt that approach would not be consistent with Rule 309 which requires that the Rules be interpreted so as to promote the purpose and object underlying them rather than impede or restrict their application.

61 The racing industry relies on fair play and the confidence of the betting public. That is one of the fundamental principles underlying the Rules.

62 The Stewards found that Mr Bond had initially rung the horse's part-owner, Mr Gartrell, to advise that the horse had worked well on the Saturday but later rang him following the Tuesday track work to caution him given the horse's performance in that subsequent track work. [Reasons at para 62]

63 Mr Gartrell's evidence to the Stewards was that he still expected the horse to win even after the phone call about the track work on the Tuesday.

GROUNDS OF APPEAL-CHARGE 2

There was no evidence the behaviour particularised individually or in combination constituted behaviour which was prejudicial or detrimental to the industry

64 In the particulars of this ground of appeal the Appellant contends:

> the problems experienced with the horse on the Tuesday training run were minor and were not matters that ought to have been brought to the attention of the public during the TAB radio broadcast;
>
> - the Stewards erred in finding that the expression to the part-owner of the horse that he should 'beware' of investing on the horse was a concern that should have been conveyed to the public on radio;
> - the Stewards failed to attach any significant weight to the gear adjustments to the racing equipment which were designed to rectify the "minor problems" and to the evidence of Mr Hall in that regard;
> - the Stewards did not attach sufficient weight to the evidence of Mr Gartrell that although there were concerns expressed, the Appellant's ultimate view was that the horse would win;
> - the Stewards failed to attach weight to the fact that the bets were novelty bets which were commonplace for the Appellant and in the Industry generally.

65 The particulars above, as I see it, represent the (somewhat selective) views about the facts that the Appellant pressed the Stewards to accept, but it remained open to the Stewards to reach the conclusions that they did given the cumulative weight of the various strands of evidence present in this case. The Appellant has not persuaded me that the Stewards, in their factual findings, reached conclusions about the facts in respect of Charge 2 that were not reasonably open to them.

66 Further, it was not necessary to require that there be evidence of the industry having undergone some quantifiable or assessed detriment or prejudice as a consequence of the

conduct or behaviour alleged. To adopt that approach would not be consistent with Rule 309 which requires that the Rules are to be interpreted so as to promote the purpose and object underlying them rather than impede or restrict their application.

67 It is sufficient, in my view, having regard to the statutory purposes and objects expressed by the text of Rule 243 (which is materially different in its wording to AR 175) and the context in which it appears in the Harness Racing Rules, that the question whether the conduct or behaviour is prejudicial or detrimental to the industry, is to be assessed having regard to the inherent character and nature of the conduct or behaviour in the context of the surrounding circumstances.

68 In my view, this ground of appeal is not made out.

The Stewards erred in finding Mr Bond guilty in the absence of a finding that he did not genuinely believe the horse could win

69 The essence of the charge is that Mr Bond acted prejudicially to the industry by giving the betting public, through his media interview on TAB Radio, a very different message about the horse's form and its prospects for the coming race in comparison to his own private warning to the owner of the horse and in contrast to his own betting on the race.

70 In summary form, what he said to the Public in the TAB Radio interview in relation to FIFTH EDITION was:

(a) the horse was nice;

(b) the horse was working pretty good;

(c) the horse was pretty well fine-tuned;

(d) he expected the horse will win and if it leads that will make its job easier;

(e) the horse will be testing material; and

(f) it was the best chance for the Bond camp for that race meeting.

There is no real issue with (a) and (f).

71 The Stewards in their reasons accepted that it was not unreasonable for Mr Bond to describe the horse as his best for the night. [Reasons at para 71]

72 The Stewards [at para 75] did not, however, agree that they would need to find that Mr Bond did not believe the horse could win, before they could find him guilty of the charge.

73 Given the concerns following the track work on the Tuesday evening, it is difficult to fathom how Mr Bond could reasonably have considered the comments at (b) to (e) above in combination were a reasonable representation of the horse's prospects and its preparation for the race without at least some word of caution. The comments offered no cautionary note which stood in stark contrast to the reservations he expressed to the owner, Mr Gartrell, and in stark contrast to his own betting selections on the race.

74 There is no duty on a trainer to provide information to the public. However, once he has agreed to make a public comment about his horse's prospects, any statement that is materially misleading has the potential to prejudice confidence in the industry as a whole, especially where the trainer has provided one message to the betting public and a very different message to the owner of the horse, not to mention the fact that the trainer had also made a bet which excluded the horse from even making the top four finishers.

75 In my view, it can be expected that trainers will from time to time be asked to participate in the racing media to discuss their horses and the prospects of their horses in forthcoming races. It is assumed that they will often be asked to make comment without much time for careful reflection.

76 In this case, the Stewards did not find that Mr Bond did not believe that his horse could win. Further, at [para 52] they said that were willing to accept that Mr Bond's concerns

about the horse following the Tuesday track work "may have been low" albeit it was "not insignificant or irrelevant".

77 Mr Bond's statement during the TAB Radio interview that the horse was "working pretty good" and was "pretty well fine-tuned" without any word of caution was likely to mislead any persons listening to the broadcast given the information he had received following Tuesday's track work and the fact he had felt it necessary to warn the owner of the horse about that. His conduct in that respect was, in my view, prejudicial to the racing industry. The Stewards did not, however, find that Mr Bond went on the Radio with the intention of misleading the public about his horse's prospects.

78 I consider that it is a positive thing for the industry to have its participants engage with the media and be willing to provide insights to the betting public. There is no evidence that Mr Bond had a history of making misleading statements about his horses' prospects or was regarded in any way other than a well-respected trainer of good character. His long standing good character makes it less likely that he had intentionally sought to mislead the betting public during the TAB Radio interview about his horse's prospects. It seems more likely to me that his words were more in the nature of cavalier or careless, than made with the intention to deceive.

79 There has been no industry directive or policy about what trainers can and can't say in media interviews. Nor is there any specific rule which deals with it. However, I do not agree with an argument that a trainer does not have some obligation to the industry to ensure that he or she does not make misleading statements about the form of his or her horses when engaged with the media. I have no difficulty in seeing that as prejudicial or detrimental to the industry as a whole, especially where the trainer's other actions suggest that he had privately acted with what appears to be a contrary view about the horse's prospects to those conveyed to the general public via a media interview.

80 The question is whether the alleged conduct is prejudicial or detrimental to the industry. That question in my view is not assisted by arguments that a trainer has no duty to the general public to act "uberrimae fides", or in the nature of a "fiduciary obligation".

81 The Appellant states that the asserted obligation that a trainer speaking on public radio must do so transparently is an obligation that has never been previously known to the industry. That may be so. However, if by that submission it is being suggested that trainers are therefore entitled to merrily engage in misleading the betting public without sanction, I cannot accept that proposition.

82 In my view this ground of appeal is not made out.

The Stewards erred by relying on hearsay information which they accepted was not attributable to the Appellant

83 The Stewards in reaching their decision in respect of Charge 2 at [Reasons at para 78] did refer to 'scuttlebutt' which had been doing the rounds on race day which had suggested that everything was not as it seemed with FIFTH EDITION, and that the horse drifted somewhat in the market.

84 The Stewards accepted that Mr Bond was not responsible for that scuttlebutt. In reaching their decision, it is unclear what significance the Stewards placed on that evidence or what part it played in their finding that the conduct the subject of the charge was prejudicial to the industry.

85 In my opinion, it was properly open to the Stewards to find the conduct was prejudicial to the industry without reference to the matters referred to in paragraph 78 of the Reasons. Therefore, even if the Stewards were in error in having regard to that material, I do not consider their ultimate conclusion that the conduct as charged was prejudicial to the industry was wrong.

86 Accordingly, this ground of appeal is not made out.

The Stewards erred by failing to have regard to the good character of the Appellant, his honesty and integrity

87 The relevance of good character to this charge must be limited since there is no element of intent or knowledge required, but rather it is an assessment of whether the conduct, to the extent it is made out, is objectively assessed to be detrimental to the industry, regardless of the intentions of Mr Bond.

88 The charge was established by reference to the objective facts found by the Stewards on the evidence and without regard to any specific intention on the part of the Appellant to cause prejudice or detriment to the industry. Character, prior antecedents and intention, however, were relevant factors to take into account in respect of the penalty imposed (which I have dealt with below).

89 In my view this ground of appeal against conviction is not made out.

PENALTY FOR CHARGE 2

90 Having regard to all the circumstances of this case, a disqualification of 12 months was manifestly excessive in my opinion.

91 Trainers should not be discouraged from participating in the media and promoting the industry through the media out of fear that if they were to say anything that may be construed as lacking in transparency they may face a condign sanction of being disqualified and potentially lose their livelihood. It will always be a matter of degree. There does need to be some accountability for public statements which are clearly misleading especially where those statements stand in stark contrast to the trainer's own betting actions or the information the trainer has shared privately.

92 It may be appropriate to disqualify a trainer where he is shown to have a propensity to behave in such a manner in contradistinction to a one-off seemingly out of character occurrence such as this.

93 Although I consider the Stewards were right to find Mr Bond guilty of conduct which was prejudicial to the industry, the penalty imposed in all the circumstances was manifestly excessive given:

- Mr Bond's long standing prior good character;
- there was no suggestion that he had a history of similar conduct;
- the fact that the Stewards did not find that he did not believe the horse could win, and
- the absence of a finding that he had sought to deliberately mislead the betting public for personal gain or advantage.

94 In my view a fine of $25,000 is an appropriate penalty which, having regard to all the matters personal to Mr Bond, will provide sufficient personal deterrence to him. It will also send a message to other industry participants to exercise due care when speaking to the media to avoid making misleading pronouncements on the radio and then conduct their own private communications and betting in a patently inconsistent way. Such conduct, deliberate or otherwise, is clearly prejudicial to the public confidence in the industry.

95 Given Mr Bond has already served approximately 1 month of the disqualification imposed by the Stewards, I would reduce the penalty to $18,000.

ROBERT NASH, MEMBER

Seal of the Racing Penalties Appeal Tribunal of W.A.

APPEAL NO. 802

RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR J PRIOR (MEMBER)

APPELLANT:	**GREGORY FRANCIS JOHN BOND**
APPLICATION NO:	**A30/08/802**
PANEL:	**MR J PRIOR (PRESIDING MEMBER)** **MS K FARLEY SC (MEMBER)** **MR R NASH (MEMBER)**
DATE OF HEARING:	**7 SEPTEMBER 2017**
DATE OF DETERMINATION:	**7 FEBRUARY 2018**

IN THE MATTER OF an appeal by GREGORY FRANCIS JOHN BOND against the convictions and penalties of six months disqualification and twelve months disqualification to be served concurrently for breaches of Rules 209 and 243 respectively of the RWWA Rules of Harness Racing imposed by the Racing and Wagering Western Australia (RWWA) Stewards of Harness Racing.

Mr T F Percy QC with Ms J Byrne of Equitas Lawyers represented Mr Bond.

Mr RJ Davies QC represented the RWWA Stewards of Harness Racing.

I have read the draft reasons of Mr R Nash, Member.

I agree with those reasons and conclusions and have nothing further to add.

John Prior

JOHN PRIOR, MEMBER

APPEAL NO. 802

RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MS K FARLEY SC (MEMBER)

APPELLANT:	**GREGORY FRANCIS JOHN BOND**
APPLICATION NO:	**A30/08/802**
PANEL:	**MR J PRIOR (PRESIDING MEMBER)** **MS K FARLEY SC (MEMBER)** **MR R NASH (MEMBER)**
DATE OF HEARING:	**7 SEPTEMBER 2017**
DATE OF DETERMINATION:	**7 FEBRUARY 2018**

IN THE MATTER OF an appeal by GREGORY FRANCIS JOHN BOND against the convictions and penalties of six months disqualification and twelve months disqualification to be served concurrently for breaches of Rules 209 and 243 respectively of the RWWA Rules of Harness Racing imposed by the Racing and Wagering Western Australia (RWWA) Stewards of Harness Racing.

Mr T F Percy QC with Ms J Byrne of Equitas Lawyers represented Mr Bond.

Mr RJ Davies QC represented the RWWA Stewards of Harness Racing.

I have read the draft reasons of Mr R Nash, Member.

I agree with those reasons and conclusions and have nothing further to add.

Kare Farley

KAREN FARLEY SC, MEMBER

Seal of the Racing Penalties Appeal Tribunal of W.A.