

RACING APPEALS TRIBUNAL

RAT 06/14

DATE OF HEARING: Thursday, 12 June 2014

DATE OF DECISION: Friday, 20 June 2014

TRIBUNAL: PRESIDENT: MR P.ERIKSEN

MR J PETZER, CHAIRMAN OF STEWARDS,
THOROUGHBRED RACING SA LTD

MISS F NELSON APPEARS TO ASSIST CHAIRMAN OF
STEWARDS, THOROUGHBRED RACING SA LTD

APPELLANT: MR R.JOHNSON

MR D CRAIG APPEARS TO REPRESENT THE APPELLANT

IN THE MATTER of a Notice of Appeal lodged by **RON JOHNSON** against an order of Thoroughbred Racing SA Ltd.

REVOCATION OF PERMIT TO TRAIN UNDER LOCAL RULE 20.6.3

LOCAL RULE 20.6 The Board may in its absolute discretion and without assigning any reason therefore;

3. revoke, cancel or suspend any such licence or permit during its currency and before the period for which the same was granted shall have expired.

ORDER

The Appellant in this matter, Mr Ron Johnson, was the holder of a Permit to Train with Thoroughbred Racing SA Limited for the racing season 2013/2014.

Mr Johnson on 15 February 2014, in the opinion of the Stewards, behaved in a manner at a race meeting at Morphettville Parks that resulted in the Stewards taking action, namely, that on 19 March 2014 Mr Johnson was advised that, in accordance

with Local Rule 20.6.3, his Permit to Train had been revoked, effective at midnight on 20 March 2014.

Mr Johnson was aggrieved by the decision of the Stewards and contacted the Registrar of this Tribunal seeking to lodge an appeal against the revocation of his Permit to Train as aforementioned.

It was conveyed to me that Mr Johnson wished to lodge an appeal to have this Tribunal consider the circumstances of the revocation of his Permit to Train.

I was informed by the Registrar that the Respondent, Thoroughbred Racing Stewards on delegation of the Thoroughbred Racing SA Limited Board, maintained that the Tribunal had no jurisdiction to entertain such an appeal.

The Racing Appeals Tribunal currently operates under a Deed and Annexure – Racing Appeals Tribunal Constitution. In that Annexure Paragraph 11 refers to appeals to the Tribunal and reads as follows:

'11. Appeals to Tribunal

The Tribunal has jurisdiction to hear and determine an appeal against:

11.1 a decision made under the rules of a Controlling Authority for its respective code of racing:

11.1.1 disqualifying or suspending a person from participating in that code in any particular capacity; or

11.1.2 imposing a fine greater than \$499 or such other amount as may be prescribed by the Controlling Authorities; or

11.2 a decision made under the rules of a Controlling Authority for its respective code of racing disqualifying or suspending a horse (but only when this decision is made in conjunction with a decision referred to in clause 11.1).'

I directed the Registrar that Mr Johnson should be advised that an appeal could be lodged and that there would have to be a 'thresh-hold point' argued as to whether or not this Tribunal in fact had jurisdiction to entertain such an appeal.

Mr Ron Johnson duly lodged an appeal on 20 March 2014 and paid the lodgement bond in the sum of \$500.00.

The terms of Mr Ron Johnson's appeal were:

'Appeal against severity according to considered facts documented via email.'

The accompanying email contained the following:

“Subject: Reasons for Appeal Ron Johnson

1. *When receiving notice in writing by Chief Steward TRSA of Licence Revoked I rang the Steward to seek Appeal strategies. I was informed that such Appeals probably did not occur in relation to Licensing. I find this stance discriminating.*
2. *I rang Appeals Manager Mr Milne who reaffirmed my opinion that such Appeal comes under the Appeals Tribunal guidelines clauses one and three.*
3. *The “revoke” of Licence is the same as cancellation or disqualification. I had my licence simply taken away from me.*
4. *The cancellation of such Licence is a way over the top judgement in my opinion in relation to the incident.*
5. *Stewards cannot make a judgement on heart felt beliefs or convictions of opinion simply stick to the offence caused on the day. The punishment does not fit the offence.*
6. *The subject Vet accepted my apology for the incident on the day and stated such. Stewards then reacted to this apology and overruled the Vets consideration which is blatant double standards.*
7. *In relation to the subject incident I simply tried to protect my horse. I was in charge of a nice horse for leading Owner/Breeders from NSW and after a result. Three weeks previous to this invasion of mental focus via late pre race testing of the horse I protected and cared for the subject horse AGISTER knocked me to the ground and dislocated my shoulder and bruised my head by striking. The subject Vet performing the worm drench by tube will testify that he is an emotional horse at times. I simply went into bat for the horse hoping he would be ok.*
8. *At the time of the Vet incident I was under the opinion that I was deliberately targeted with my first runner of the Licence season. The Steward presented documented facts to suggest I was wrong in my judgment that I initially agreed to waive the opinion of discrimination. Now the Licence has been cancelled I am of the firm belief I was given a document to sign under duress agreeing to blood testing, deliberately targeted late by the Vet on instruction by Stewards knowing full well I would react then put out of business on integrity and behavioural issues. Nice ol’ set up in my opinion. Not unusual but very wrong.*
9. *When my horse AGISTER raced next I was slammed by the Chief Steward for competing in a Victoria at Moonee Valley. Not his business. I take them where they can win. He ran third after suffering some interference. Top effort.*

10. I have this horse in work ready to race next week at Morphettville. I would like a stay of proceedings and deserve such. My Appeal on grounds of severity deserves appropriate analysis. I was simply caring for my horse."

Thereafter, via the Registrar of the Tribunal, I requested written submissions from the Appellant and the Respondent in respect of the thresh-hold issue as to whether or not this Tribunal had jurisdiction to entertain Mr Johnson's appeal.

I received the following written submissions:

- 20/3/2014 from Ron Johnson - Reasons for Appeal Ron Johnson
- 20/3/2014 from Ron Johnson - Re: Letter attached from Chairman of Stewards
- 21/3/2014 from Ron Johnson - Re: Lodgement of Notice of Appeal by Ron Johnson
- 21/3/2014 from Ron Johnson - Appeal
- 21/3/2014 from Johan Petzer - Submission on jurisdiction
- 21/3/2014 from Ron Johnson - Re: Lodgement of Notice of Appeal by Ron Johnson
- 21/3/2014 from Ron Johnson - Letter for the President ... Appeals
- 21/3/2014 from Ron Johnson - Re: Appeal
- 24/3/2014 from Ron Johnson - Re: Notice of Appeal lodged by JOHNSON
- 24/3/2014 from Ron Johnson to Jim Watters - Official complaint against Chief Steward J Petzer
- 1/4/2014 from Johan Petzer - Further submissions on jurisdiction
- 3/4/2014 from Ron Johnson - Grounds for Appeal re Jurisdiction.
- 28/5/2014 from Johan Petzer – Letter Re “Appeal” Mr R Johnson – Jurisdiction Hearing
- 30/5/2014 from Johan Petzer – Letter “Appeal” Mr R Johnson – Jurisdiction Hearing
- 4/6/2014 from Registrar, Racing Appeals Tribunal
- 4/6/2014 from Donal Craig – Ron Johnson – Revocation of Training Licence
- 5/6/2014 from Johan Petzer – Mr Ron Johnson – Jurisdiction Hearing
- 9/6/2014 from Donal Craig – to Registrar, Racing Appeals Tribunal

10/6/2014 from Johan Petzer – to Donal Craig – Ron Johnson – Jurisdiction Hearing

11/6/2014 from Donal Craig – Email attaching written submissions of Appellant

The Tribunal received detailed submissions presenting the Appellant's position that in these circumstances the Tribunal definitely had jurisdiction to entertain the appeal lodged by Mr Ron Johnson.

There is a certain amount of uniformity in the approach of the Appellant and Respondent in that both parties agree:

1. That this Tribunal's jurisdiction is derived from Clause 11 of the Annexure to the Racing Appeals Tribunal Deed.
2. There was no charge laid by the stewards against Mr Ron Johnson pursuant to any provision of the Local Rules of racing.

However, the parties strongly disagree in respect of the appropriate interpretation of Para.11 of the Annexure to the Racing Appeals Tribunal Deed, and what, if any, inter-relationship it has with 33.1 of the Local Rules. Local Rule 33.1 states:

'Any person aggrieved by a decision of the Board or the Stewards imposing –

(a) a suspension, disqualification or warning off

(b) a fine exceeding \$499

may, within seven (7) days after the decision, lodge a Notice of Appeal with the Registrar of the Racing Appeals Tribunal, (as prescribed by the Rules of the Racing Appeals Tribunal) stating –

(i) the name and address of the appellant

(ii) the decision appealed from, and

(iii) the grounds of appeal

together with payment of the bond and non refundable lodgement fee required by the Constitution and Rules of the Racing Appeals Tribunal in the amounts as from time to time prescribed by TRSA Limited and published in the Racing Calendar.'

The Appellant has submitted that Mr Ron Johnson should have the status of a 'person aggrieved by a decision of the Board' and that the proper interpretation is that this Tribunal has jurisdiction to look into circumstances of the revocation of his permit to train.

In order for this argument to succeed it is necessary for this Tribunal to interpret the words 'a suspension or disqualification' (per 33.1 of the Local Rules) as being the same as a revocation of the permit to train.

The Appellant developed this argument, both in the written submissions and oral submissions presented to the Tribunal which I summarise as follows:

1. Whether the Tribunal has jurisdiction in Mr Johnson's appeal therefore depends upon whether the decision made under the Local Rules to 'revoke' Mr Johnson's Licence was a decision disqualifying Mr Johnson from participating in thoroughbred racing in a particular capacity (i.e. as a trainer). Such a decision would also qualify as one 'imposing' a 'disqualification', within the meaning of LR 33.1(a).
2. A decision "disqualifying a person" from participating in a code in a particular capacity includes a decision to "revoke" a licence to train from a trainer.
3. The Local Rules are to be "read, interpreted and construed together" with the Australian Rules of Racing (Australian Rules): LR 3.1. The Australian Rules provide only an inclusive definition of "disqualification", which cannot be determinative in the present case:

"Disqualification' includes the adoption or confirmation in accordance with these Rules of any disqualification and "Disqualify" has a corresponding meaning."

4. The word "disqualification" must therefore be construed according to a consideration of its objective meaning, which would ordinarily involve giving the words their natural and ordinary meaning, understood in context. Construing the word "disqualification" involves having regard to other textual indicators within the applicable rules.
5. In a very practical sense, the effect of the decision to revoke Mr Johnson's Licence is to deprive Mr Johnson of his qualification to participate in thoroughbred horse racing in the capacity of a trainer.

6. It would be appropriate not to give the words that meaning if there were clear indications otherwise arising from the text, context and purpose of the rules to suggest a narrower meaning.
7. On one view, the context serves to reinforce the conclusion that a decision to revoke a trainer's licence is a type of decision "disqualifying" a person from participating in thoroughbred capacity. LR 20.6.3 is in the following terms:

"20.6 In connection with an application for a Licence (including any renewal), the Board may in its absolute discretion and without assigning any reason therefore [sic]

...

 3. *revoke, cancel or suspend any Licence during its currency and before the period for which the same was granted shall have expired".*
8. The use of the word "suspend" in this context is significant given that LR 33.1(a) provides that one of the decisions which may be appealed to the Tribunal is a decision involving a "suspension". There is a strong reason to construe the words "revoke" and "cancel" as being cognate with "disqualify". To do otherwise would create the incongruent result that an appeal would lie to the Tribunal from a decision to suspend, whereas no appeal would lie from a decision to revoke or cancel, notwithstanding that such a decision plainly carries more serious consequences. In accordance with general principles of interpretation, "preference is given to a construction supplying a congruent operation to the various components of the whole": *Wilkie v Gordian Runoff Ltd* (2005) 221 CLR 522 at [16] per Gleeson CJ, McHugh, Gummow and Kirby JJ.

However, the Respondent's position, as detailed in its written submission dated 1 April 2014 is summarised as follows:

1. The Racing Appeals Tribunal (hereinafter referred to as "the RAT") is a domestic Tribunal established on 1 October 2000 by way of a Deed (the Deed) between the three racing codes in South Australia. The functions and powers of the RAT are set out in an annexure to the Deed.
2. The Deed records the terms of the agreement for the establishment of the RAT and the conduct of the RAT business.
3. The annexure to the Deed describes, among other things, the RAT constitution, the functions of its members, appointment of members etc.
4. It follows that the RAT is a Tribunal, which derives its existence, constitution and functions from the Deed. The Rules of the Controlling Authority, invest the RAT with its jurisdiction to decide a particular substantive matter in certain prescribed circumstances. Furthermore, the Constitution of the Respondent, under clause 26.9, reaffirms the RAT jurisdiction in similar and consistent terms as those contained in the Deed and the Rules of Racing.
5. In order to exercise its jurisdiction and decide the merits of the substantive matter, the RAT will first have to determine whether those prescribed circumstances exist.
6. The matters set out in Local Rule of Racing 33.1 and section 11 of the annexure to the Deed are the conditions precedent to the exercise of the RAT jurisdiction. They must first be found to exist before the RAT has jurisdiction, see *Bunbury v Fuller* (1953) 9 Ex111 at 140 and *R v Fulham, Hammersmith and Kensington Road Tribunal; ex parte Zerek* (1951) 2 KB 1 at 6 and 10.
7. Local Rule of Racing – LR 33.1 provides;

33.1 Any person aggrieved by a decision of the Board or the Stewards imposing –

 - (a) a suspension, disqualification or warning off
 - (b) a fine exceeding \$400

may, within 7 days after the decision, lodge a Notice of Appeal with the Registrar of the Racing Appeals Tribunal.

8. Section 11 of the annexure to the RAT Constitution provides that the Tribunal has jurisdiction to hear and determine an appeal against:
 - 11.1 a Decision made under the rules of the Controlling Authority for its respective code of racing:
 - 11.1.1 disqualifying or suspending a person from participating in that code in any particular capacity; or
 - 11.1.2 imposing a fine greater than \$499 ...
 - 11.2 a Decision made ... disqualifying or suspending a horse ...
9. In *ex parte Wurth; re Tully* (1954) 55 SR (NSW) 47 a Tribunal was entrusted by statute with jurisdiction to hear an appeal by a Public Service Officer against a decision by the Public Service Board for his “dismissal”, but proceeded to hear an appeal by an officer whose probationary appointment had been annulled. In that case it was held that the Tribunal made a jurisdictional error. Also in *ex parte Wurth* at 53, Street CJ said “It would be an extraordinary interpretation to put upon the section that the Board was to have unfettered and unchallenged power to define the extent of its own jurisdiction, and to give any decision or embark upon any proceeding without any liability to correction. It is unlikely that the legislature would have conferred upon the tribunal ... the right to determine questions of law and by such determination to extend indefinitely the limits of the Board’s jurisdiction”.
10. In *R v Shoreditch Assessment Committee* (1910) 2 KB 859, Farwell LJ said: “Subjection in this respect to the ... [c]ourt is a necessary and inseparable incident to all tribunals of limited jurisdiction; for it is a contradiction in terms to create a tribunal with limited jurisdiction and unlimited power to determine such limit at its own will and pleasure – such a tribunal would be autocratic, not limited – and it is immaterial whether the decision of the inferior tribunal on the question of the existence or non-existence of its own jurisdiction is founded on law or fact”.
11. Judicially reviewable errors committed by lower courts and tribunals are usually referred to as “jurisdictional errors”. Jurisdictional errors may be either jurisdictional errors of law or errors in finding a fact whose existence is a condition precedent to jurisdiction. These latter types of factual errors are usually referred to as the “jurisdictional fact” doctrine.
12. A jurisdictional error, in traditional terms, is of three kinds: (1) A want (or lack) of jurisdiction: that is, there is an absence of power or

authority on the part of the decision-maker to make the decision, (2) An excess of jurisdiction: that is, the decision is within the general power or authority of the decision-maker, but there is a lack of jurisdiction occurring somewhere throughout the decision-making process itself, and (3) A wrongful failure or refusal to exercise jurisdiction: that is, there is no lack or excess of jurisdiction, but simply no exercise or it – from “The Anisminic Revolution” in Australia. The reception of the doctrine of extended jurisdictional error in Australia, Ian Ellis-Jones BA LLB Thesis.

13. Excess of jurisdiction can occur in several ways. In particular, a tribunal may purport to enlarge the ambit of its authority in a manner not referable to its legal source by, for example, extending the criteria regulating the use of power or purporting to make an order not provided for by the empowering legislation. Excess of jurisdiction can also occur where a tribunal misconstrues the statute investing it with jurisdiction leading it to misunderstand the nature of the jurisdiction, which it is to exercise and to apply a wrong and inadmissible test, or misconceive its duty, or function, or the nature of its task.
14. In *Police v Melbourne and Metropolitan Tramways Board* (1957) 98 CLR 337, a Tribunal was entrusted by statute with jurisdiction to hear appeals by employees against “dismissals, fines, deductions from wages, reductions in rank, grade or pay or other punishments” but it heard an appeal by an employee against a reduction in grade and pay that had been imposed by reasons of staff administration and efficiency rather than for punitive reasons. The Tribunal was held to have made a jurisdictional error. The High Court (per Dixon CJ, Webb, Kitto and Taylor JJ) said at 343-4 “It is evidence that the appeal board has a limited power and wherever those limits may be drawn it seems impossible to suppose that it was intended that by its own authority the appeal board should exceed them”.
15. In *R v Melbourne and Metropolitan Tramways Appeal Board Ex Parte Melbourne and Metropolitan Tramways Board* (1957) VicRp 95; (1957) VR 651, O’Byrne, J stated “The attack upon the jurisdiction of the Board in this case is based upon the nature of the subject-matter of the inquiry. S17(5)(b) limits the Board, as I read it, to an enquiry into reductions in rank grade or pay which have been made by way of punishment. If the reduction in question was not a punishment, the Board’s jurisdiction was wanting for lack of subject matter ... and the Board cannot, by its finding that the subject matter was something which in fact it was not, assume a jurisdiction which it would not otherwise have”.

16. Tribunals have no inherent powers; any they have must spring from legislation (in this case the Rules of Racing), *vide Re Hughes Boat Works Inc* (1980) 102 DLR 661 at 665.
17. The prescribed circumstances and the conditions precedent which would entitle the RAT to exercise its jurisdiction in any matter, including the substantive matter in the present case, are limited to decisions by the Controlling Authority which result in;
 - (a) Punitive actions by a Controlling Authority, which action follows an inquiry during which a charge was brought against a participant under the Rules of Racing, resulting in a guilty finding and the imposition of a:
 - (i) suspension, or
 - (ii) disqualification, or
 - (iii) warning off, or
 - (iv) fine exceeding \$499.
18. The substantive matter, the subject of this hearing, relates to a licensing matter, which by its very nature allows for the exercise of discretion in relation to the status of a licence (“privilege”) held by a participant.
19. The revocation or annulment of a licence or privilege is not punitive in nature but rather “administrative” in nature, and when so exercised does not take on the character of either a condition precedent or a prescribed circumstance as contemplated in the enabling jurisdictional provisions in the Rules of the Respondent. Consequently the RAT would not be entitled to hear the substantive matter.
20. In the present case the RAT would be acting in excess or want of jurisdiction and *ultra vires* if it were to proceed to hear and determine “the application” on the substantive matter by Mr Johnson.
21. The powers of the RAT can only be exercised for the purpose of carrying out its functions.

It is of importance to remind oneself that in this case Mr Johnson has not been charged with any offence under the Australian Rules of Racing. Obviously had he been, and convicted, this Tribunal would have jurisdiction to entertain the appeal.

The analogy that Mr Donal Craig, Counsel for Ron Johnson, the Appellant, put to the Tribunal of a driver losing his driver's licence as the result of an offence in respect of a breach of one or more Sections of the Road Traffic Act, has some initial appeal. However, the fundamental difference is that in the driver's licence analogy there is a finding by the appropriate Court of an offence, consequent upon that a disqualification of the licence. Here there has been no finding of any offence in respect of a breach of the Australian Rules of Racing.

Having given careful consideration to the matter, I am of the opinion that I am constrained to find that in all of the circumstances the Tribunal does not have jurisdiction to entertain Mr Johnson's appeal, and that any potential redress of what he considers to be unfair or unjust dealings by the Respondent in the circumstances in which his Permit to Train was revoked would have to be pursued by other means.

In the circumstances I have instructed the Registrar to advise Mr Johnson that the appeal will not be entertained by the Tribunal.

I order that his bond be returned to him in full.