

# RACING APPEALS TRIBUNAL

RAT 8/15

DATE: THURSDAY, 28 MAY 2015

TRIBUNAL: PRESIDENT: MR T ANDERSON QC

## IN ATTENDANCE:

MR JOHAN PETZER, CHAIR OF STEWARDS, THOROUGHBRED RACING SA LTD

APPELLANT: MR TREVOR DAY

APPELLANT'S SOLICITOR: MR NICK VAN DISSEL

**IN THE MATTER OF:** An Appeal by Mr TREVOR DAY against a decision of Thoroughbred Racing SA Ltd Stewards.

**BREACH OF RULE:** Australian Rule of Racing 175A

*Any person bound by these Rules who either within a racecourse or elsewhere in the opinion of the Committee of any Club or the Stewards has been guilty of conduct prejudicial to the image, or interests, or welfare of racing may be penalised.*

**PENALTY:** Fine of \$2,500.00 and conditional suspension of licence for 27 months.

## **DETERMINATION**

In this matter Mr Trevor Day is appealing from a decision given by the stewards following a hearing conducted by the stewards.

Mr Day was charged with breach of the Australian Rule of Racing 175A in that he had been guilty of conduct prejudicial to the image or interest or welfare of racing.

The brief particulars of that charge were that it was prejudicial to the image of racing, because it was alleged that over a period of approximately nine years he disposed of deceased horses, the most recent of these being on about February 2015 in which horses were in his care at the Riverside Stud at Blackfellows Road, Yundi.

That area was nearby and adjacent to the Mount Magnificent Conservation Park where the horses were disposed of. I won't go into the details of the horses, their names or any other matters.

It appears that Mr Day drove the horses by use of a front-end loader from his property across the intersection of the road adjoining his property and the fire track on the exterior of the conservation park, and then dumped the bodies of the horses in the scrub.

The bodies were discovered by a woman who was walking in the park with her daughters.

When asked to plead Mr Day indicated that he wished to plead guilty, and he is to be given credit for that.

The stewards took the view, quite rightly I add, that his conduct was prejudicial to the image of racing because of the publicity of the discovery of the remains of the horses, which attracted widespread media attention throughout Australia.

The stewards took the view that that sort of conduct would prejudice the sport of thoroughbred racing, and furthermore the stewards took the view that it was not in accordance with what a reasonable person would expect in the circumstances and fell below contemporary standards.

After pleading guilty Mr Day and the stewards entered into a detailed discussion of the question of penalty and various options were considered and discussed. These included the imposition of a fine up to a maximum of \$100,000, a suspension of his trainer's licence or a disqualification from the industry.

After discussion it appeared that Mr Day clearly wished that he be dealt with on the basis of a suspension if they were to be the only options, because a disqualification from the industry would have been quite detrimental to his overall business and he didn't have the means whereby he could afford to pay a substantial fine.

The stewards and Mr Day discussed these matters at length.

They discussed his personal circumstances, and Mr Van Dissel, who appeared on behalf of Mr Day today, told me that his client was 47 years of age, he had been training for 24 years and he had no previous offences in the racing industry.

Mr Van Dissel tendered seven character references, all telling me that Mr Day was highly regarded in the industry and had been instrumental in assisting in country race meetings, in particular Broken Hill and Kangaroo Island.

The references, it can be said, are all very complimentary of Mr Day as a person and a keen supporter of the racing industry.

As Mr Day put it when discussing with the stewards the questions of penalty, whatever happened to him was going to kick him in the guts.

As a result of the tender of an exhibit - that's exhibit 1 showing the aerial juxtaposition of the property and the conservation park - I have formed the view that it was always highly likely that someone taking advantage of the environment and walking through the park would discover these remains, and that should have been foreseen - that possibility, indeed probability, that the remains would at some stage be discovered either by sight or by smell.

It should have occurred to Mr Day and I have taken that into account.

Mr Day is not a wealthy man. He has substantial obligations.

He has suffered from the publicity which has come about as the result of his actions, and as I have said, the document handed up by Mr Petzer shows that the publicity was indeed widespread, going to all forms of country towns throughout Australia.

The fact remains that this is a serious offence and the stewards took that into account in imposing their penalty.

Indeed, from reading the transcript of the stewards' inquiry and the discussions that took place, I don't think that any criticism can be levelled at the stewards for the way in which they have conducted the inquiry and for the matters which they took into account.

In my view they took all appropriate matters into account. The only question remaining is whether in all the circumstances the penalty is too high.

The stewards took into account the question of general deterrence and that was emphasised before me by Mr Petzer today, and it is important that other people in the industry are deterred and therefore the stewards took that into account in assessing their penalty.

The stewards took into account the good character and the way that Mr Day cooperated with the hearing.

The fact that he had never been charged with any other breach under the rules, the fact that he made full and frank disclosure and actually assisted in providing records to establish the identity of the horses, were all matters which they took into account.

Likewise, they took into account that there was no ill-treatment of any of these animals, who all died from natural causes or were euthanized because of some particular problem they had encountered.

It was against that background that the stewards considered this a very grave offence affecting the image of racing.

The stewards formed the view that it would be too harsh a penalty for Mr Day to be disqualified from the industry. I agree with that.

In the end the stewards imposed a suspension for a period of 27 months and imposed a fine in the sum of \$2,500. It's against the combination of those two matters that Mr Day appeals.

As I have said, I believe that the stewards did take everything into account, but that is not to say that I necessarily agree with the end result.

In my view the end result is perhaps a little harsh. I take into account that there was the plea, there was the cooperation, there are Mr Day's personal circumstances,

there is the fact that he had no prior record, there is the fact that there was no ill-treatment of the horses, and I emphasise that possibly more than the stewards did, although I don't criticise them in the slightest for the way they dealt with it.

It seems to me that on the face of it that penalty – that is, the combination of the suspension and the monetary penalty – may, in the circumstances, be too harsh.

I have grappled with what an appropriate penalty might be and my view is that the appropriate penalty is that the suspension remains at 27 months but that after 18 months it be lifted so that Mr Day be free to train again, and that the balance of that nine months after the 18 months be suspended.

In other words, nine months of the suspension is suspended. In my view that would be a more appropriate penalty and would reflect better the personal circumstances of Mr Day.

So my decision is that the suspension should take effect as of today, 25 June 2015, because up until today there's been a stay in operation and that that suspension should remain in place until 24 December 2016.

And then the remaining nine months suspension be suspended upon Mr Day agreeing to not breach any conduct related rules of the Australian Racing Rules in that period.

On that undertaking, if he gives it, that would take him out to 24 September 2017 on my calculations.

I've attempted to do justice. I hope I have. It is very serious.

I don't believe you'll ever do this again and I've taken that into account. It's a lesson well learnt, and I just know in my own mind that you won't do it again.

Do you understand that you can resume training after 18 months but that you are still then bound, and if you do anything, no matter how minor, in breach of the rules of racing then the rest of it will come down upon you?

MR DAY: Yes, sir.

PRESIDENT: Okay.

MR PETZER: Mr President, can I just ask on that basis, does that mean the fine is quashed?

PRESIDENT: No, I'm leaving the fine as it is.

MR PETZER: You're leaving the fine as it is? Okay.

PRESIDENT: Yes, but I'm leaving Mr Day the option of dealing with the authorities as to time payment.

I don't expect you to pay it in one go, but that's none of my business. I understand that you can be accommodated by some means of paying it gradually. So the fine will stay as it is.

The end result is that the appeal is allowed to the extent that I've explained, and the suspension reduced to 18 months with a further bond for nine months following that.

I take it that in those circumstances, Mr Petzer, you wouldn't have any objection to me ordering that the bond money for the lodging of the appeal be released?

MR PETZER: No objection at all, Mr President, but can I just ask: at the inquiry the stewards when imposing that penalty of suspension also ordered under AR183F that certain restrictions be placed on Mr Day during the course of his suspension, i.e. the likes of him not being able to go into the mounting yard or the parade ring area or the saddling area and so on, as we are allowed to do in those circumstances. Is your penalty that you're handing down as such inclusive of those restrictions or have you turned your mind to those restrictions?

PRESIDENT: I hadn't, but I did read them when I read the transcript.

What do you say about that, Mr Van Dissel? Mr Day did discuss them and queried the stewards at the time about what he could do and what he couldn't do and I think he fully understood what he could do.

I would have thought that should remain as it is. I don't see that there's any huge detriment in that.

MR VAN DISSEL: Naturally it's my job to try and minimise it, Mr President, but I've got no--

PRESIDENT: Yes. Off you go, if you want to.

MR VAN DISSEL: No, your Honour, I don't think there's any reason to.

PRESIDENT: Okay. I will order therefore that the bond money be returned. I thank everyone for their assistance.

MR VAN DISSEL: Thank you, Mr President.

PRESIDENT: And thank you in particular, Mr Day, for the manner in which you've conducted yourself in relation to the stewards' inquiry and, indeed, the inquiry before me; a very difficult thing for you, a very hard lesson.

It may seem still harsh to you, but I believe that's the correct penalty. That's the end of the hearing. Thank you.