

The Stewards alleged that Small, James and a man called Trembath and thereafter Copeland conspired to deceive the Stewards and the public by holding out Copeland was the trainer of 3 horses at a time when Small was actually the trainer.

In the case of Small, the charges were

1. **Rule 245 – “ A person shall not direct, persuade, encourage or assist anyone to breach these rules or otherwise engage in an improper practice.”**

Particulars were that Mr Small, for an extensive period preceding July 20 2007, engaged in an improper practice when carrying out training activities for the horses LIKE BECKHAM, TANGO WITH LOLA and BIONICLE, when he was not, during that period, the holder of a licence which would have permitted him to carry out training activities.

Mr Small was disqualified for a period of 6 months.

2. **Rule 91(1)(a) – “Subject to sub-rule (4) a person shall not carry on an activity regulated by licence – (a) if that person is not the holder of a current licence.”**

Particulars were that Mr Small, for a period between 1 September 2006 and 16 November 2006, carried on activities as a stable hand whilst assisting trainer Mr John Edmunds, when he was not, for that period, the holder of any licence, which would have permitted him to assist in those activities.

Mr Small was disqualified for a period of 6 months.

3. **Rule 209 – “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.”**

Particulars were that Mr Small, on or about 18 February 2007, arranged false information to be furnished to the Controlling Body by proposing that stable returns be submitted for LIKE BECKHAM, TANGO WITH LOLA, KIEWA VALLEY and BRINGBACKTHEBIFF, purporting Trainer Paul Trembath to be the trainer of those horses, knowing that they were not conditioned, prepared nor supervised by him at that time, in an attempt to deceive the Controlling Body.

Mr Small was disqualified for a period of 6 months.

4. **Rule 228 – “A person employed, engaged or participating in the harness racing industry shall not accept or agree to accept any money or other inducement improperly.”**

Particulars were that Mr Small, accepted money from the owners of LIKE BECKHAM for the purposes of conditioning, preparing and training that horse, when he was not licensed to carry out such activities. Such acceptance of money therefor was improper.

Mr Small was disqualified for a period of 3 months.

5. **Rule 241 – “A person shall not in connection with any part of the harness racing industry do anything which is fraudulent or corrupt.”**

Particulars were:

1. That Mr Small on 27 February 2007 fraudulently caused LIKE BECKHAM to race at Albion Park, purporting that horse to be trained by Mr Paul Trembath, when in fact it had not been, nor was, conditioned, prepared or supervised by Mr Trembath, at the relevant time.
2. That Mr Small on 3 March 2007 fraudulently caused BRINGBACKTHEBIFF to race at Rocklea, purporting that horse to be trained by Mr Paul Trembath, when in fact it had not been, nor was, conditioned, prepared or supervised by Mr Trembath at the relevant time.

Mr Small was disqualified for a period of 6 months.

In relation to the penalties imposed, Stewards ordered that they be served concurrently, effective immediately.

In the case of James, the charge was:

Rule 245: “ A person shall not direct, persuade, encourage or assist anyone to breach these rules or otherwise engage in an improper practice.”

Particulars were that Mr James, for an extensive period preceding 20 July 2007, assisted Mr Geoff Small to breach these rules, when he engaged in an improper practice, by being a party to the training activities of the horses LIKE BECKHAM, TANGO WITH LOLA, BRINGBACKTHEBIFF and BIONICLE, when during that period it was known by him, that Mr Small did not hold a trainer’s licence, which had he held, would have permitted him to undertake those activities for the above mentioned horses.

Mr James was disqualified for a period of 3 months.

In the case of Copeland, the charges were

1. **Rule 245 – “ A person shall not direct, persuade, encourage or assist anyone to breach these rules or otherwise engage in an improper practice.”**

Particulars were that Mr Copeland, a licensed trainer, between 2 July 2007 and 20 July 2007, assisted Mr Geoff Small to breach these rules, when he engaged in an improper practice by carrying out training activities, when not licensed to do so, by purporting himself to be the trainer of LIKE BECKHAM, TANGO WITH LOLA and BIONICLE, when in fact during that period, they were not adequately conditioned, prepared and supervised by him.

2. **Rule 209 – “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.”**

Particulars were that Mr Copeland on 2 July 2007 allowed false information to be furnished to the Controlling Body, by purporting himself to be the trainer of LIKE BECKHAM TANGO WITH LOLA and BIONICLE when in fact the horses concerned were not being trained by him in accordance with the rules.

Mr Copeland exercised his right not to enter a plea to both charges and sought an adjournment to seek legal advice,

The Stewards' hearing lasted over 6 days: 23 July, 30 July and 6 August 2007.

Copeland sought adjournments and was heard on 3 further occasions in August.

The outcome of these appeals depends entirely on the evidence.

The inquiry and charges giving rise to these appeals followed closely in time on a charge of improper conduct brought against a leading driver, Petroff, who had an on-course altercation with Small. Petroff is well connected in the industry. The appellants plainly believed and said at the Stewards' hearing that the Petroff/Small incident was the reason that Stewards opened their inquiry and that the charges were brought against them. The Stewards denied this and alleged that their investigation had been on going “for some time”. Whether the investigation was promoted or not is irrelevant to a determination of the issues but there was an unusual level of invective and hubris between the parties apparent throughout the inquiry and even the appeal. It seriously coloured the fact finding exercise on which the charges were laid and interfered with an objective assessment of the evidence.

It should not have to be stated that the Stewards are vested with considerable powers but such powers are not absolute. The Stewards owe it to persons subject to their powers to exercise such with total impartiality and fairness, and to observe the

law and the rules of natural justice. If serious charges are laid the Stewards have to be satisfied about them to the standard that the law requires, a standard of which they must be aware.

Long gone are the days when the Stewards can rely on anything other than evidence. To act unfairly or arbitrarily destroys the integrity of the industry that they are committed to regulate in the same way as any licensee or offender who breaks the Rules.

The Chief Steward, Mr Knibbs, who appeared for the Respondent tendered at the appeal a document described as "Summary of Evidence" which is replete with allegations which appear to be derived from inferences drawn by the Stewards or from other sources not in evidence at the inquiry or on the appeal. As an objective analysis of what took place it is of no practical value to this Tribunal.

History

The appellant, Small, had been a licensed trainer for some 20 years. His trainer's licence was surrendered when he was offered a job as a steward at the Greyhound Racing Authority. He was at one time President of BOTRA, and was formerly a school teacher and country school headmaster.

In 2006, he formed an association with a younger trainer named John Edmunds and in September 2006 applied for and was granted a stable hand's licence and a C Grade driver's licence.

This stable hand's licence continued until it was surrendered after discussion with the Chief Steward on Friday, 20 July at 12.30pm before the Stewards' inquiry. He described himself as a "hobbyist". This is a term used in an industry where many small trainers and others such as stable hands are not able to make a living from the industry but participate on less than a full time, professional basis.

James was at all material times a stable hand who originally owned one horse called Tango with Lola and who subsequently purchased another called Bionicle.

James and Small were friends.

Small had a mare called Kiewa Valley which was moved to Edmunds' property in the West Moreton area.

Small had an association with people from Central Queensland called Driver and they sent down a horse owned by them called "Like Beckham" which Small arranged to be located on Edmunds' property. Small gave evidence that he was their agent but not a lessee of the horse.

Small visited the horses regularly and for a time in late 2006 was living at Edmunds' property and assisting with the horses. The evidence does not establish Small was involved in training activities during this time.

Small appears to have had some sort of mentoring role with Edmunds as disclosed in the comments of Steward Castillo in the transcript

“MR CASTILLO: Just one thing, Mr Chairman, through you. Can I just clarify that my concern with Mr Edmunds, as you have stated, Mr Small, is that Mr Edmunds was turning up to the races as a trainer in shorts and thongs and T-shirts and, in my opinion, wasn't correct clothing to be worn by a trainer.

I approached Mr Edmunds and had some concerns. Mr Small at the time was in the company of Mr Edmunds on several occasions at the races. Mr Edmunds – Mr Small informed me that you were taking up under your wing and just trying to do the right thing and try and get him to lift his act in relation to his appearance. I must say that his appearance did improve over a certain amount of time, and then from then on there were obviously – must have been a disagreement between Mr Small and Mr Edmunds because the 2 gentlemen weren't together at the races.” (p 126, lines 6-19)

There appears to have been no suggestion at that time (late 2006) that Small was dummifying for Edmunds.

Small and Edmunds fell out in about February 2007 and Edmunds departed for Victoria. Small said that after Edmunds went away he continued to “look after” other Edmunds' horses (Toriela, ABA, Cammy's Charm, Zardawe and BringbacktheBiff).

In the inquiry, Mr Knibbs tendered an email from Mrs Margaret Edmunds (John Edmunds' mother) which was entered as Exhibit E dated Tuesday, 17 July 2007, 3.55PM

“Dear Mr Knibbs re G Small

We did not mind his bringing his mare as he said he would help Jae(John) with his horses.

He brought Like Beckham to my property 4th Sept.2006 Prior to X'mas Jae had advised him send him home as he had problems that were going to cost them more than he was likely to win. He then brought Bringbackthebiff and Tango with Lola here after me asking him not to bring more horses here as there were not the facilities to accommodate them At he time he still had his mare Kiewa Valley. Jae had a confrontation with him Feb 2007(8th or 9th) about his repaying the money loaned to get Kiewa Valley from Stud in Vic.

He refused saying the money had been won on the punt.

On 10th Feb Jae Edmunds flew to Vic to avoid more trouble and said he would not return till G. Small had vacated the premises.

Geoff then contacted Paul Trembath to transfer the four horses into his name as trainer. On being questioned by several people about absence of trainer he said he had notified stewards and had the o.k. (he also told me that he had clearance to continue to train the 3 horses not belong to him) which he was getting paid for.

Geoff bought his own feed and had his own training program.

It was not until the 14/15th March (5 wks later) that his truck had been repaired and a roadworthy passed to register his truck and as it had been unregis for some time he would not drive it into Brisbane Geoff returned on Sat. evening (I was at a neighbours) with some help and within about 1& half hours had removed his horses and belongings.

I hope this is sufficient if not let me know.”

That is the only suggestion Small was engaged in training. It is unsworn and Mrs Edmunds did not give evidence. The Stewards did not charge Edmunds with dummying. To accept this type of evidence as a basis for all the findings made against Small i.e. an unsworn email from a person not called to give evidence is simply not good enough.

Small denied the suggestion of training. He further commented:

“THE CHAIRMAN: It is not signed because it is an email. In relation to the specific timing of it, is that sort of pretty much in accordance with your recollection of the timing

“MR SMALL: The timing might be right but a lot of the information is incorrect.” (p 118, lines 11-16)

“MR SMALL: -- what she was trying to get at, that – you know, obviously she was probably disappointed that I had left because I was doing most of the work there for the horses, plus she was getting rent, she was getting board. So – and she wasn't getting any income from Jae, who wasn't working, and gambling and just being a general nuisance.” (p 124, lines 23-27)

“MR SMALL: But in return I worked there and he – he was the trainer, but he never, ever loaned me any money. He never had any money to loan.” (p 119 lines 11-20)

When Edmunds took off for Victoria Small looked for another trainer to take over some of the horses. Small's mare was sold.

An association was then formed with Trembath who had a trainer's licence and was located at Hendra. Small moved to live at Albion. Trembath signed and lodged stable returns which show that the horses were stabled at Norman Copeland's stables and that he was the trainer from 19 February 2007.

Trembath has had a trainer's licence for 20 years, lives at Taigum and is a postman. He trained one horse of his own.

He was shown in the QHRB records as the trainer of "Like Beckham" and "Tango with Lola" from 19 February 2007. Subsequently another horse "Bionicle", purchased by James, was sent to him.

Trembath knew that James was the owner of 2 of the horses and believed that there was some arrangement with "Like Beckham" between the owners, the Drivers, and Small. Trembath appears to have no stables of his own and had an arrangement for using stables of Trainer, McMullen, for another horse.

"THE CHAIRMAN: How then do we explain how the entry of training of horses into Mr Trembath's name occurred when in fact the horses were still at the property of Edmunds?

MR SMALL: Well, they were in the process of being shifted because the truck wasn't ready to be used.

THE CHAIRMAN: Would it be that because Mr Edmunds had gone away on 10 February – as Mrs Edmunds has said – and a new trainer was found within a week – well, say, within – by 19 February – is that unusual? Is that coincidental?

MR SMALL: It might sound unusual but it's not – because I didn't want the situation where he was away and I had horses in my care and he may not come back. He was a fairly unpredictable sort of a fellow and he argued with his mother continually about him sleeping in and gambling and whatever.

THE CHAIRMAN: But do you think it is proper to put – can I just ----

MR SMALL: So it was in my best interests to look around and obtain another trainer.

THE CHAIRMAN: And to you think it's proper they go into the name of a person when clearly they weren't under his care at that time?

MR SMALL: Well, it was just one of those situations where it was time to make a decision. A Decision was made and we shifted the horses as soon as we could." (p 120 line 40-p 121 line 21)

The horses were moved from Edmonds' property about 3 weeks after the stable return was lodged by Trembath. They went from Edmonds' stables to Copeland's stables as the parties had arranged.

The training arrangements while Trembath was registered as trainer are difficult to follow. The horses were stabled by agreement at Copeland's but nothing can be made of that. It is a common practice.

There was no definitive arrangement about sharing prize money but Trembath believed he would get a percentage of any winnings. He did not appear to nominate the horses but as the Chief Steward observed

"You are not the only trainer that doesn't nominate but let others do it." (p 133, line 34)

Trembath's attitude could best be summed up in his own words:

"I don't smoke. I don't drink. I'm single." (p 91, lines 33-33)

"I live for the horses. I've had one night off in 2 years from the – on the Saturday night. This is my life. I live for it." (p 91, line 37-38)

“MR SMALL: But I tried to do the right thing by explaining to Michael what was happening and he took that on board, and he was very kind to give me time. He is a steward that gives time to licensees, and I had the confidence in him to tell him what was happening and he was kind enough to listen.

THE CHAIRMAN: I see. All right. Mr Trembath, what is your recollection of the conversation back when you were approached to take these horses?

MR TREMBATH: Just to – as said, Michael and Geoff – we were just going to do it as a hobby, and ----

THE CHAIRMAN: Michael James?

MR TREMBATH: Yes. I knew Geoff from a steward when I worked at the Greyhounds, and, you know, glad to help them out?

THE CHAIRMAN: You’d be able to help them out?

MR TREMBATH: Yes. But I’d get something out of it as well.

THE CHAIRMAN: What were you to get out of it?

MR TREMBATH: Do fast work again and driving in trials and – I think Geoff may have been, you know, one time stable foreman for Darryl Graham – I’m not sure – so I thought, well, I’m going to learn something. Like, you know, he’s an articulate man so I thought ----

THE CHAIRMAN: Did you think everything was proper? Did you think it was all above board?

MR TREMBATH: Yes, I didn’t think any ----

THE CHAIRMAN: At the time:

MR TREMBATH: At the time, yes. Yeah, like, it was great. You know, I was doing fast work and driving in trials and going to the races, and, as I said, Geoff is quite articulate and – and I don’t know if was the stable foreman for Mr Graham but I believe he was, so I thought well ----

THE CHAIRMAN: Did Mr Small ever have a conversation with you and infer that he had spoken to stewards and the arrangement was fine or ----

MR TREMBATH: I’m not sure.” (p 127)

In the inquiry the Stewards focused on the period of time in February/March 2006 when the horses were still at Edmunds’ property and the fact that the stable returns showed Trembath as trainer and the horses were located at Copeland’s.

“THE CHAIRMAN: So would that concern you that you had horses racing in your name and you didn’t know their whereabouts?

MR SMALL: Mr Trembath was present each time those horses started.

THE CHAIRMAN: He may have been but he has told us in evidence a number of times he has never been to the Edmunds’ property and the horses were stabled at that time there.

MR SMALL: Yes, but I tried to explain ----

THE CHAIRMAN: Which may be in breach of the rules.

MR SMALL: It may be, but I was also – and what you need to consider here is that when Mr Edmonds left – and Mr Edmonds had his car shifted – it was necessary then for me to make a decision within the rules that I Understand and that is for him to be out of the state and for me to be taking horses to the races with him as trainer would look very suspicious.

THE CHAIRMAN: He wasn't the trainer, Mr Small; Mr Trembath was. It may be your impression that it was within the rules but maybe others have a different view.

MR SMALL: Well, that may be the case but when Mr Trembath signed those stable returns, the horses were then, in my opinion – well, they were as a fact – he was the registered trainer of the horses and he was present when they raced, so that – I'm trying to explain ----

THE CHAIRMAN: He was the registered trainer by lodging stable returns. Maybe that's correct, but he's – the horses are stabled for a period of time on a property of which he has never been to.

MR SMALL: But we couldn't shift them because the truck was having rust cut out of the floor, the door, and it needed a new radiator and ----

THE CHAIRMAN: But does that make it proper?

MR SMALL: Well, in the real world, you can't wave a magic wand and have horses shift when you haven't got the transport. There was no transport for them.

THE CHAIRMAN: So it is more convenient to put in a – or notify the controlling body of something that may not be true?

MR SMALL: No. Well, it was true because when Mr Trembath signed those forms he was the trainer and we shifted the horses to Brisbane as soon as practicable when the truck was fixed.

THE CHAIRMAN: When you ----

MR SMALL: Now, the truck was due to be fixed a long time before it actually got fixed. It was something that was drawn out for reasons I can't explain. But the truck was off the road. It was getting fixed. It had rust to cut out. It had a whole range of things to do because the Roadworthy had to be fulfilled, and as soon as that was done and the truck was registered we shifted the horses in the most practical way and that was to truck all the gear and everything else. So that was the facts and the truth – that we didn't want ----

THE CHAIRMAN: That may be the facts, that may be the truth, but do you think it is proper? Is it in accordance with the rules to have a trainer in charge of horses stabled on a property of which he has never even been to?" (p 151, lines 16-44, p152, lines 1-34)

Mr Finnigan, a steward, asked the pertinent question about when Trembath thought he assumed control of the horses.

“MR FINNIGAN: Mr Trembath, just to confirm something for myself. When do you believe you took over the training of these horses?”

MR TREMBATH: I’m not sure now.

MR FINNIGAN: Was it when the horses arrived at Mr Copeland’s stable?

MR TREMBATH: Yes.

MR FINNIGAN: And no before that?

MR TREMBATH: No. I didn’t even know where they came from.

MR FINNIGAN: All right. So – the way the conversation has gone here is that these horses were in your name before they got to Mr Copeland’s?

MR TREMBATH: It sounds like that, doesn’t it?

MR FINNIGAN: And that surprises you? Would that surprise you?

MR TREMBATH: Yes. I ----“ (p 133, line 45 – p 134, lines 1-18)

Trembath pleaded guilty to a charge under Rule 209 for providing “false information” and was disqualified for 3 months.

Trembath thought that he had some entitlement to a share of prize money but it was not specifically agreed. He charged no training fees.

In the inquiry there were practically no questions about what Small’s part was with Trembath.

At the time of Small’s move to Trembath, James became involved in the stable. James is a young man who is employed at Albion Park by both the QHRB and GRA. He obtained his stable hand’s licence in October 2006 and had at that time one horse, Tango with Lola. He is attempting to complete the course required to obtain a trainer’s licence and gives the impression that he is committed to harness racing. His evidence before the Stewards and before the Tribunal was forthright.

In his statement which he read into evidence before the Tribunal, he says:

- “2. I obtained a stablehand licence around October 2006, at this time my knowledge of stable management was limited, and my first horse “Tango with Lola” was stabled with Mr Phil Mitchell at Churchable and I was travelling there on weekends to learn the duties of a stablehand. Mr Mitchell did not consider that my horse was city class and I sought another trainer closer to my home.
3. I asked Mr Paul Trembath to train her with me assisting as stablehand. At this time Mr Geoff Small, personal friend and workplace associated had moved from Thagoona to Albion. Mr Paul Trembath did not have available boxes for any new horses and I approached Mr Norm Copeland, who lives in the next street to me asking him to train for me. Mr Copeland said at that time the best he could was rent boxes to me. I then asked Paul Trembath if he would train if my horse was stabled at Hendra, he agreed and both Mr Small and I placed horses at Hendra with Mr Paul Trembath as trainer.
4. Mr Small and I then commenced to work as stablehands for Mr Trembath, trainer. Mr Small although he had been an ‘A’ grade trainer for many years did not act other than as a stablehand working under Mr Trembaths instructions. During May 2007, I bought another horse named ‘Bionicle’ which was also stabled at Hendra and trained by Mr Trembath.
5. On the 2nd July 2007, Mr Trembath asked me to move my horses to Albion Park as he could now obtain boxes. I declined his offer as the horses were in a routine and very settled at Hendra, I also would have had to pay double for the box rental and couldn’t afford that amount. In discussion with Mr Copeland he said he would like to train the horses but did not have transport or much equipment. It was agreed that Mr Copeland could train and use Mr Small’s truck and equipment, which was kept at Mr Copelands, until such time as I was granted my licence.
6. As owner, I asked that the horses work schedule remain in place and Mr Copeland agreed stating he would make changes if the horses performances required it.”

The evidence is not strong enough to support an inference that Trembath was a dummy trainer.

Trembath remained on the record as trainer until the end of June. At that time there was the altercation between Small and Petroff at the Gold Coast which appears to have led to rumours about the Small/Trembath arrangements.

Trembath resigned as a trainer in July 2007.

Small and James had to look for another trainer.

Copeland was a trainer with one horse of his own, Roulette King. He was originally approached to take over the training of the horses he had declined on the basis that he did not have enough equipment for 4 horses and had no truck to transport horses to various meetings.

After Trembath pulled out and after further discussion with James and Small, Copeland was persuaded to take over the training of the 3 horses: 2 owned by James and one by the Drivers, for which Small described himself as the agent of the owners. The two James horses were Tango with Lola and Bionicle, and the Drivers' horse was Like Beckham.

The arrangements struck were again a sort of collective input. None of the parties had much money. Copeland had stables and one horse of his own. Small had a truck and some gear from his days as a trainer. James could offer his services as a strapper and his 2 horses as an owner. Copeland was paid no training fees but it was agreed in addition to stable rent he would get a percentage of winnings. This is a reasonably common practice.

The Stewards took grave exception to Copeland's statement that he took on his training duties as a "favour". It was what the appellants described as a "team" arrangement. These terms seem to have been what has upset the Stewards and led

to their findings. They strongly object to the descriptions used by the appellants when they describe the arrangements as involving a “favour”. They appear to have implied that this clearly meant multiple control but the evidence does not go that far.

They also found that the concept of “favour” in relation to the licence to train implied some form of loaning of the licence. The Tribunal having heard all the evidence of the parties does not accept such a finding. The term relates to arrangements being reached which suited all the parties albeit at some inconvenience to the trainer.

The period to which these charges relate is from 2 July to 20 July, some 18 days.

On 2 July 2007, Copeland was returned in the records as the trainer. The Stewards alleged that in the 18 days that Copeland had the horses he only appeared at training 3-4 times. They produced no evidence to support this. Copeland strongly denied this and put his attendance level at about 12 times. He explained his absence on other occasions by the statement that he had agreed on a couple of days to work the horses of a fellow trainer, Bond, who had broken his arm. James seems to have attended training every day and Small for about one week. The Stewards had no evidence which contradicted Copeland or the others, not even their own observations.

Copeland's evidence about his level of control of the horses and the number of times he attended training at Albion Park was attacked by the Stewards. Copeland produced written testimony from 7 other industry people verifying his attendances and control of the horses during the time in question. Drivers also confirmed it was Copeland who issued instructions.

This evidence appears to have been rejected by the Stewards.

Copeland said that when the horses came to him they had a simple work regime and he saw no reason to change it. The Stewards alleged, and apparently found, that the regime was set by Small. The parties denied that Small issued any instructions that would normally come from a trainer.

The Stewards highlighted the fact that Copeland trained his own horse differently which Copeland explained satisfactorily. The Stewards contended that Copeland prepared the work schedule for his own horse "Roulette King" but not the others. Copeland denied this emphatically and said the work schedule for the others was so simple it did not need to be changed but that he accepted full responsibility for the schedule.

The Tribunal cannot find any Rule which prevents this sort of behaviour provided the trainer is in control and is accountable for and accepts responsibility for the specific horses.

On the morning of 18 July 2007, the Stewards accosted Small and James at Albion Park. Copeland was not there but was working on another trainer's (Bond) horses.

The Stewards raised in the inquiry a number of times the matter of Small's truck. During the time Small had a trainer's licence, he had purchased the truck from Darryl Graham, another trainer, when he had his own licence. At the time it was sign written

with the words “Darryl Graham Racing Stables”. Small’s uncontradicted evidence was that he took it to a sign writer and it was cheaper to change “Darryl Graham” to “Geoff Small” rather than have the sign repainted. Obviously the continued use of the truck with “Geoff Small Racing Stables” sign written on it also annoyed the Stewards as it was mentioned a number of times in the Stewards’ inquiry and appears to form the basis of an inference that Small was holding himself out as a trainer.

Apart from the truck, the matters which appear to have led to the Stewards findings that Small, not Copeland, was in fact the trainer were:

1. The horses followed Small’s movement from Edmunds to Trembath to Copeland. Each move was explained.
2. The Stewards found Copeland admitted he did not do the work schedules for all the horses. Copeland denied this and there is really no direct evidence to support such a finding.
3. Trembath raced the horses for a time in February in his name as trainer at a time when they were still located at Edmunds’ property. This was admitted but the evidence was that Edmunds had gone to Victoria and was no longer the trainer. The actual location of the horses while supporting an allegation of an incorrect return does not support an allegation of dummyming which was charged and found proven.
4. Copeland’s statements that he “allowed his involvement as a favour”. This has been commented on.
5. On 20 July, Copeland was not at the track when Small and James were confronted by the Stewards. The evidence about this was acceptable.

6. The “team” nature of the enterprise where Copeland and Small and James all participated in the work schedules, the work, the supply of the truck, the supply of some gear, the lodgement of stable returns and nominations by different people. This has also been commented on.
7. Small had been accepting \$100 per week, paid intermittently, for the feed and stable rent. The evidence was that this amount would barely cover those expenses and not include any training fee component.

All of these matters are the basis the Stewards used for their findings. Most have explanations provided in evidence by the various appellants and most explanations seem reasonable enough. The evidence was obviously rejected, and completely. Adverse inferences were drawn with no direct evidence led by the Stewards.

There is little doubt that the approach of James, Small and Copeland was not that of the usual owner/trainer/strapper arrangement but was a collective effort with each contributing what he could to participate in the industry. The one fact on which Copeland was positive about in sworn testimony was that if it was a “team effort” he was the captain. He said he was the trainer and accepted responsibility for the horses.

This appeal has to be determined almost exclusively on the facts. The only place the facts can be found is in the evidence not in rumour and innuendo or on unarticulated opinions.

The Tribunal had the benefit of hearing sworn testimony from James, Small and Copeland. James and Copeland were credible and unequivocal, but Small was less forthright, was laboured and slightly argumentative. The evidence was that a medical problem exacerbated by stressful situations and a medical report tendered indicated this had existed since 2000. His evidence was satisfactory on the main issues. It was corroborated by others. On some peripheral points he was not credible.

Plainly, the charges against James and Copeland were brought only because of their involvement with Small.

The Stewards have not come close to establishing guilt on the appropriate standard of proof on what they themselves described as “grave” charges with “enormous consequences”. Practically all of their findings are based on inference. To rely on such a level of inference to support serious charges is unacceptable and unlawful.

The case against James seems to be that he was there – no more than that. He performed stable hand’s duties at places where his horses were located and had a licence to do so. He was the owner of the horses and as such can discuss training and entry with whomsoever he chooses.

The transcripts and other material indicate that the Stewards approached this inquiry with a mindset that the appellants were all guilty of dummying, made the allegations, ignored most of the evidence, brought numerous charges based on that view, found such proven and imposed severe and unsustainable penalties. Most of what Mr Knibbs tendered as a “summary of evidence” to the Tribunal is not supported by any disclosed evidence.

The case against Copeland is simply also not supported by the evidence.

Notwithstanding the training and remuneration agreements, there can be no adverse factual inferences drawn which can support the charge.

Mr Murdoch SC in his submission spelt out his client's case:

- “6. From 2 July to 20 July 2007, the horses were trained within the meaning of the Rules by Norm Copeland, the person who:-
 - (a) had the horses housed in his stables;
 - (b) lived on site at the stables
 - (c) held a trainer's licence;
 - (d) submitted stable returns for the horses;
 - (e) attended trackwork at Albion park on a majority of mornings that the horses worked on the track;
 - (f) on the morning that he did not attend trackwork, he issued instructions to the stable hands as to what trackwork to do;
 - (g) went to the races when the horses raced;
 - (h) gave instructions to the drivers;
 - (i) got the reports from the drivers post race;
 - (j) shod the horses;
 - (k) was prepared to accept responsibility for the presentation of the horses, under the Rules
 - (l) provided a letter of authority to Mr Small on the one occasion he could not attend a starter at the races.

7. Mr Small was away on holidays at the Gold Coast for all of the week commencing 2 July 2007. During that week Mr Copeland worked the horses at Albion Park himself with help from Mr James, but without any assistance from Mr Small.

8. It is immaterial that Norm Copeland had an arrangement with Geoff Small under which Copeland had the use of Small's horse truck which was used to transport the paces from the stables at Hendra to Albion Park trackwork. Likewise it is immaterial that Norm Copeland had an arrangement with Geoff Small to use harness which was owned by Geoff Small.

10. The fact that Geoff Small as the holder of a stable hand licence had a limited role as the owner's agent in the management of one of the horses, namely Like Beckham, owned by his Bundaberg friends the Driver family is irrelevant. Indeed the definition of stable hand under Rule 90(3.4) expressly refers to management.

11. The repeated reference to the “Geoff Small racing stables” signage on the truck was trivial. Geoff Small explained that he had previously been a trainer, licensed with the board, and that the truck had another trainer's name painted in the signage when he purchased it. It was

cheaper to paint over one name and substitute another than to remove all the signage.

12. No inference adverse to Mr Small can be drawn from the fact that on a minority of occasions Mr Copeland left it to Mr Small to work the horses at Albion Park while he (Copeland) went down to Bond's property to drive their horses in fast work. This is entirely explicable, for entirely innocent reasons, on the basis that Mr Bond had been injured at Redcliffe and Mrs Bond requested Copeland to help out when there was no one else available.
13. Finally, the fact that Mr Copeland was training the horses as a favour is irrelevant. Surely this is unremarkable when there is a small stable and the trainer is not reliant on training for his or her livelihood.
14. The favour was that, in the short term, Norm Copeland would train the horses until Mr James, who was studying to qualify for a trainer's licence, had obtained his licence. Mr James had an ownership interest in two of the horses. No adverse inference could reasonably be drawn from these facts.
15. In any event, there was a verbal agreement between Mr Copeland and Mr James, part owner of the two horses."

Small's charges under Rule 245 were framed using the words "for an extensive period preceding 20 July 2007". The Tribunal has concluded that no such arrangement existed while the horses were with Copeland.

Mr Knibbs on the appeal conceded Mr Murdoch's point that this period related only to 2 July to 20 July 2007 and the appeal was argued on that basis.

This leaves the Tribunal in the situation where it needs to consider whether it should adjudicate on the same charge for the period from 19 February to 1 July, that is the period when the horses were returned as being trained by Trembath. No specific charge was made against Small; no particulars were given about this period nor was there any specific finding that Small "dummied" for Trembath.

This period as a basis for a charge was not dealt with before the Tribunal by the Respondent.

There was a specific charge under Rule 91(1)(a) that Small worked as an unlicensed stable hand for Edmunds prior to February but the evidence about what Small did during that time is so weak that charge is not capable of being proven to the requisite standard.

In the absence of any specific charge and the concession that the particulars referred to the period of 2-20 July 2007, the Tribunal makes no finding on the dummyming allegations involving Small and Trembath other than that there is insufficient evidence to arrive at such a conclusion.

Trembath was charged under Rule 245 with dummyming. He pleaded not guilty to that charge but was convicted by the Stewards and disqualified for 3 months.

He abandoned the right to appeal that decision.

He did admit and plead guilty to providing false information under the Rule 209 charge in that the stable returns signed by him were "incorrect". They showed him taking over as trainer from Edmunds and for a period of weeks the horses were still stabled at Edmunds' property at the time when Edmunds was not there and had departed for Victoria. Trembath was given a concurrent disqualification of 3 months.

Mr Knibbs contended in argument at the appeal that this case was "the same as" the cases of Neilson and Hancock heard in April 2004. In that case Mr Hancock openly

admitted he was not the trainer of the horse and that Neilsen was and pleaded guilty to a breach of Rule 241. Neilsen also admitted the offence. The two cases have no bearing on this appeal except that they involve a similar charge.

For the purposes of making decisions, it seems appropriate that the charges be considered in some sequence and perhaps the logical place to start is with Copeland.

Copeland

Copeland was charged with breaches of Rules 245 and 209. The core of the findings was that he breached Rule 245 in that he assisted Small to engage in an improper practice to carry out training activities when not licensed to do so.

Rule 209 deals with providing false information to the controlling body.

Simply put the evidence does not substantiate these charges.

It follows from the above that this charge cannot be maintained.

Small

Small was charged with multiple offences.

Rule 245, improper practice.

As stated above, this charge is not supported by the evidence.

Rule 91(1)(a) carrying out licensed activity whilst unlicensed.

The particulars of this charge appear to relate to the period between 1 September 2006 and 16 November 2006, when he was assisting Edmunds on his property.

The evidence insofar as it relates to this period is not strong enough to substantiate that Small was the trainer of any horses. The charge is unproven.

Rule 209 - This allegation is that Small “arranged” for false stable returns to be lodged before the horses were physically moved from Edmunds to Trembath.

Trembath pleaded guilty to this charge “with mitigation” and there is no evidence that Small was directly or indirectly involved in the preparation or lodgement of the returns. The returns exhibited are all signed by Paul Trembath.

On the evidence the charge is unproven.

Rule 228 - This is a charge that Small accepted “money or other inducement improperly” for the purposes of conditioning, preparing and training.

This relates to the intermittent payment by the Drivers to Small of \$100 per week for the upkeep and feed of their horse, "Like Beckham". There is no evidence that it was a "training" payment.

The charge is probably miscast. The Rule was framed to prevent bribes and other forms of inducement.

The Stewards have not shown on the evidence that there was anything "improper" about Small acting as agent for the Drivers and paying the horses' upkeep.

The other aspects of this charge about training, conditioning, are unproven.

Rule 241 - This charge is that Small was fraudulent or corrupt.

The evidence does not even come close to sustaining such a charge which has to be strictly pleaded and proven. It is not the type of charge that the Stewards can sustain based on wide ranging inferences. It requires specific and compelling evidence of which there was little in this matter.

James

James was charged with a breach of Rule 245 "encouraging and assisting" Small to breach the Rules or otherwise engaging in improper practice.

There is no evidence to sustain this charge against James.

It follows therefore that

1. Copeland's appeals are allowed and the convictions and penalties are set aside. His deposit is ordered refunded.
2. James's appeal is allowed and the conviction and penalty are set aside. His deposit is ordered refunded.
3. Small's appeals are allowed and the convictions and penalties are set aside. His deposit is ordered refunded.

Finally, it seems appropriate to make some comment on what has transpired since the appeal was heard and before this judgement was published. The appeal was heard on 5 September. About a week later there was a request by a firm of solicitors now representing the QHRB to ask that the appeal be reopened for the introduction of further evidence as Stewards believed that they could now prove that Small had lied in evidence to the Tribunal.

The application to reopen the hearing was refused because due process had already been followed and that every opportunity had been given to the Stewards in their 6 days of Stewards' inquiries and one day of hearing before the Tribunal to introduce any appropriate evidence. There was no suggestion that the evidence was new.

Secondly, the Tribunal requested some form of character reference on Small before the closing of the appeal. Counsel for Small, Mr Murdoch SC, tendered several

innocuous references. The Stewards on the other hand tendered 2 statements, both unsigned, the first being a further statement from Mrs Edmunds and the second from another trainer.

This was little more than a backdoor attempt to introduce further evidence under the guides of character references.

It has been looked at but is not considered relevant to any decision by the Tribunal.

Leo Williams AO
Chairman

Brockwell Miller
Deputy Chairman
