

**RACING APPEALS TRIBUNAL
QUEENSLAND**

NOTICE OF DECISION

APPEAL NO: RH008-07

DATE: 14 September 2007

APPELLANT: Darren Ian Hooper

RESPONDENT: Queensland Harness Racing Board

APPEARANCES: Mr David Keane of counsel representing the Appellant
Ms Sally Armitage of counsel instructed by Schweikert
Lawyers on behalf of the Respondent

REASONS FOR JUDGMENT

Mr Leo Williams AO - Chairman

Mr Brockwell Miller - Deputy Chairman

The Appellant was a licensed trainer of standard bred horses operating near the Redcliffe Paceway when a *Standstill Order* was made pursuant to the *Exotic Diseases in Animals Act 1981* as a result of the onset of the Equine Influenza virus. At the relevant time he was the trainer of four horses that were exercised at the Redcliffe Paceway and subject to that Standstill Order was obliged, along with all other trainers of thoroughbred and standard bred horses, to refrain from moving any horse or entering upon any raceway until the Order was lifted or approval was granted to him by the Department of Primary Industries (the DPI). On 28 August 2007 the DPI, in association with the relevant Racing Board, determined that certain precincts were marked to allow movement within that precinct. This had the effect of facilitating the exercise and training of those horses in the various precincts. No movement outside was permitted to be undertaken. To enable a trainer such as the Appellant to take advantage of the relaxation

of the Standstill Order, he was obliged to present to the Queensland Harness Racing Board (the Respondent) an Application Form to enable him to take his horses to the training facility nearby. On 28 August at 7.04pm the Appellant faxed that form (admitted into evidence and marked Exhibit B in the Stewards' Inquiry) to the QHRB and identified his stable location, his current training facility and the horses that were currently in the stable. He further identified the name of one staff member, Damian Shaw, who was proposed to be used by him during the term of this Application. He signed and dated the document, agreeing to adhere to the conditions printed at the foot thereof confirming that he was aware that should he fail to comply with those directions, then his licence may be the subject of a suspension.

He was subsequently informed that his Application was approved and that he had a window of opportunity for training purposes the following morning for one hour. In his evidence he confirmed that he would ordinarily work all his horses without assistance as he was able to walk each of the horses to the paceway which was only some 7.5 minutes from the stables. He explained that it would take him approximately four hours to complete the training regime for the horses in question on his own. He stated that he telephoned Damian Shaw to ask him to accompany him on the morning of 29 August to the paceway, only to be advised that Mr Shaw was unable to take time off his regular employment. His evidence was that Shaw normally worked for him in the afternoons and had a steady job in the mornings. The timeframe allotted to him on this occasion was a morning timeframe.

He then telephoned his brother, Mr Brett Hooper, who had been in Brisbane since February 2007 and who had, on various occasions, assisted him in handling and caring for the horses in the stables. He was, he said, aware that Mr Hooper (Brett) was ordinarily not able to assist in these activities because he was a fill-in operator of TAB agencies and would be normally unavailable. Upon contacting his brother, he was informed that as there were no races being undertaken due to the Influenza virus, he was able to assist and the following morning he attended at the Redcliffe Paceway with his brother, Brett Hooper, to work two of the horses in question, during the one hour that was allocated to him for that purpose.

Whilst at the paceway, he was handed the Equine Influenza Training Log Book with specific instructions contained therein for him to complete the Book so that each horse would have its temperature evaluated twice daily. Attached to the Log Book was a schedule which was to be completed, identifying the names of the persons and the dates upon which those persons attended at the stables of Mr Hooper and confirming, amongst other things, the time of arrival and departure of each of those persons and whether those persons had contact with any other horse and the reason for their visit. There was a column also to identify whether those persons complied with disinfecting procedures that had been put in place by the DPI and the Stewards of the QHRB. For the purposes of completeness it should be noted that the first entry was on 29 August 2007 for Damian Shaw who confirmed he had no contact with other horses, that he was a stable hand and that he arrived at 1.30pm and departed at 4.30pm. On the same day, Mr Darren Weeks, a farrier, attended the stables between 1.00pm and 3.35pm. The only other entry on that schedule was on 30 August 2007 (the following day) when Brett

Hooper attended as a stable hand between the hours of 7.00am and 10.35am. Each of those persons signed to acknowledge the matters written into the schedule. As mentioned, Mr Hooper identified that he was handed this Log Book and supporting documentation whilst at the paceway on the morning of 29 August. It would seem that he completed the particulars or caused to have the particulars completed by the persons who attended his premises after he returned to his stables upon leaving the Redcliffe Paceway with his horses. It is to be noted that Mr Brett Hooper did not sign the document on the day upon which the Appellant was handed the Log Book.

On the following morning, the Appellant and his brother again proceeded to the Redcliffe Paceway and he was notified that he had failed to complete another form required by the QHRB that unless and until he did so, he would not be able to exercise his horses. That form is marked Exhibit C to the transcript of the Stewards' Inquiry and it can be seen at the top thereof the notation that it was faxed on 30 August 2007 to the QHRB from Redcliffe Paceways at 9.28am. The form itself is an Application by a licensed trainer to drive horses during the Standstill Order period and has been signed by Darren Hooper as the trainer. Of some significance may be the time at which the form was faxed to the QHRB(9.28am).

Exhibit A to the Stewards' Inquiry was a memorandum from the Integrity Manager of QHRB, Michael Castillo, who confirms that on the Wednesday morning he saw Mr Brett Hooper attending to horses of the Appellant, Mr Darren Hooper. As a result of certain enquiries made by Mr Castillo, it became apparent to him that Mr Brett Hooper was an unlicensed person.

Mr Castillo confirmed that at 8.59am he telephoned the QHRB and was informed that no person by the name of Brett Hooper had ever been licensed in New South Wales. Mr Castillo properly reported this issue to the Chairman of the Stewards and was instructed to inform the Appellant that under no circumstances could his brother attend to any horses until further notice. The Appellant's evidence before the Stewards' Inquiry corroborated by his brother, Brett, was that the Appellant honestly believed his brother had a stable hand's licence issued in New South Wales. His brother, Brett, confirmed this to the Stewards in the Inquiry as did the Appellant himself. When approached by Mr Castillo, the Appellant stated his belief that his brother had a New South Wales stable hand's licence.

The Stewards opened an inquiry into this issue on the afternoon of 30 August when evidence was taken from the Appellant and Mr Brett Hooper. During the course of the Inquiry, Mr Brett Hooper was charged with three offences to which he pleaded guilty. The Appellant was charged with two offences, the first under Rule 239(A) which stipulates:

A person whose conduct or negligence has led or could lead to a breach of the Rules is guilty of an offence.

The particulars identified of that charge were that he was negligent by failing to ascertain the licensed status of his brother, Mr Brett Hooper, and therefore allowed him to carry out the duties of a stable hand when he did not hold a stable hand licence. Mr Hooper pleaded guilty to the charge and was fined \$500.00.

The second charge was levelled pursuant to Rule 238 which stipulates:

A person shall not fail to comply with any order, direction or requirement of the Controlling Body or the Stewards relating to Harness Racing or to the Harness Racing Industry.

The particulars of that charge identify that he failed to include Mr Brett Hooper as *staff proposed to be utilised during this Application* in his Application for Permit to move standard bred horses during the Queensland Government Standstill Order. This resulted in him failing to comply with the directions of such Order, when Mr Brett Hooper performed licensed activities on 30 August 2007 without the necessary permit from the Controlling Body, issued on behalf of the DPI, as required. The Appellant pleaded guilty to the charge and was disqualified for a period of six months.

It is as a result of the penalties imposed under each of those charges that this Appeal was lodged.

At the outset Mr Keane, on behalf of the Appellant, confirmed that the Appeal was as to penalty only and not as to conviction, there having been an oversight in ticking one of the boxes relative to the *Finding of Stewards*. There can be no doubt that the Equine Influenza virus that is sweeping Queensland and New South Wales can have dire consequences for the Industry and it is most appropriate for Stewards and other parties to be diligent in their observations of what transpires in the Industry. Mr Knibbs, in his sworn testimony before this Tribunal, confirmed that the pre-eminent purpose of the schedule to the Log Book was to facilitate a chain of inquiry should it be found that any of the horses attended to by a person

noted on the Log Book had previous contact with horses in another area. That is possibly the only way that the Stewards and the officers of the DPI could expect to control the spread of the virus.

Mr Darren Hooper, the Appellant, gave sworn testimony before this Tribunal. He confirmed that his brother had informed him that he had a stable hand's licence in New South Wales. He said that he did not insert his brother's name on the first return that he sent to the QHRB because his brother did not normally assist in the exercising of the horses in the morning. He gave as an explanation the fact that Mr Damian Shaw, whose name he had included on the form, was unable to help him on the morning of 29 August. He gave evidence that both he and his brother had carried out all the strict quarantine requirements the DPI and that he ensured that all other attendees at the stables he rented did likewise. He ensured that Mr Brett Hooper's name was included on the schedule on the morning of 30 August. He can give no explanation as to why it was not included on the schedule for the morning of 29 August. One can perhaps interpolate here that it may well be because he did not receive the Log Book and attached form until after Mr Brett Hooper had attended at the stables and the horses had been worked.

There is no doubt that the Appellant did not take proper steps to satisfy himself that his brother was licensed as a stable hand. He did not seek to inspect any licence but he explained his actions for failing to do so simply because he believed what his brother had told him and he gave uncontradicted evidence that on no fewer than three occasions he had since February

2007 made inquiries of his brother as to his licensed status and that his brother had informed him in the affirmative. There was no suggestion from the Stewards that the failure to include Brett Hooper on the form was an intentional effort to deceive.

Notwithstanding that aspect, the Tribunal considers that the Appellant was negligent as alleged by the Stewards and dismisses the Appeal against penalty. It is the opinion of this Tribunal that a penalty of \$500.00 is adequate in all of the circumstances for a failure to comply with obligations imposed under the Act.

The second charge that has been visited upon the Appellant relates to a failure to comply with a direction or requirement of the Controlling Body. Particulars of that charge were already identified earlier in these Reasons, but it appears to this Tribunal that the breach of the Rule is more of a failure or an oversight, rather than a flagrant disregard. Were it not for the Standstill Order imposed under different legislation, this Tribunal has no doubt that the penalty imposed would be of a monetary nature, however, the simple answer is that because of the Equine Influenza and the serious lengths to which Government agencies and the Racing Industry personnel have gone to attempt to eradicate the disease, there must be a very serious penalty imposed to act as a deterrent to any other persons who may be the subject of a breach of a similar rule. The Tribunal considers that the Appellant did not intend to mislead the Stewards but that he has committed a very serious error and must be dealt with accordingly. The Tribunal is, however, of the opinion that a penalty of a disqualification of his licence for a period of six months is not appropriate if one views his actions and the effect that such a

disqualification would have on his livelihood and on his family. As stated, it is imperative, however, that a serious penalty be imposed and the Tribunal determines that his licence be the subject of a suspension for a period of one month from 30 August 2007 and that he pay a monetary penalty in addition in the sum of \$1,000.00, such payment to be made within 30 days or such further time as may be allowed should his financial circumstances require this Tribunal to reconsider.

In the circumstances, the Appeal as to penalty under the first charge is dismissed and the finding of a penalty of \$500.00 is sustained and the Appeal against the second charge is upheld and the disqualification of six months is overturned and in lieu it is ordered that his licence be suspended for one month from 30 August 2007 and a fine of \$1,000.00 be imposed.

It is ordered that the deposit be refunded.

Mr Leo Williams AO
Chairman

Mr Brockwell Miller
Deputy Chairman
