

TRNT Appeals Committee

APPEAL of Licensed Trainer R Bell

APPEAL COMMITTEE: Mr P McIntyre (Chair) and Mr S Stirling

DATE of HEARING:

The Appeals Committee met to determine this matter on 15 July 2024.

Application for leave to withdraw Appeal

Materials Before the Appeals Committee

1. The following documentary materials were available to the Appeals Committee.
 - a. Transcript (153 pages) of the Stewards Inquiry (Transcript).
 - b. A list of exhibits (32 pages) presented to the Stewards Inquiry (the Exhibits)..
 - c. TRNT Stewards Report 7 December 2023 (Stewards Report).
 - d. Notice of Appeal dated 9 December 2023 (Notice of Appeal).
 - e. Emails between the Appellant and the Stewards (and their legal advisers) and the TRNT as referred to in these reasons below.

Background

2. At the conclusion of a Stewards Inquiry on 7 December 2023 the appellant was found guilty of a charge under AR240(2).

AR 240 Prohibited substance in sample taken from horse at race meeting

(2) Subject to subrule (3), if a horse is brought to a racecourse for the purpose of participating in a race and a prohibited substance on Prohibited List A and/or Prohibited List B is detected in a sample taken from the horse prior to or following its running in any race, the trainer and any other person who was in charge of the horse at any relevant time breaches these Australian Rules.

3. The appellant's license was suspended for 3 months.
4. In the Notice of Appeal the Appellant applied for:
 - a. A determination that the finding of guilt should be set aside;
 - b. A determination that the penalty imposed was excessive; and
 - c. A stay of the penalty pending determination of the appeal.
5. In support of the application described at paragraph 4. a. above the Notice of Appeal identified as the only ground of appeal the following assertion:

‘Swab procedure not followed correctly.’
6. No grounds were identified in support of the application described at paragraph 4. b. above.
7. The Stewards did not oppose the application described at paragraph 4. c. above and the stay was granted by the Appeals Committee on 12 December 2023.
8. The Transcript and the Exhibits were sent to the Appellant by email on 21 December 2023 together with a request that he forward them to his nominated lawyer Mr Luke Gardiner.
9. On 22 December 2023, Andrew O’Toole CEO of TRNT (CEO) sent an email to Mr Luke Gardiner seeking confirmation of his receipt of the Transcript and the Exhibits to which email there was no reply.
10. On 2 January 2024 the CEO received an email from Mr Luke Gardiner informing him that he had not received the Transcript or the Exhibits which he said he needed to enable him to prepare particulars of the grounds of appeal (Particulars) and to properly instruct counsel.
11. The CEO sent the Transcript and the Exhibits to Mr Luke Gardiner by email on 2 January 2024.

12. The CEO sent an email to Mr Luke Gardiner on 15 January 2024 informing him the Particulars had yet to be received.
13. The CEO sent transcripts with amended dates and documents entitled 'NT Positive Swab Penalties December 2023' to Mr Gardiner.
14. Having heard nothing further from Mr Luke Gardiner, the CEO sent an email to the Appellant on 22 January 2024 asking if Mr Luke Gardiner was still representing the Appellant.
15. The Appellant informed the CEO by email on 22 January 2024 that he would follow up with Mr Luke Gardiner.
16. On 30 January 2024 the CEO sent an email to the Appellant seeking an update.
17. On 30 January 2024 Mr Luke Gardiner informed the CEO by email;
 - a. Of the dates when his retained counsel Ms Anne Barnett would be available for the hearing of the appeal;
 - b. That the Particulars would be provided by close of business on 9 February 2024; and
 - c. That the Appellant intended at the appeal hearing to seek leave¹ to cross-examine forensic witnesses relied upon by the Stewards at the Stewards Inquiry.
18. Having been asked on 9 February 2024 by telephone call from Mr Luke Gardiner for an extension of time until close of business on 14 February 2024 to submit the Particulars, Mr Andrew O'Toole granted an extension until close of business 12 February 2024.
19. The Particulars² were submitted to TRNT on 12 February 2024.
20. On 14 February 2024 the Appeals Committee sent email correspondence to the parties informing the parties of the grant of leave for them to have legal representation at the appeal hearing and making directions for the preparation of the hearing of the appeal on 13-14 March 2024.³
21. At the completion of racing at Alice Springs on 17 February 2024, the Appellant verbally informed the Chief Steward that he forthwith surrendered his trainer's licence.

¹ NT23. (b) Except by leave of the Principal Racing Authority, no fresh evidence shall be allowed at the hearing of any appeal

² See Annexure A

³ A copy of that correspondence is Attachment B to these Reasons.

22. During the conversation referred to in paragraph 21 the Appellant made no mention of an intention to withdraw this appeal.
23. On 19 February 2024 the CEO sent an email to Mr Gardiner asking if the Appellant intended to continue this appeal.
24. On 23 February 2024 Mr Luke Gardiner informed the CEO by email⁴ of the Appellant's formal application to withdraw this appeal which request was forwarded by email to the Stewards legal representatives (De Silva Hebron) on the same day.
25. On 26 February 2024 De Silva Hebron informed the CEO that they would provide submissions on behalf of the Stewards concerning the application to withdraw this appeal by COB on 4 March 2024.
26. On 4 March 2024 De Silva Hebron submitted by email submissions⁵ on behalf of the Stewards.
27. On 8 March 2024 Mr Luke Gardiner sent submissions in reply⁶.
28. By 11 March 2024 both parties had confirmed that they were content for the Appeals Committee to determine the matter on the papers and that neither of them sought to present any further submissions.

Application for leave to withdraw Appeal

29. This matter comes before the Appeals Committee as an application for leave by the Appellant to withdraw his appeal pursuant to NT25.
30. The powers of the Appeal Committee applicable to this application are as follows:

NT 23(c) The Principal Racing Authority may quash, set aside, alter, vary, increase or add to the punishment imposed by or confirm the decision of the Stewards or refer the case on appeal back for rehearing or the decision for reconsideration, and they shall have power to draw inferences of fact and to give any judgement or decision and make such order as in their opinion the justice of the case requires and may make such order as they deem fit with reference to the deposit or deposits lodged.

⁴ Attached hereto as Annexure C

⁵ Attached hereto as Annexure D.

⁶ Attached hereto as Annexure E.

Consideration of the Application

31. The Stewards submissions include various assertions of fact set out in paragraphs 3-5, 10 and 13 therein.
32. Except for what is referred to in paragraph 27 above, the Appellant does not take issue with those assertions of fact.
33. Neither does the Appellant engage with the Stewards submissions on the law relevant to determining the question of costs.⁷
34. The Appellant incorrectly construes the Stewards factual submissions as ‘an assertion Mr Bell was not genuine in the pursuance of his appeal rights’.⁸
35. An accurate reading of the Stewards submissions reveals that the Stewards characterise the behaviour of the Appellant by reference to the criteria described by Shepherd J in *Harvey Norman Holdings Ltd v Fels* [2002] FCA 13⁹.
36. It is important to note that the Particulars submitted by the Appellant were in fact not particulars of the ground of appeal contained in the Notice of Appeal but rather an attempt to entirely re-cast the nature and content of the appeal.
37. Without reference to the existing ground of appeal the Particulars contain (in part) the following:

‘I am now able to provide the amended grounds of appeal, settled by Anne Barnett of counsel.

Those are as follows;

1. The Stewards failed to give adequate reasons in finding that there was sufficient evidence to establish the charge under Australian Racing Rule 240(2);
2. The Stewards gave no or no proper weight to the evidence of Russell Bell, Megan Bell, Leah Denton and Matthew Penney; and
3. The evidence is insufficient to establish a charge under Australian Racing Rule 240(2).

⁷ See paragraphs 11-19 Stewards submissions.

⁹ See paragraph 17-18 of the Stewards submissions.

.... further confirm my instructions Mr Bell intends to bring an application to lead further evidence by way of cross-examination of the vet.’

38. At paragraph 6 of the correspondence to the parties set out in Annexure C, the Appeals Committee made it clear that the parties would be expected to address the unexpected change in the nature and content of the now proposed appeal hearing.
39. At paragraph 2 of the correspondence to the parties set out in Annexure C, the appellant’s legal representative was directed ‘to provide a written application with submissions regarding the amended grounds of appeal and further evidence by way of cross-examination of the vet’ by ‘no later than Friday 23 February 2024.’
40. Instead of complying with the directions referred to in paragraph 39 the Appellant made the application referred to in paragraph 24.

Determination

41. The Appellant’s application to withdraw this appeal is not opposed by the Stewards and the Appeals Committee grants leave for that withdrawal.
42. However, the Appeals Committee agrees with and adopts the submissions of the Stewards at paragraph 17.B of the Stewards submissions.
43. The Appeals Committee determines that the criteria referred to in paragraph 17. B. of the Stewards submissions is established by:
 - a. the extraordinary delay between the filing of the original Notice of Appeal on 9 December 2023 and the Appellant’s application for withdrawal of this appeal of the Appellant on 23 February 2024; and
 - b. the unexplained apparent abandonment of the original ground of appeal and the adoption of an entirely different and unexplained approach set out in the so called ‘amended grounds of appeal’ referred to in paragraph 37 above.
44. In the absence of any explanation from the Appellant the Appeals Committee concludes that either the original grounds of appeal or those referred to in paragraph 37 above (or both) make allegations that ought never have been made and have caused undue prolongation of this appeal.
45. Accordingly, the Appeals Committee determines that the Appellant should pay the legal costs of the Stewards and on an indemnity basis.

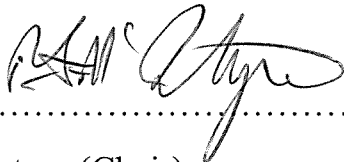
46. At paragraph 20 of the Stewards submissions, it is submitted that the quantum of the Stewards legal costs are \$3002.34.

47. The Appeals Committee determines that the Appellants filing fee not be returned to the Appellant.

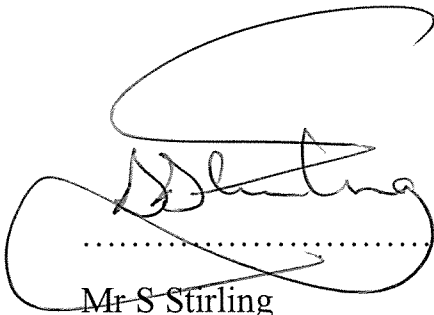
48. The Appeals Committee makes the following directions:

- a. That the parties have seven days from the date of these Reasons to agree on the quantum of the Stewards legal costs to be paid by the Appellant.
- b. The Stewards are to inform the Appeals Committee of any agreement reached pursuant to the direction in paragraph 47 a. within a further 3 days.
- c. The Appeals Committee shall resume the hearing of this appeal within 15 days of the date of these Reasons to either;
 - i. Make directions for the taxation of the Stewards legal costs on an indemnity basis; or
 - ii. Order that those costs agreed to pursuant to paragraph 47 a. be paid by the Appellant.

Dated the.....15th.....day ofJuly.....2024



.....
P F McIntyre (Chair)



.....
Mr S Stirling