

TASMANIAN RACING APPEAL BOARD

Appeal No. 14 of 2018/19

Panel:	Tom Cox (Chair) Kate Cuthbertson (Deputy Chair) Wendy Kennedy (Member)	Appellant:	Phillip Ford
Appearances:	John King – Director of Racing Anthony O’Connell (on behalf of the Appellant)	Rules:	Not applicable
Heard at:	1 Franklin Wharf HOBART	Penalty:	Not applicable
Date:	29 March 2019	Result:	Dismissed

REASONS FOR DECISION

1. The appellant has appealed against a decision of the Director of Racing dated 3 March 2019 to refuse to grant him an unrestricted stable hand licence. This is the third appeal by the appellant against a decision of the Director of Racing to refuse to grant him a stable hand licence. By way of background, the appellant applied for a stable hand licence in late 2017 following the expiration of a period of disqualification of 4 years in 2016. In his first appeal against the Director’s decision this Board concluded in appeal No.12 of 2017/18:

...Mr Ford’s culpability for previous breaches of the rules has been variously described as negligent, ambivalent and reckless. His character and reputation have been negatively impacted by his record, but not, in our view, to the extent that the public could not have any confidence that he will not reoffend as a licensed stable hand. The Director’s position may, quite properly, be different if Mr Ford was applying for a trainer’s licence with all of the added responsibility that entails.

He is suitably qualified to obtain the licence. His intentions for doing so, being his desire to assist his daughter, are reasonable. He has been out of the industry for 7 years and, in our view, has sought to re-enter it at a suitable level. The appellant also demonstrated some contrition for his previous offending in acknowledging that he was not proud of his earlier breaches of the rules for contraventions relating to prohibited substances. His troubles with the law, concerning his failure to leave a licensed premises, are relevant, but should not be held too harshly against him.

Taking all of these matters into account, we have not come to the same view as the Director. That is, we are not satisfied that Mr Phillip Ford is not a fit and

proper person to be granted a stable hand's licence. Put another way, we are satisfied that Mr Ford is a fit and proper person, and suitably qualified, to obtain a stable hand's licence.

2. Following that appeal, the appellant was granted a stable hand licence on the condition that he only assist trainer Dylan Ford. He was granted that licence in February of last year.
3. When Mr Dylan Ford was disqualified for two years in August last year for reasons we will explain later, Mr Ford's licence was effectively at an end. As a result, he applied again to the Director for a stable hand licence, this time for a licence without conditions. In late 2018 the Director again refused to grant him a stable hand licence on the basis that the Director had formed the view that Mr Ford's offence history and "*recent inquiries [he had] been involved in*" warranted a conclusion that the appellant was not a fit and proper person, and to issue him with a stable hand licence would be "*detrimental to the integrity of the Tasmanian Racing industry*".
4. The reference to "the recent inquiries" was a reference to two incidents of note. First, there had been allegations made by the appellant's daughter, Taylor Ford, that in September 2018 she had been assaulted by her father following an argument which had begun because, as she claimed, the appellant had administered prohibited substances and intended to administer further prohibited substances, by injection, to various horses. As matters transpired, Ms Taylor Ford retracted those allegations and was charged with and found in breach of the Rules of Racing for giving false and misleading evidence to the Stewards contrary to AHRR187(2). Secondly, as noted above, in August 2018 Dylan Ford was disqualified for a period of two years for presenting a horse, *Almeria*, to race at the Launceston Pacing Club on 11 July 2018 with a prohibited substance, namely, TCO2. The horse had been in the appellant's control on the day of the race, the implication being that the appellant knew that the horse had been administered with a prohibited substance.
5. In Mr Ford's second appeal against the Director's refusal to grant him a licence, this Board stated in appeal No. 9 of 2018/19:

It is necessary to reiterate that the appellant bears the onus of satisfying the Director and this Board that he is a fit and proper person to hold a stable hand licence. This principle has particular application in circumstances such as the present. The appellant cannot simply come to this Board, nor can he simply state to the Director, that "nothing has changed" since he obtained his stable hand licence. Clearly, the incident with his daughter is a material change in circumstances and his involvement in her development in the industry for better or for worse is a material consideration. Moreover, he has a history of offences for breaches of the Rules of Racing. Obtaining a licence of any sort is very much a privilege and one which he must earn. It remains for him to satisfy the Director and, if necessary, this Board, not merely that he is a fit and proper person to hold a stable hand licence, but the circumstances in which he will operate within the industry. Those requirements can only be satisfied by the appellant candidly disclosing to the Director allegations such as the type made by his daughter, and providing detailed evidence concerning the manner in which he will operate in the industry. We note the previous condition that he only assist trainer, Dylan Ford. We further note that the only evidence as to the manner in which he intended to operate within the industry was his

assertion that he would assist a relative, a trainer, at her property at Stoneyfield. No further detail was forthcoming.

In our view, the Director was not in a position to make an informed assessment of the appellant's application (and nor is this Board) without an inquiry (not necessarily a formal inquiry) into the allegations and having made an assessment of all the other relevant matters attending his application. He may have done so by various means but, at the least, he should have articulated each of the allegations or relevant matters of concern and asked the appellant to address them. If necessary, a formal inquiry with any relevant witnesses may have been convened and any allegations thrashed out. The identity of prospective trainers, the terms of any engagement as a stable hand, the persons with whom he would be working and matters of the like could all have been considered. In a process of that type, the Director could make an informed assessment of the application and form a proper view as to whether or not he should grant a licence and, if so, on what conditions, if any.

6. Following this Board's determination in that appeal, the appellant made further submissions to the Director of Racing in support of a further application to be granted a stable hand licence. As part of the appellant's submissions he stated:

"...I submit that I will perform stable hand duties under direction from the trainers listed on my application and any other trainer if granted an unconditional licence. These duties may include driving horses in work and general stable hand duties that I am directed to perform.

I reiterate that I am a fit and proper person to hold such a licence and the inquiries that I have been recently involved in have not resulted in any sanctions being issued against me. Alternatively the inquiries ... found that the persons charged engaged in behaviour that breached the Rules and were accordingly punished. It should be noted that I fully cooperated in all aspects of these inquiries and the Stewards or TRAB found no evidence that could result in any charge being layed [sic].

I reject any suggestion that I influenced my son Dylan when he was training it is my view that you have taken a very limited approach in assuming that a spike in his TCO2 levels when in training are a result of practices that breach the Rules of Racing [sic]."

7. Following those submissions, among others, the Director convened an inquiry on 15 February 2019. At the inquiry, the Director put to the appellant various issues for response.
8. In respect of the allegation that he knew that *Alemeria* had been administered a prohibited substance because "Dylan, the appellant and Taylor were the only ones who had contact with the horse during the day", the appellant again denied any knowledge of how the horse presented with a prohibited substance and said that if the horse had been administered with anything it didn't happen in the period during which he was with the horse on race day. His attitude was that it was Dylan Ford's responsibility and not his.

9. A similar response was made in respect to an assertion that the levels of TCO₂ in the horses trained by Dylan had risen or spiked after the appellant had been granted the stable hand licence in February 2018.
10. It was put to the appellant that he had been seen towing a horse float without a transporter's pass and that in that process he was doing more than merely acting a farrier at a time when he did not hold a licence. His response was that he did not consider that he was acting as a stable hand or in any capacity that required a licence. As matters transpired in this regard, it appears the appellant was driving the horse to be destroyed.
11. In response to the allegations concerning Taylor Ford and her assault and claim that he had administered prohibited substances, the appellant maintained his position that her allegations were false; that she had been charged and penalised accordingly and that in itself was proof that what she said was false.
12. In response to the allegation that the appellant had attempted to pressure persons into transferring part ownership in various horses to him, the appellant said "bring these people forward and we'll have an inquiry.....because it's not true."
13. In response to questions concerning the trainers he would assist, the appellant said that there were a number of trainers, including Zane Medhurst, Zeke Slater and Mark Reggett as well as Bianca Heenan who he would assist. Mainly though it would be Bianca Heenan. No detail was provided as to the exact terms of any arrangement, although ultimately the appellant stated that any payment for his services as a stable hand would be sorted out between them as family.
14. Following that inquiry, the Director provided formal reasons for his decision to refuse to grant the appellant a stable hand licence.
15. The relevant extracts from that decision are as follows:

"Based on the information contained in the above documents and forums [various appeals relating to Dylan Ford, Taylor Ford and the appellant, and the inquiry], I maintain my position that you are not a fit and proper person to hold a licence of any type within the Tasmanian Racing Industry. I formed this view by taking a holistic view of your contact with the racing industry and have not limited it to a singular event, of which there are many.

I have formed the view that you were involved in, or had knowledge of, the race day administration of alkalising agent causing excessive TCO₂ levels in Alemeria. This incident ultimately resulted in the disqualification of trainer Dylan Ford.

I have formed the view that you were involved in an incident where you attempted to treat registered race horses when you were unlicensed. This incident resulted in a head injury and the subsequent disqualification of Taylor Ford.

I have formed the view that you have been conducting regular trainer and stable hand duties, despite having no current licence.

I have formed the view that you have applied unwanted pressure to horse owners in order to influence the transfer of ownership.

I formed the view you do not believe the rules of racing apply to you.”

16. As to the merits of the appellant’s appeal we direct ourselves in accordance with the observation made in the appeal of Scott Ford No. 4 of 2016/17 at pars 11-13 where we stated:

The appeal before the Board was pursuant to s.28A(1)(a) of the Act against the refusal by the Director of Racing to grant a licence. As such the onus was on Mr Ford to demonstrate that he ought to be granted the licence he was seeking. The key issue for the Board (as it had been for the Director) was whether Mr Ford was a fit and proper person to hold a licence within the harness racing industry. Rule 90(6) of the Australian Harness Racing Rules provides that a licence may be suspended or cancelled by the Director where the Director is satisfied that the person holding the licence is not a “fit and proper person” to be associated with harness racing. While it is not specifically stated that a requirement for the granting of a licence is that the applicant is a fit and proper person to be associated with harness racing, the Board, as noted above, will proceed on the basis that Mr Ford meets that prerequisite.

The nature of Mr Ford’s appeal is not such that he needs to demonstrate an error by the Director; rather he bears the onus of satisfying the Board that he ought properly be granted a licence. Thus the Board is not limited to consideration only of the material before the Director when the licence was refused or the basis upon which he made his decision, but may have regard to all material before it at the hearing; that is the documentation noted above, and the evidence and submissions at the hearing on 10 November.

The interpretation of “fit and proper person” was dealt with by the High Court in Australian Broadcasting Tribunal v Bond (1990) 170 CLR 321. In paragraph 36 of their joint decision Justices Toohey and Gaudron stated:

“The expression “fit and proper person”, standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of “fit and proper” cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not a fit and proper person to undertake the activities in question.”

17. The critical complaints made by the Director are that during the limited time during which Mr Ford held a stable hand licence:

- a. his daughter Taylor Ford has been disqualified for a period of two months for providing false or misleading evidence to the Stewards in circumstances where she had previously alleged that the appellant had assaulted her and administered prohibited substances to horses; and
 - b. the trainer for whom he was granted a licence to assist, Dylan Ford, was disqualified for presenting a horse with a prohibited substance in circumstances where the horse was in the possession and control of the appellant on the day of the horse race.
18. The remaining matters, namely, the claim that the appellant has been conducting regular trainer and stable hand duties without a licence; that he applied unwanted pressure to horse owners; and that he does not believe the Rules of Racing apply to him, may be put aside for want of any probative evidence to support those views. First, we could not find in any of the material any definitive evidence that he had been conducting training and stable hand duties without a licence. The Director clearly had concerns when he attended on the appellant from time to time, but we do not think that those concerns, even coupled with allegations from unknown person that the appellant had been training horses, could support a positive finding that the appellant had been undertaking such duties without a licence. Secondly, we have not heard from the persons claiming that the appellant applied undue pressure. Finally, the Director's opinion that the appellant does not believe the Rules of Racing apply to him is merely a conclusion.
19. We have already commented on the issue concerning Taylor Ford in the previous appeal. Nothing in the Director's further inquiry or the hearing before the Board, has produced any further evidence from which we could make a positive finding about what occurred. The state of affairs in this regard remains unsatisfactory. We know that Taylor Ford lied about what occurred, but that is not to say we accept one version of events over the other. Her breach of the Rules for giving false evidence was constituted by her change in her statement about what occurred. It does not compel a conclusion that her initial version of events was false.
20. In our view the Director and this Board, whilst entitled to hold serious reservations about the appellant's version of events and the reasons for Taylor Ford's retraction, is not entitled to find that the incident occurred in any particular way. The position is simply neutral and it would be unfair to conclude that its mere occurrence, without more, is likely to negatively impact the appellant's reputation further and, in turn, reduce the Director and this Board's confidence that the appellant will not reoffend.
21. Dylan's Ford's breach of the rules of racing as they relate to prohibited substances and the fact the appellant was assisting him as a stable hand at the time (and in accordance with his licence conditions), is of more concern to this Board. He had the horse in his care and control from around 1pm on race day. The other persons who had care and control of the horse on race day were Dylan and Taylor Ford, his family. Dylan had the horse in his care from around the same time as his father and Taylor Ford had the horse in her care for all of the day. The evidence at Dylan's inquiry was unequivocal – the horse had been administered with an alkalising agent within 24 hours of the race. At page 50 line 13 Mr Paul Zahra from Racing Analytical Service gave the following expert evidence:

CHAIRMAN: So based on the results in this instance, and your knowledge of those administration trials, are you

able to form an opinion as to how this level could be attained, or most likely be attained.

MR ZAHRA: Based on the resting level that's been reported in horses from people doing population studies, where the resting levels been published, one, a study done, one of the first studies done to establish what the normal level was, was done by David Ower who published that the level, approximate level, the resting level was 30.8 millimoles per litre, so to get up to levels approaching 40, some sort of alkalinising reagent would have to, would have to have been administered to the horse.

CHAIRMAN: Within what timeframe, in your opinion?

MR ZAHRA: Well based on that study that I spoke of, it would have to have been within twenty-four hours if not earlier.

CHAIRMAN: Okay. And what's the most likely route of administration of the alkalising agent?

MR ZAHRA: I'm, its, I'm probably not well qualified in terms of how it's administered. All I've read in papers is by a nastro, a tube through the nostril or the mouth.

CHAIRMAN: Okay.

MR ZAHRA: And usually some sort of alkalinising agent, it doesn't have to be sodium bicarbonate, it could be something else such as a citrate. There are other things that act as alkalinising reagents.

22. In our view, it was open to the Director to find that the horse had been administered with a prohibited substance by any one of or more of the three. It is possible that an administration occurred without the appellant's knowledge, but we think it more likely that he did have knowledge for the following reasons. First, we reject Dylan's Ford's explanation for the elevated reading on account of electrolytes. Secondly, no candid explanation has been provided by any of the three. Thirdly, the three are family and work together on the preparation and presentation of their horses to race and, in those circumstances, it is unlikely that one or other would not have been aware of any treatment the horse received. Fourthly, it is highly unlikely that some malevolent third party was involved.
23. It follows, that we find that the appellant knew that the horse had been administered with an alkalinising agent within 24 hours of the race. It also follows that his reputation in the industry has been negatively impacted. Any ordinary participant in the industry could not help but to think that there is a likelihood that if he was permitted to participate in the industry, especially in his family circle, he will reoffend. The common theme across his career has been his involvement with prohibited substances. The risk that he may reoffend in connection with prohibited

substances has increased from the time when he was originally allowed to re-enter the industry back in February 2018.

24. It is also concerning that the appellant continued to assert that the administration of electrolytes could account for the elevated TCO₂ reading that resulted in Dylan Ford's disqualification. It is further evidence of the appellant's lack of insight and affects our assessment of his likelihood of him being involved in administration and presentation offences in the future.
25. Finally, there has been little more put to this Board by the appellant concerning the manner in which he intends to participate in the industry that would give us some comfort. No person has come before the Board and indicated how the appellant may be retained as a stable hand. The evidence concerning Ms Heenan seemed to suggest that the appellant would look after her horses while she worked. This is not the sort of arrangement that is appropriate for a person with the appellant's history. Because of his history he requires a strong independent trainer to work for and, ideally, mentor him back into the industry. We do not think it is desirable that he work with family members with horses for which they share vested interests and without any clear structure or arrangements in place to determine each member's respective roles and duties. Such loose arrangements as proposed by the appellant are likely to engender confusion about each member's responsibilities under the Rules of Racing.
26. Having regard to the foregoing we are not satisfied that the appellant is a fit and proper person to be granted a stable hand licence. His reputation in the industry has only diminished since his return to the industry and the Director was entitled to refuse to grant him a stable hand licence following his inquiry in February this year.
27. In accordance with s.34(1A) and (2)(a) of the *Racing Regulation Act 2004*, 50% of the appellant's prescribed deposit is to be forfeited to the Secretary of the Department. The appellant is also ordered to pay 50% of the cost incurred in the preparation of the transcript in accordance with s.34(4A) and (4B)(a) of the Act.