TASMANIAN RACING APPEAL BOARD

Appeal No 9 of 2013/14

Panel:	**Mr R Foon (Chair)**	**Appellant:**	**Mr A Rawlings**
Appearances:	**Mr L Dornauf for Appellant** **Mr A Crowther on behalf of Stewards**	**Rule:**	**Australian Harness Rule AR 254A**
Heard at:	**Launceston**	**Penalty:**	**$100 Fine**
Date:	**4 April 2014**	**Result:**	**Appeal upheld** **Conviction quashed**

REASONS FOR DECISION

1. The appellant, Mr Rawlings, was present at the Devonport Harness Racing Club meeting held on 23 February 2014. During the meeting his 8 year old child was found to be present in the stabling area. Stewards subsequently held an inquiry and found Mr Rawlings had breached AR 254(A), which provides:

> *"An unlicensed person who has not attained the age of 14 years may only enter the stabling area at race meetings or official trials where that person is separated from the horse stalls by a barrier preventing direct access to the horse stalls"*

2. Mr Rawlings was fined the sum of $100. He has appealed the stewards' decision, regarding conviction and penalty. He appealed on the grounds that he was not guilty and an allegation of inconsistent stewarding. At the hearing of the appeal it was apparent the appeal against conviction was based on, inter alia, an argument that the provision contravened was unenforceable against him. To the extent necessary the Board varies the appeal grounds to include that.

3. Although the stewards at the inquiry referred to a charge under AR 254A, any breach of the rule in that part is an offence under AR 255. AR 255 provides "*a person who fails to comply with any provision of a rule contained in Part 14 is guilty of an offence*." AR 254A is contained in Part 14.

4. The stewards' submissions where effectively that the appellant was caught by reason of the wording of AR 255 or alternatively as a licensed person with duties under the rules.

5. For the reasons set out below the Board is of the view that a charge of a breach of AR 254A through AR 255 is not maintainable against the appellant.

6. In reaching that conclusion, whilst the Board has absolutely no doubt that the stewards and the various clubs can take appropriate steps to ensure that the rule is complied with by removal of unlicensed persons under the age of 14, the rule is not certain as to its applicability to the appellant.

7. As it is a penalty provision the Board's view is that it must be strictly construed and any ambiguity should be resolved in favour of the appellant.

8. The Board was advised at the hearing that this is the first case, to anybody's knowledge, to consider AR 254A. It is certainly the first time someone has been charged under that rule in this State. Therefore the applicability of the rule has yet to be tested.

9. The Board's view is in its present form it cannot be enforced against the appellant either as a licensed trainer or, for example, the person who has control of the unlicensed person under 14. This is despite the admissions that were made by Mr Rawlings at the hearing that the unlicensed person is his daughter and she was in the stabling area. It is clear that Mr Rawlings was aware that children were not to be in the stabling area as it had been spoken about on several occasions and there had been signs erected.

10. The reasoning as to why the appellant cannot be found guilty of a breach of AR 254A is as follows:

a. AR 254A specifically refers to an unlicensed person who has not attained the age of 14 years. The appellant is clearly not that person.

b. The offence creation provision AR 255 provides that a person who fails to comply with any provision or rule contained in Part 14 is guilty of an offence.

c. A person in the terms of AR 255 has to be interpreted to mean a person to whom the rule not complied with and contained in Part 14, applies to. That is because specific rules in Part 14 do not apply to persons generally but specific groups or subset of persons, for example, AR 225 – a trainer; AR 250 – a driver; AR 252C – a licensed person.

d. The rules do not set out a general system of how a person can be found guilty of the charge. For example there are no general provisions that make a person guilty on the basis of aiding or abetting, or facilitating a breach by someone else.

e. The Board is not prepared to imply that a person under the rules can be liable for someone else's breach.

f. In the event the Board is wrong that basis of culpability ought to have been referred to both in the decision of the stewards and put to the appellant at the inquiry

g. Further, there is another matter which influences the view that the Board should not imply that a person under the rules can be liable for someone else's breach. That is, that the rules specifically make it offence in some circumstances - see AR 226 "*a trainer shall not knowingly permit a person to drive, train or carry out duties in breach of rules 202, 203 and 204*." In that case the rules have specifically set out responsibility for a person for the breach by another. It would be unnecessary for this to be specified in AR 226 if there was a general liability to not do so.

11. Also the appellant, although the unlicensed person was his child, cannot in fact prevent the child from entering the stable area generally, rather they may have some control over the child when the child enters their own stable. The unlicensed person (i.e. the child) commits the breach by entering the stable area in many circumstances before a trainer or parent knows that they have done so.

12. At the hearing Mr Rawlings stated at page 3 of the transcript:

> *"I ..... I can't stop her coming in like, if she's outside and gotta come in to see mum or dad or something, so yeah nothing I can do so …"*

13. We also accept that stewards would exercise some discretion in relation to enforcement of breaches. However, it demonstrates that in its present form there are real questions as to when the offence is committed and by whom and the scope of the parent's or trainer's duty.

14. As the rule is not enforceable against the appellant it is unnecessary to decide whether the appellant was in fact actively allowing his daughter to remain in the stables. It was raised as an issue at the appeal but did not form part of the original finding.

15. In light of this decision the stewards will need to consider whether or not in the future they may be able to attach liability to a licensed trainer or other appropriate person by way of a different rule. They may wish to consider utilising AR 238 or AR 239A.

16. The Board raises that so this decision is not seen as some form of approval for licensed trainers and the like to simply ignore the rules and allow unlicensed persons under 14 into the stable area.

17. The Board has powers under section 34(1)(b) of the *Racing Regulation Act 2004* (the Act) to remit a matter for re-hearing if it is satisfied that the appellant did not engage in the conduct that prompted the making of the decision but may have engaged in some other conduct that would have justified the respondent making another decision against the appellant. On this occasion it is arguable on the evidence before the stewards there was a breach of AR 238, however, even if it could be satisfied of that the Board does not consider it just to remit the matter for re-hearing by the stewards.

18. It follows as a consequence that the charge is not maintainable against the appellant and there is no need to consider whether or not the penalty was manifestly excessive.

19. The appeal is upheld and the conviction quashed.

20. Pursuant to s34(2)(e) of the Act, the appeal deposit is to be returned to the appellant.