IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

A.231/84

BETWEEN GREGORY JOHN CHILDS
of Matamata, Jockey
Applicant

A N D NEW ZEALAND RACING CONFERENCE
and WAIKATO DISTRICT COMMITTEE
care of Waikato Racing Club,
Te Rapa, Hamilton
Respondents

Counsel: T.F. Fookes for Respondents in Support
R.S. Garbett for Applicant to Oppose

Hearing and
Judgment: 19 December 1984

ORAL JUDGMENT OF GALLEN J.

This is a difficult matter with serious consequences for both parties. There are a number of unusual and complex questions involved in it and I should have preferred to have reserved my decision and taken time to consider it. Having regard to the circumstances, that is impossible. I think all those who are involved in the matter are entitled to know where they stand and under those circumstances I propose to give an immediate oral decision.

Counsel have made careful, detailed and comprehensive submissions. In the circumstances, it is no disrespect to those submissions if I do not refer to all of them. The applicant holds a Jockey's Licence and on 10 November 1984 he rode in a race at Hamilton, as a result of which a charge was brought against him under the provisions of the Rules of Racing. That charge was considered by the Judicial Committee of the Waikato Racing Club on 17 November 1984 when the charge was dismissed. That is a factor which has in my view, a bearing on the conclusion to which I have come. The Stipendiary Steward who was involved in bringing the charge was unhappy with the result and exercised the rights available to him under the Rules of Racing to have the matter re-considered.

Mr Garbett for the applicant, has made the submission that having regard to the provisions in the Rules, that right was either not open to the Stipendiary Steward concerned, or he did not establish the right to initiate the proceedings which followed. I reject that submission. It seems to me that the Stipendiary Steward acted properly, in accordance with the Rules.

Following the provisions of the Rules, a subsequent tribunal was set up in order to hear what amounted to an appeal against the initial decision. Mr Garbett has made submissions for the applicant which suggest that the procedures which were followed did not comply with the Rules. In particular, he

refers to the necessity in bringing such provisions under R.58 (1) for the Stipendiary Steward to consider the decision unsatisfactory, but more importantly that the Executive Committee must be satisfied that the decision should be reviewed before directing it to be referred for review. In this case, the Executive Committee's role was exercised by the President under rights of delegation. There is no direct evidence before me as to the satisfaction or otherwise of the President, there being an affidavit filed and properly filed, which indicates that the President had indicated that he was satisfied, but that is as I say, not direct and I must have regard to the possibility that a Court in considering allegations of the kind raised in this case may need to go behind the actual decision and consider whether or not there were grounds for the President being satisfied. I think that this is perhaps the strongest point available to the applicant in this case.

Mr Garbett however, makes other submissions. He has also based his application on allegations of bias and these allegations arise from the fact that the President of the Waikato Racing Club who quite innocently believing that the matter was finally disposed of, took the opportunity to express some views regarding the matter to the applicant himself and to the trainer concerned. Subsequently to his suprise - and I accept that he genuinely was surprised - he was required as a result of the proceedings initiated under R.58, to deal with

the setting up of the necessary Tribunal to hear or re-hear the matter on appeal. The Rules provide that such a committee is to be established by the Executive Committee.

Mr Garbett refers to the fact that a at least some initial enquiries were made by the President himself. I accept Mr Fookes' submission that in the circumstances all that the President did was to make enquiries as to the availability of persons who could have been involved and the actual decision was made by the Executive Committee as is contemplated by the Rules. Nevertheless, I am concerned over the suggestion that the views of the President may in some sense be thought by a person looking from the outside, to be reflected in the appointment of members of the Tribunal and perhaps in their decision. Although there is affidavit evidence from the President to the fact that he did not discuss the matter with the persons concerned, those affidavits had been filed and quite properly filed, at such a time that there has been no opportunity for the applicant to take any issue with them.

When the matter first came before me, the applicant through counsel, indicated that it was sufficiently urgent to be dealt with ex parte. Although the possibility of dealing with the matter on notice was then explored - because it is desirable that applications of this kind should always be dealt with on notice if possible - the submission was made that that was impossible having regard to the circumstances because a

decision, having regard to the availability of the applicant to ride, had to be made the following day and the notice contemplated by the Rules could not be complied with. I was also informed that the decisions as to riding at the following meetings were such as to involve the applicant in commitments to subsequent meeetings where horses which ran in the first meeting, were effectively running on a preliminary occasion. Under those circumstances, I granted an interlocutory injunction and the respondent now moves to set that aside.

The Rules relating to matters of this kind are clear. It is necessary for the applicant to establish that there is a serious question to be tried. In my view, the applicant has raised sufficient matters for consideration in relation to whether or not the President acting as delegate of the Executive Committee, was or could have been satisfied having regard to the circumstances - and I bear in mind that in considering this aspect of the matter, there had already been a decision in favour of the applicant.

I think that the material before me as to the possibility of bias is slim in the extreme but I cannot say that there is no possibility that having regard to the very technical way in which bias is looked at in relation to domestic tribunals, that there is no argument available to the applicant. I think that the applicant suceeds, but perhaps only just suceeds in crossing the threshhold of establishing that there is a serious question to be tried.

That however, brings up the other matters relating to balance of convenience and there are matters of concern in relation to this. Mr Fookes quite properly puts an emphasis on the fact that there are rights of appeal which were and are, open to the applicant under the Rules of Racing. He says that it is appropriate that the matter should be dealt with as is contemplated by those Rules, by persons who are sufficiently expert to deal with them in context and having regard to the background circumstances. He submits also, there is an obligation on persons to have available to the Court, all the material which should have a bearing on the decision and the fact that there was no reference made to that right of appeal is sufficient to justify the exercise of discretion of the Court against the applicant.

He argued also and strongly, that if it was thought it was possible for persons in the position of the applicant to take the action which has been taken here and effectively avoid the consequences of their behaviour by not going through the procedures which are contemplated by the Rules, the Courts would be faced with a flood of applications of this kind. I should be concerned if this were so.

It is my view that the appropriate form of dealing with matters of the kind in issue here is the form which is contemplated by the Rules of Racing and it is my view that the applicant should exhaust the remedies which are open to him

under those Rules before he invokes the assistance of the Courts. At the same time, I accept that he like every other citizen has a right to call on the Courts for assistance where the Tribunals to which he is subject, act in some manner which he regards as unsatisfactory according to the Rules which apply to them.

There are some very unusual circumstances in this case which I think tend to distinguish it from most others that might be envisaged. Perhaps the most important of these is the time of year at which the proceedings have been brought. Mr Fookes makes the point and makes it strongly, that if the interim injunction is to continue in force, then effectively the applicant may never need to serve any penalty whatever the ultimate result of the proceedings, even if he chooses to take them to fruition, because the penalty was imposed in terms which means it expires on a particular date. He submits also that even in any event if the Court did have power to substitute a penalty whatever penalty is substituted, may not reflect the penalty imposed in this case because of the time of year. At the same time, the applicant has presumably, following the submissions which were made last week, entered into certain commitments. While it is submitted for the respondent that the applicant could achieve whatever result he wishes to achieve by simply never taking the matter further, it is of course open to apply the same assumption to the

respondents who, if there were no interim injunction, would be under no necessary pressure to arrange a hearing in the same period.

Having regard to all the circumstances, I think it is appropriate that the applicant should be required to exhaust his remedies under the Rules of Racing first, but I would like to ensure that both parties to this make sure it is dealt with within the shortest possible time.

Under those circumstances, with some hesitation, I am not prepared to rescind the order, but I am prepared to change it. The interim injunction will remain in force subject to conditions, the first of which is that the applicant is to file an appeal in terms of the rights of appeal available to him under the Rules of Racing and such appeal is to be brought before 5 p.m. on Friday 21 December 1984 on the basis that if the appeal is not so brought, then in the absence of any other order, the interim injunction will expire. The interim injunction is also to extend only to such time as the appropriate Tribunal hearing the appeal sits and arrives at whatever decision it arrives. As soon as that decision has been given, then the interim injunction will itself expire.

That order is designed to ensure that the matter is dealt with according to the Rules of Racing and that neither side suffers from the consequences of appeal or the difficulties of the time of year.

I think that this is one of those cases where there are many considerations which reflect on the balance of convenience, but in the end the consequences are likely to be serious for either party if the position is not maintained until such time as the appeal can be heard. I accept that the applicant if he gets past the period which is contemplated by the suspension, may be under no pressure otherwise to ensure that these proceedings are dealt with, but it is equally true that if the suspension operates and the applicant is ultimately found to be right in the contentions which he puts forward and on which of course I express no view, then the consequences for him cannot be put right either. There are therefore to be orders in terms of those indicated. There were other matters referred to by counsel. I have not referred to them in detail because of the desirability of disposing of this matter at this time and as quickly as possible.

The question of costs should be reserved until the substantive hearing.

R Q Sallen

Solicitors for Respondents in Support: Messrs Bell, Gully, Buddle and Weir, Wellington

Solicitors for Applicant to Oppose: Messrs McKinnon, Garbett and Company, Hamilton