

## Appeal decision

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**Decision Date:** 6 October 2015

**Hearing Date:**

**Code of racing:** Harness

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**Appeal panel:** Mr B Miller, Chairman;

Mr P James;

Mr D Kays

**Appearances:** Nil – this matter was heard on the papers

**Decision being appealed:** An Application by the appellant for costs of the appeal decided on 2 December 2014

**Result:** Application for costs refused

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The appellant Justin Abbott has sought an order of this Board that his costs of and incidental to the appeal should be paid by Racing Queensland. In support thereof submissions were received from both the appellant and the respondent identifying the various arguments both for and against such an award. This Board has considered all of the submissions and has identified that it would not be appropriate to make any award for costs in such circumstances.

Section 149ZZC of the *Racing Act 2002* provides:

1. Each party to an accepted appeal must bear the party's own costs for the appeal.
2. However, the Constituted Board for the appeal may make an order requiring a party to the appeal to pay all or a stated part of the costs of another party to the appeal if the Constituted Board considers the interests of justice require it to make the order.

It is therefore mandatory that each party to an appeal, if that appeal is accepted as valid and determined by the relevant Board, shall bear its own costs UNLESS the Board considers the interests of justice require it to make the order. For the appellant to succeed in his application he must satisfy this Board that the mandatory obligation is overturned by virtue of the interest of justice requiring such determination. The appellant was charged with eight separate offences which were levelled against him after an enquiry into procedures that had been adopted during some racing events and after exhaustive submissions were made in response to the charges. The submissions, to some degree during the course of the appeal, were adopted by the Board but that of itself does not identify that there has been any miscarriage by the stewards in their investigations and final pronouncements of guilt and imposition of penalties.

The respondent Racing Queensland is obliged to ensure that all licensees comply with the Australian Rules of Racing. It does so by the appointment of stewards whose tasks are many and varied but not the least of those tasks incorporate the investigation of any issue that may be considered to be a breach of those Rules of Racing and with the imposition of any penalties that may be resultant from such breaches. It is an essential element of proper compliance with the Legislation that the stewards must act reasonably and not in any vindictive or vexatious manner. Were they to do so one could easily determine that there would be an appropriate mechanism for ensuring compliance and that mechanism would be the imposition of a Costs Order against Racing Queensland and the stewards for their actions in overstepping the boundaries of the Legislation.

In this particular instance the stewards formed a conclusion that the appellant had breached the Rule and in so doing levelled charges against him. The appellant as is his right sought legal advice both by way of submission and by way of representation with the assistance of counsel to proceed with the appeal before this Board. The respondent would, if the appellant had not sought legal intervention, have been estopped from briefing counsel on its own behalf. This is a requirement of the relevant Rules and Legislation. Once the appellant had appointed counsel then Racing Queensland were also entitled to do so. The appellant argues that, by virtue of his being obliged to employ counsel and solicitors, that should be a

basis for the consideration that the mandatory element of that section should be overcome. This Board does not agree.

It is true to say that the appellant was successful in having some of the charges overturned and some other penalties reduced but he did not succeed in having all of the elements alleged against him by Racing Queensland overturned. It was, in the opinion of this Board, appropriate for the charges to be ventilated and it was a right of the appellant to appeal against same. The fact that he was successful does not identify that there has been a breach of any rule of natural justice or identified that the interest of justice would be served by demanding or requiring costs be imposed against the respondent Racing Queensland. In fact it is the view of this Board that it was appropriate for the charges to be levelled based on the evidence that was before the stewards. Whether the imposition of the penalties was reasonable or otherwise is not a matter for this Board to determine. The fact that the charges were proven to some extent and that penalties were imposed is sufficient to abrogate the need to consider the other matters raised in sub-section (3) of section 149ZZC. In that respect it is unnecessary to identify the relevant strengths of the claims made by each of the parties or whether the financial circumstances of each of the parties was an appropriate consideration. In the opinion of this Board the relevant control body did not breach any rule of natural justice when it made the decisions against which the appeal was levelled.

The application for costs is refused.

Further right of appeal information: The Appellant and the Steward may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **28 days of the date of this decision**. Information in relation to appeals to QCAT may be obtained by telephone on (07) 3247 3302 or via the Internet at [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au)