

Appeal decision

Hearing Date: 1 October 2015

Decision Date: 1 October 2015

Code of racing: Thoroughbred

Appeal panel: Mr P Elliott

Decision being appealed: Disqualification of Stablehand, S Colohan, licence for a period of 6 months – AR175Q

Appeal result:

On 18 July 2013, Townsville Stewards conducted an inquiry into an incident that occurred at approximately 7:45 a.m. at the Townsville Racecourse on the day before.

This inquiry considered evidence from 16 witnesses and continued over two separate days.

After considering the evidence, the Stewards elected to charge only one of the protagonists involved in an altercation with an offence under AR175 (q) of improper conduct.

The person charged was Shane Colohan.

When asked whether he was guilty or not, "guilty" he replied. "I plead guilty to hitting him, I did it. But it was in self-defence".

Colohan was then convicted and asked to make submissions on penalty. The Chairman of the Stewards indicated he could, as part of those submissions, include submissions about self-defence presumably on the basis that these would be considered in mitigation.

Mr Colohan lodged an appeal to the Racing Disciplinary Board which consisted of Judge William Cater, Peter Elliott and Roy Dickinson.

Judge Carter has, unfortunately, died, Mr Dickinson is unavailable and the reconstituted Board consists of Peter Elliott only.

At the hearing of the appeal by the Board, leave was sought and given to Counsel for Mr Colohan to change his plea.

At the outset of this appeal, Judge Carter (as Chairman) indicated the concern of the Board as to the manner in which the Stewards inquiry had been conducted. Of particular concern, was procedural fairness in respect of both the actual conviction and the consideration of the evidence that led to the Stewards laying the charge against only one of the protagonists.

The Board then:

1. Permitted the Appellant to change his plea to a plea of not guilty; and
2. Set aside the conviction and penalty.

In so doing, the Board, expressed the view that the events, the subject of the Stewards inquiry were "of the utmost concern and prejudicial to the best interests of racing".

The Board also directed that the evidence in the case and a copy of the Board's remarks be sent to the principal Racing Authority to take such action as may be advised.

The Queensland All Codes Racing Industry Board then appealed the Board's decision by lodging an appeal with the Queensland Civil and Administrative Tribunal. That appeal proceeded before Justice Thomas on 2 April 2015.

The appeal proceeded on three grounds.

Ground 1: The Racing Disciplinary Board fell into error by allowing the Application to set aside the plea of guilty of Mr Colohan.

Ground 2: The Racing Disciplinary Board fell into error in interpreting section 149ZE(2) of The Racing Act 2002 (Qld) as prescribing the test to be applied when determining an appeal under section 155.

Ground 3: The Racing Disciplinary Board fell into error in interpreting AR175(q) as requiring that the Stewards had to be satisfied that Mr Colohan was guilty to the exclusion of others.

Mr Justice Thomas found as follows:

Ground 1: The appeal was not allowed.

Ground 2: Nothing turned upon the comments made in relation to section 149ZE of The Racing Act.

Ground 3: He found there was sufficient doubt about the reasoning which underpinned the decision, including if an erroneous view about the requirements imposed by AR175(q) were made and that the matter should, therefore, be remitted back to our Board for reconsideration.

The purpose of this hearing, therefore, is to deal with only Mr Justice Thomas' findings on Ground 3.

A Notice has been sent to both the Appellant and the Respondent that I propose to conduct a re-hearing and requesting that they both lodge written Submissions.

Submissions have been received from DR Kent QC as Counsel for the Queensland All Codes Racing Industry Board and those Submissions dated 15 June 2015, are now marked as Exhibit "A".

Am instructed it has been difficult to notify and receive Submissions from Mr Colohan as he has not, for some time, continued to be a licensee. I have been informed, however, that administrative staff have made telephone contact with him and he has indicated that he does not wish to make any Submissions as he no longer participates in the industry.

Dealing now with the Submissions by the Appellant:

On Page 2, Paragraph 7, it is submitted on a proper reading of AR175Q there was clearly evidence before the Stewards to conclude that the Respondent had breached the rule by his conduct in engaging in a fight with Mr Kenning. The Appellant then demonstrates three examples, which are set out in Paragraph 7 (a), (b) and (c).

Counsel for the Appellant then submits that there was ample evidence upon which the Stewards were entitled to form the opinion that the Respondent had acted in a way which could be considered misconduct, improper conduct or unseemly behaviour within the parameter of AR175(q).

Counsel also submits that the roles of the other participants were comparatively less serious and that the Stewards determined that the evidence in respect of their involvement was not of the standard which would allow them to be satisfied of the breach of the law and, this does not offend AR175(q).

The other submission is that there is no requirement placed upon the Stewards to determine whether the Respondent was guilty of impropriety to the exclusion of others.

Counsel submits the original Decision of the Stewards was correct on the evidence and their original conclusion should be upheld.

It is clear to me as stated by Justice Thomas at Line 46 (Page 8) that AR175 (q) does not require that Mr Colohan was guilty of impropriety to the exclusion of all others and I proceed on that basis.

Taking all of this into account and, considering the submissions by Counsel for the Queensland All Codes Racing Industry Board, I make the following comments:

1. Do not interpret AR175(q) to mean that Mr Colohan might only be found guilty if he was guilty of impropriety to the exclusion of others. I accept that Mr Colohan can be found guilty notwithstanding the fact that others could or should have been charged.
2. I believe that I cannot, under section 149ZE(2)(d) of The Racing Act, give a fair and proper consideration of the issues so far as they relate to the Appellant. I do not believe that a re-hearing de novo can correct the injustices that have occurred.
3. This is a matter in which I consider the stewards ought to have dealt with it as a 'Not Guilty Plea'. Justice cannot be administered in a vacuum and, in considering the facts, generally, I believe the actions of the Stewards were not fair and reasonable and, consider from an objective view point, they could be perceived to be biased. I believe that justice must not only be done but also must be seen to be done.

4. The failure to enter a plea of not guilty deprived Mr Colohan of some of his rights. Any attempt to correct this now is unlikely to receive a just result due to the delay and also as Mr Colohan is no longer in the industry.

5. I am aware as was the formerly constituted Board of section 8(c) of the Racing Act. In these circumstances, I affirm the original decision and set aside the conviction of Colohan and the penalty being a disqualification of six months.

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