Appeal decision

Decision Date: **2 June 2016**

Hearing Date: **31 May 2016**

Code of racing: **Thoroughbred**

Appeal panel: Mr B. Miller – Chairman
Mr P. James
Mr D. Kays

Appearances: R.E. Crow, R.V. Crow and V. Aspinall,
Mr K.Mouldes as witness for Mr. V.Aspinall

Mr L Collins for Racing Queensland

Decision being appealed: $100 fines for breaching Local Rule 85(1)(c)

Appeal result: Appeals upheld

The appellants R.E. Crow, R.V. Crow and V. Aspinall were all licensed bookmakers operating at Yeppoon Racecourse on Saturday, 23 April 2016 when Mr Luke Collins, the steward in charge of the meeting entered the bookmakers' room and observed that the three appellants had not entered their Starting Prices (SP) for Race 1 at this time. As a result of his observations, the steward imposed a penalty of $100.00. The steward in charge acknowledged that at no time did he enquire as to whether there was any valid reason for these bookmakers not to have set their prices at the relevant time.

The appellants have appealed on the premise that they have been denied natural justice in that each of them had believed they were harshly treated without any warning having been provided either at that meeting or in respect to each of the appellants at any prior time or occasion. It may well be that Mr Collins had not officiated as the chief steward in charge of a race meeting in Yeppoon previously or, if he had done so, he did not have any necessity to enquire as to whether the bookmakers had followed the relevant rules.

It is acknowledged that Mr Collins did indicate that he was *"sick of bookies putting prices up whenever they liked".*

The Appeal was held by way of teleconference which, to say the least, is not the most desirable or efficient means of resolving important issues involving appealable decisions. Notwithstanding that, it was obvious from the information conveyed over the telephone that each of the bookmakers had never received any formal warning prior to this occasion, that

two of them had been significantly long term licensees with good records and were in fact the two leading bookmakers on the races in Rockhampton and its surrounds and that no enquiry was ever made of them as to whether they had a valid reason for being late in setting their prices.

The Rule in question under which they were charged was LR85(1)(c). It was noted that under the provisions of the Betting Rules for Bookmakers published in 2013, there was a prospect that local rule 85 had been amended or repealed. The provisions of both the local rule and the bookmakers rule are identical and it matters little whether the charge was correctly levelled by the chief steward at the time. Suffice to say, it is sufficient, for the purposes of this Board, that a charge could be issued.

Each of the appellants gave evidence that there were compelling reasons why a construction should not be imposed. The reasons were different in each of the appellants' versions but what appears patent is that it was not merely these three bookmakers whose prices were not set and it would seem from comments made that the chief steward penalised them when he could perhaps also have penalised others for identical failures. The mere fact that he did not do so does not detract from whether or not the bookmakers could have been charged.

The main point for contention that was raised by each of the appellants centred upon the failure of the steward to convene an enquiry at which they as defendants or persons charged with an offence under the Rules could have given an explanation which, in the usual and proper way, may have mitigated against penalty or may even have persuaded the steward in question not to have proceeded. It is suggested that they were denied *"natural justice"*. A person charged under a Rule of Racing where he is alleged to have breached an official Rule such that a conviction will be entered upon his record is, by virtue of the rules of natural justice, entitled to be given a fair hearing in respect to the matters. The steward did not convene an enquiry and did not seek to ask whether any of the appellants had a reasonable excuse. In the opinion of this Board, his failure to do either one or both of those things is sufficient to satisfy a determination that he failed to provide those charged with a fair hearing of all matters. In so doing, it is impossible for these charges to be maintained. A steward should, in circumstances of a similar nature, either convene an enquiry at which evidence can be taken and recorded and explanations given or seek out whether there is any reasonable basis for the charge to be levelled and thereafter of course convene the enquiry and impose whatever penalty is appropriate if a finding of guilt is subsequently made. The steward did not do these things and that is sufficient for these appeals to be upheld.

The order of this Board is that each of the relevant appeals is upheld, the conviction is quashed and any penalty imposed is to be disregarded.

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