

Appeal decision

Decision Date: 2 June 2016
Hearing Date: 23 May 2016
Code of racing: Thoroughbred

Appeal panel: Mr B. Miller – Chairman, Mr G. Casey and Mr D. Kays

Appearances: Mr Peter Boyce from Butler McDermott Solicitors appeared on behalf of the appellant Ricky Vale

Mr M.J. Tutt, solicitor, appeared on behalf of Racing Queensland

Decision being appealed: 18 months disqualification

Appeal result: Dismissed but penalty varied to a suspension of 6 months with the order that the suspension be stayed from the date of this judgment upon the proviso that the appellant not reoffend for a period of 12 months

The appellant was a trainer who was engaged with the presentation of various horses at the Rockhampton Jockey Club on Friday, 8 April 2016. He was charged under Australian Rules of Racing 175(j) which states:

“The principal Racing Authority or stewards exercising powers delegated to them may penalise any person guilty of improper or insulting behaviour at any time towards the Committee of any Race Club or Association or any member thereof or stewards or any official in relation to their or his duties.”

The specifics of the charge were that the appellant conducted himself improperly at the Race Club meeting by *“your improper behaviour and insulting comments made towards Racing Queensland stewards and other officials, namely Mr Matt Henderson”*. Mr Vale pleaded guilty to the charge and a penalty was imposed of a disqualification of his licence for a period of 18 months. He has appealed against the severity of that penalty.

There is absolutely no doubt that the language used by Mr Vale was colourful and inappropriate. He swore repeatedly and profusely and appears frankly from the review of the transcript to have simply not been aware of the extent to which his profanities were verbalised. In his defence, he claims that he simply *“lost it”* and entered the stewards’ rooms when one of his horses who had finished out of a place was called upon to be swabbed. He believed that he was being *“targeted”* by the stewards for a previous positive swab as a result of which he suffered a penalty that had been imposed by way of a suspension.

Regardless of what he thought, the words he used were unnecessary and were not something which one would ordinarily be expected to hear when acting in the position of stewards in their officiating at a racecourse.

Of some difficulty is the fact that when Mr Vale initially started his abuse, no enquiry had been convened and it was to the stewards in their confined area in front of whom he was swearing. It is unnecessary to repeat the phrases used but they were words used by many people when they become so incensed that they lose control of their faculties. Throughout the course of the evidence that was taken at the resumed stewards' enquiry – one which was convened by the same stewards who had been the subject of the charges – he continued to protest that he simply did not recall that he was swearing as much as he did. He said that he did swear regularly but has always tried to maintain a composure when involved with stewards. It is unfortunate indeed that he has failed to do so in this circumstance. It does look, on a review of the early parts of the transcript, that the stewards were not really able to control his outbursts although at times words used by the stewards could be looked upon as being *"baiting of the appellant"*.

Submissions were received from both Mr Boyce and Mr Tutt. On behalf of the appellant it was suggested that the penalty imposed was manifestly excessive, that the stewards were incapable of making independent and objective decisions that was free from bias (either actual or perceived) due to the fact that they were complainants and witnesses to the incident and that they failed to give proper weight to the numerous mitigating factors in favour of the appellant including:

- (a) a lack of relevant history of offending;
- (b) an early plea of guilty;
- (c) significant detriment likely to be caused by a disqualification;
- (d) personal health of the appellant;
- (e) circumstances leading up to the incident.

It was suggested that the appellant had been a horse trainer for more than ten years and working in the industry since 14 years of age. At the time of his disqualification, he employed three ground staff, two track work riders and a farrier. Until his disqualification from training, he had 21 horses in his care for the purpose of racing and racing is his only occupation and the only one known to him.

We agree with the proposition put forward by Mr Boyce that:

"whilst it is acknowledged that stewards are required to conduct enquiries, the process embarked upon by the stewards was fundamentally flawed on the basis that the stewards were incapable of approaching the matter with impartiality and/or objectivity".

It was suggested that this is a failure of natural justice and it goes to the heart of the meaning of that term in the opinion of this Board. The stewards who were the witnesses in this instance should have disqualified themselves from the panel but they did not do so. The question for this Board then is whether that failure is sufficient to warrant the penalty being removed totally or varied. The abuse that flowed was something that certainly warranted a penalty but the penalty to disqualify a man from his livelihood for 18 months for overstepping the line when his medical history was a relevant element is manifestly excessive. Furthermore, the stewards, whilst they acknowledged that they took into account the mitigating circumstances, did not evidence that particularly well in their determination. One can understand why they were anxious to impose a disqualifying period as they would not want to be the subject of similar abuse in the future or at another place.

It is the observation of this Board that Mr Vale's conduct is something that has occurred somewhat out of the ordinary. He has regretted the statements that he made as he read the transcript and he himself was somewhat mystified that he would have sworn in such a way. The mere fact is that he did do so and for that he must suffer a penalty. In the opinion of this Board a suspension of six months would be the appropriate penalty. We are prepared to vary that penalty somewhat as a result of his being already visited with a disqualified period during which he would have had to have transferred care of his horses to other personnel. In the circumstances, we order that from the date of this judgment, the balance of the six month penalty be stayed on the proviso that should he reoffend against the same rules, the balance of the penalty be served as well as any further penalty that the stewards would deem appropriate in the circumstances for any subsequent offence.

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