

REASONS FOR DETERMINATION OF THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: AARON STEPHAN YUGOVICH

APPLICATION NO: A30/08/574

PANEL: MR D MOSSENSON (CHAIRPERSON)

DATE OF HEARING: 18 JUNE 2002

DATE OF DETERMINATION: 18 JUNE 2002

IN THE MATTER OF an appeal by Mr A S Yugovich against the determination made by the Stewards of the Western Australian Turf Club on 1 June 2002 imposing 2 months suspension for breach of Rule 175(j) of the Australian Rules of Racing.

Mr T F Percy QC, with Mr MN Caratti, instructed by Mark Andrews & Associates, appeared for the appellant.

Mr B J Goetze, instructed by Minter Ellison, appeared for the Stewards of the Western Australian Turf Club.

This appeal came on for hearing on the 18 June 2002. I upheld the appeal and reduced the penalty of a 2 month suspension from riding to a 1 month suspension. I now publish my reasons.

Background

On 1 June 2002 the Stewards opened an inquiry into Jockey Yugovich's conduct following the running of Race 2 at Kalgoorlie on that day. The Steward chairing the inquiry, Mr Biggs stated at the outset:

'Following the running of Race 2 I was in the scale area weighing the riders in and I asked Mr Jerrard, who was standing outside, to go into the Jockeys' room because I was concerned that there may have been an altercation or there may have been some blue between yourself and Mr Davies. Just as I was about to do that you come racing out and yelling out that "you can all go and get fucked and I'm not riding any more", and I then, you then turned around and went back into the jockeys' room. I followed you back in the jockeys' room. You started throwing your saddle around and you turned around, turned across to Mr Davies and told him he's just a weak cunt and he waits 'til nobody's around and you stated that you've previously been, been belted up by him, or punched by him when you were an apprentice and you're not going stay, stay around and let the same thing happen again. By then, you were then swearing and quite, quite abusive in the jockeys' room. I then asked you to leave the room and come into the Stewards' room. I then escorted you actually out of the, out of the jockeys' room and as we, as we were coming out you were very abusive and telling me that you're just a weak cunt and at one stage there you went to turn around and I was standing, I had my hand behind you and you turned around and you said, you said "get your fucking hand off me, you mob of cunts and you then continued to come into the jockeys' room, using, making abusive remarks towards myself and we then escorted you into the Stewards' room here. As a result of that altercation we then advised you that because of your conduct we would be escorting off the course as soon as you got your gear ready and the main reason we did that was we didn't want anything further to blow up or erupt and make the situation any worse than it already currently is. And as a result of that we did ask the Clerk of Scales Mr Baker who is a detective of the WA Police Force to escort you off the course, and also when we brought you in here following, before you go, went off the course, we did advise you that you would be required to attend an inquiry following the running of the last race and you stated that you wouldn't be attending any inquiry and I think on that particular occasion, you made the comment that I think "you're a mob of, you're old mob of cunts" or something like that and "you can do whatever you fucking like" or something like that, ...?'

The inquiry heard evidence from Mr Yugovich, Jockey T Stubberfield and from Mr G Forrest, Vice-Chairman of the Kalgoorlie-Boulder Racing Club.

Mr Yugovich was charged with a breach of Rule 175(j) of the Australian Rules of Racing. That Rule states:

'175. The Committee of any Club or the Stewards may punish:

...

(j) Any person guilty of improper or insulting behaviour at any time towards the Committee of any Club or Association or any member thereof, or Stewards or any Official in relation to their or his duties.'

The particulars of the charge were:

'...in the opinion of the Stewards, you used insulting and abusive language towards, in particular myself, and other Stewards in the Stewards' room.'

Mr Yugovich pleaded guilty to the charge. In announcing penalty the Chairman stated:

'Stewards have given consideration in relation to penalty. As I previously stated to you, Stewards do believe this to be one of a very serious matter. We have the

option of a disqualification, a suspension or a fine. We certainly, on this occasion, don't believe that a disqualification is, is appropriate. However, Stewards do believe that on this occasion a suspension of your licence should be the appropriate penalty. One would suggest that the normal, or the penalty that one would be considering in relation to this would be a suspension of your licence for a period three months. However, we have taken into consideration that you have been very remorseful for what you did. You've been very apologetic throughout this inquiry and you have been cooperative through this inquiry throughout. However, the fact that the incident, as I said, was one that Stewards cannot and will not tolerate and one that must act as a deterrent to you and to others, that we will not tolerate this type of conduct. We've also taken into consideration that the conduct of yourself was witnessed by a number of people in the mounting enclosure, being owners, trainers and committeemen of the Kalgoorlie-Boulder Racing Club, and we certainly don't believe that, that it was appropriate at all. Taking all that into consideration, we've also taken into consideration your prior record where you don't have any charges of a similar nature as this. We've taken all that into consideration, we do believe that the appropriate penalty on this occasion is to be a suspension of your licence for a period of two months.'

Mr Yugovich pleaded guilty. He gave but the briefest explanation for his conduct. He simply explained that he normally would not abuse a Steward nor swear as he did but he was *'...pushed to do...'* it *'...by another rider'*, by *'...what happened previous... to when I come out of the room swearing'*. There was no dispute that the altercation between the jockeys was triggered by unintentional interference from Mr Yugovich during Race 2 which probably cost Jockey Chad Davies the race.

It is clear from reading the transcript of the Steward's inquiry that Mr Yugovich was ineffectual in pleading his own cause at the inquiry.

The appeal

Upon instituting his appeal Mr Yugovich was granted a stay of proceedings until midnight on Tuesday, 18 June 2002 or as otherwise ordered.

The substituted grounds of appeal are:

- 1 *The Stewards erred in imposing a penalty which was too severe in all the circumstances of the case and which failed to adequately take into account:*
 - (a) *the degree of provocation under which the offence was committed;*
 - (b) *the Appellant's plea of guilty and his genuine remorse;*
 - (c) *the youth, inexperience and immaturity of the Appellant; and*
 - (d) *the apology to the Stewards.*
- 2 *The Stewards erred in placing the offence into the "very serious" category of offences of its type.*

Particulars

- (a) *The offence was not at the very serious end of offending as it –*

- (i) *did not take place in view of the general public;*
 - (ii) *did not involve any form of physical violence or assault;*
 - (iii) *lacked any degree of premeditation and was completely spontaneous;*
 - (iv) *occurred as a result of provocation from a senior rider which whilst not being a complete defence, constituted a significant mitigating factor; and*
 - (v) *was committed by a young apprentice.*
- (b) *By imposing a penalty which even after the discount allowed was at the upper level for penalties commonly imposed under this Rule, the Stewards fell into error.*

Senior counsel for the appellant tendered the transcript of the Stewards' inquiry into Mr Davies' conduct. This inquiry, which extended over 2 sittings, was held subsequent to Mr Yugovich's inquiry. Eventually it emerged Mr Davies had punched Mr Yugovich in the jockey's room. Mr Davies had previously denied having done so but eventually he admitted it and pleaded guilty to the charge which was subsequently laid against him. This placed the whole factual foundation upon which the Stewards had found Mr Yugovich's offence to be so serious in a different light.

I was supplied the following examples of penalties imposed under ARR175(j):

- 25/11/97 PJ Jennings: 6 months suspension for improper behaviour towards Assistant Racecourse Investigator at Ascot - No appeal
- 19/01/91 AR Oram: 3 months suspension for insulting behaviour towards the Stewards at Kalgoorlie. Appeal dismissed, penalty varied to 1 month.
- 07/04/90 JH Regan: 2 months suspension for improper behaviour towards an official at Kalgoorlie - No appeal.
- 05/12/89 KP Smith: 12 months disqualification for improper behaviour towards an official (whilst mounted steered his horse towards official) at Kununurra - Later varied to 12 months suspension.
- 11/12/88 JM Wulff: 12 months disqualification for insulting behaviour towards officials (swearing at officials in the swab box) at Esperance - Appeal dismissed.
- 06/11/87 AR Taylor: 12 months disqualification for insulting behaviour towards a Steward at Kalgoorlie - Appeal dismissed.
- 07/12/84 IJ Kennedy: 6 months disqualification for improper and insulting behaviour towards the Stewards at Norseman - No appeal.

Taking into account these penalties, coupled with the revelations of the Davies' inquiry, it is clear the penalty imposed on Mr Yugovich was too severe.

At worst Mr Yugovich's aberrant behaviour can be classed as a mid range offence bearing in mind his young age, inexperience, the limited amount of public element associated with it, its spontaneity, the provocation and lack of physical aggression. Further, the Stewards undervalued the undoubted remorse. Clearly, not all mitigating factors were known to the Stewards.

I find the particulars in grounds 1(a) – (d) inclusive and 2(a)(ii) – (v) and (b) are established.



DAN MOSSENSON, CHAIRPERSON

