

DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: LUIGI PASQUINO LUCIANI

APPLICATION NO: A30/08/668

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR P HOGAN (MEMBER)
MR W CHESNUTT (MEMBER)

DATE OF HEARING: 22 MARCH 2007

DATE OF DETERMINATION: 28 MAY 2007

IN THE MATTER OF an appeal by Luigi Pasquino Luciani against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 16 February 2007 imposing a fine of \$5,000.00 for breach of Rule 175(j) of the Australian Rules of Racing.

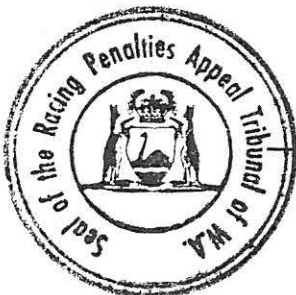
Mr T F Percy QC appeared for Mr Luciani.

Mr R J Davies QC appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

This is a unanimous decision of the Tribunal.

The appeal against penalty is upheld. The penalty imposed by the Stewards be varied by suspending \$2500 of the \$5000 fine for 12 months from the date of conviction on the condition that:

- (a) Mr Luciani provide a written apology to the satisfaction of the Stewards and addressed to Mr Lewis and the other Stewards present on the day of the offence within 2 weeks of the date of this decision.
- (b) Mr Luciani not commit an offence against ARR 175(j) or any similar provision of the Rules during the 12 month period.



Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

THE RACING PENALTIES APPEAL TRIBUNAL

**REASONS FOR DETERMINATION
OF MR D MOSSENSON (CHAIRMAN)**

APPELLANT: LUIGI PASQUINO LUCIANI

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Mr T F Percy QC appeared for Mr Luciani.

Mr R J Davies QC appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

I have read the reasons of Mr P Hogan, Member, and I am entirely satisfied he has accurately and comprehensively summarised the background to the appeal and addressed all relevant considerations. I agree with Mr Hogan's rejection of the grounds of appeal but I would allow the appeal by varying the penalty in the way Mr Hogan has proposed. Having reached those conclusions it would be attractive simply to adopt and endorse the Member's reasons and offer nothing further. However, as this matter is somewhat out of the ordinary it does call for brief comment.

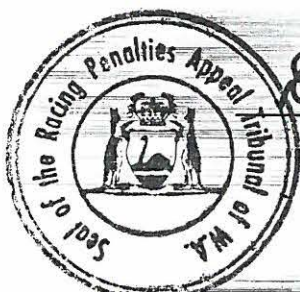
In arriving at appropriate penalties for breaches of the improper behaviour rule (AR 175(j)) an element to be considered is the importance of maintaining public confidence in the racing

industry. The health of the industry always needs to be carefully protected. Events occurring in the weeks preceding the incident and the incident itself may have potential to dent the usual faith and confidence of the public in the sport.

This appeal involves improper behaviour by a licensed person against a senior official. The misconduct in question was by a leading trainer. Mr Luciani addressed the Chief Steward who was officiating at the mid week race meeting at Ascot Racecourse in an aggressive, disparaging and abusive manner in the mounting yard. As is clear from Mr Hogan's reasons the background to and explanation for Mr Luciani's outburst was the trainer's belief the Stewards were in part accountable for the poor standards of riding being experienced at the time. Mr Luciani considered the Stewards were not reacting appropriately to address the ongoing unsatisfactory situation which had implications for the horses Mr Luciani was racing as well as for his son the jockey. From what appears in the transcript of the Stewards' inquiry and as confirmed by supplementary material tendered by senior counsel on behalf of Mr Luciani at the appeal hearing, Mr Luciani was not the only trainer conscious of the situation. In the weeks preceding the offence concerns had been expressed by some trainers and the issue had surfaced in press reports. Those concerns, no matter how sincerely held by the appellant, could not warrant or mitigate his outburst in the mounting yard even allowing for the fact that he was probably emotionally charged because of the danger to his son who had just ridden.

The Tribunal was not offered any explanation for the ongoing poor riding, the mounting concerns and apparent lack of Steward reaction. It is a matter of speculation whether there may have been inadequate communication back to the Stewards of these concerns. Equally it is possible the Stewards may have unwittingly allowed things to develop and had not maintained their usual high standard of control. There are limits to how far the Stewards need to justify or explain their actions or perceived inaction in performing their responsibilities. When key participants in the industry, such as some respected trainers, raise legitimate issues, a timely and effective response by the Stewards would have been more helpful for all concerned.

Having made these general observations I now return to Mr Hogan's reasons. I entirely agree with Mr Hogan that Mr Luciani's conduct in verballing the Chairman of Stewards in the mounting enclosure whilst Mr Lewis was going about his normal duty was totally improper. Such conduct could only have the potential to undermine the Stewards' authority and in turn damage the industry. Despite that and the fact that the appeal in relation to the two separate grounds is dismissed I do agree with Mr Hogan that the substantial merits of this case warrant taking the somewhat unusual step of varying the penalty. I hope Mr Hogan's proposed handling of the penalty will have an appropriate effect on others as well as on Mr Luciani himself. Whether Mr Luciani is prepared to acknowledge the error of his ways, by providing the apology and ensuring that he does not transgress again during the twelve months period, is a matter which the appellant must determine himself.



Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR P HOGAN (MEMBER)

APPELLANT: LUIGI PASQUINO LUCIANI

APPLICATION NO: A30/08/668

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR P HOGAN (MEMBER)
MR W CHESNUTT (MEMBER)

DATE OF HEARING: 22 MARCH 2007

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IN THE MATTER OF an appeal by Luigi Pasquino Luciani against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 16 February 2007 imposing a fine of \$5,000.00 for breach of Rule 175(j) of the Australian Rules of Racing.

Mr T F Percy QC appeared for Mr Luciani.

Mr R J Davies QC appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

INTRODUCTION

On 16 February 2007, the Racing and Wagering Western Australia (RAWWA) Stewards of Thoroughbred Racing opened an inquiry into a report received from the Chief Steward Mr Lewis regarding an incident which occurred after the running of Race 7 the R. M. Williams – Aquanita Stakes over 1600m at Ascot Racecourse on Wednesday, 14 February 2007. The incident concerned words spoken by the Appellant to Mr Lewis, the Chief Steward of thoroughbred racing.

At the conclusion of the investigative part of the inquiry, the Appellant was charged with an offence against Rule 175(j) of the Australian Rules of Racing. That rule is as follows:

"AR.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 Chairman of Stewards particularized the charge. He said at T17:

"Now you're charged under that rule with improper behaviour, the improper behaviour being that you spoke to Chief Steward Mr Brad Lewis in the mounting enclosure following the running of Race 7 the R. M. Williams Aquanita Stakes over 1600m on Wednesday the 15th of February 2007 in an aggressive, disparaging and abusive manner."

The Appellant pleaded guilty. He was fined the sum of \$5000. In handing down the penalty, the Chairman of Stewards said at T24:

"Mr Luciani, the Stewards have considered the matter of penalty and taken into account your submissions in relation to penalty. Firstly, the Stewards view this matter as serious. The Stewards do acknowledge your guilty plea. This was an outburst by a leading trainer on the Chairman of Stewards. Stewards were addressing the incidents at hand and subsequently did so. They were going about their normal duties in an entirely appropriate manner despite repeated requests by the Chief Steward to cease and refrain from your conduct, you chose to ignore this. Mr Lewis also offered you the option of discussing the matter in the Stewards' room, you declined that offer. Your conduct was totally inappropriate and reflected negatively on the image of racing. This incident happened in full public view. Owners, trainers, industry participants and members of the public witnessed this incident. It would have clearly have the potential to bring racing into disrepute. Your record shows that you have a prior conviction, that being in November 2005, a \$200 fine for improper conduct in the mounting enclosure. The Stewards see that any penalty must encompass a deterrent factor both specific and general. Such conduct cannot be condoned and will not be tolerated. You are a mature person and a leader of the industry. Such conduct cannot be repeated. A clear message needs to be sent to the racing industry that such conduct will not be tolerated. The Stewards have considered the penalty options under ARR.196. We do not believe that disqualification is appropriate. The Stewards did consider the matter of suspension of your licence, however, under these circumstances we have determined that a fine to be appropriate. Mr Luciani, after considering all factors, the Stewards are fining you the sum of \$5,000."

THE GROUNDS OF APPEAL

The grounds of appeal are as follows:

"1. The Stewards erred in imposing a penalty which did not or did not adequately take into account the circumstances in relation to the race in question and the personal circumstances of the Appellant.

PARTICULARS

- (a) the race in question was run against a background of increasingly dangerous or careless riding by Perth jockeys at Ascot over a period of some weeks.*
- (b) the Appellant's horse was competing in the race in question and had been placed in a position of significant danger by the careless riding of other riders in the race.*
- (c) the Appellant's outburst towards the Stewards was spontaneous and occurred as a result of his being completely overcome by seeing the situation in which his horse had been placed.*
- (d) in a race immediately preceding the race in question the Appellant's son had been placed in a situation of great danger as a result of the careless and dangerous riding of other riders.*
- (e) the outburst was not justified but the circumstances which led to its occurrence was a*

significant mitigating factor which was not or not adequately taken into account by the Stewards in their assessment of penalty.

- (f) the penalty imposed was as a result manifestly excessive.
2. The Stewards erred by failing to impose a penalty that was commensurate with penalties previously imposed for similar offences and which was manifestly excessive in all the circumstances of the case."

THE EVIDENCE AT THE INQUIRY

Mr Lewis' report was read to the inquiry. It was in the following terms:

"In my position as Chief Steward Thoroughbreds, I was responsible for conducting the meeting held at Ascot racecourse on Wednesday, 14th of February 2007. Following the running of Race 7, the R. M. Williams - Aquanita Stakes, Stipendiary Steward Mr Jason Timperley and I left the Stewards' tower situated adjacent to the winning post to attend to duties in the mounting enclosure. Upon entering this area I was immediately approached by Trainer Mr L. Luciani who spoke to me a loud, aggressive and abusive manner. Mr Luciani accused me of taking no action against riders who cause interference in races and that the Stewards in general are doing nothing to prevent jockeys from riding carelessly. He went on to say that the Stewards continually allow riding of poor quality to go unpunished and that I would see it from another perspective if I had a son as a jockey. I found Mr Luciani's comments very offensive and attempted to placate him on a number of occasions by asking him to settle down and to discuss the matter in the privacy of the Stewards' room later in the day. Mr Luciani ignored my repeated requests and he said several times that he didn't care if he was told to shut up and he was not worried if he was to be fined for his actions. I replied by saying that he should settle himself down and discuss his concerns with the Stewards after the matters he was referring to were dealt with. Mr Luciani continued to use disparaging remarks towards me whilst I dismounted the riders and moved to the weighing in area of the enclosure. His comments continued to be made in a forceful and aggressive manner and another attempt by me to settle him down by saying that the Stewards would be reviewing the race and dealing with the incidents were ignored and the abuse continued. A large number of persons were present in the mounting enclosure at this time and all those within the immediate area would have heard Mr Luciani's abusive remarks. I was shocked and offended by the way in which I was spoken to by Mr Luciani and never in my seventeen year career have I been subject to such a public outburst by a licensed trainer. Although I accept that Mr Luciani's comments may have been emotive, they were a sustained attack on the Stewards and made in a loud, aggressive and abusive manner. I estimated that Mr Luciani's comments extended over a continuous period of several minutes."

Mr Lewis gave oral evidence at the inquiry. He said that it was a high profile mid-week meeting, with a lot of owners and licensed people present. He said that Mr Luciani raised his voice several levels during the incident. Another Steward, Mr Timperley, also gave oral evidence. He described Mr Luciani's comments as "...a sustained verbal attack towards Mr Lewis" (T12). He said that it was in an aggressive manner, and it would have been clearly audible to everyone on the mounting enclosure including officials, jockeys, trainers, owners members of the media and members of the public (T12 – T13). He gave evidence that some of the particular comments made by Mr Luciani were: "I'm sick of these pygmies causing interference" and "...you blokes letting these kamikaze riders out there" (T13).

The Appellant also gave evidence at the inquiry. He said that he did not dispute what Mr Lewis said (T5). He was asked why he behaved in that fashion. In a lengthy explanation, he gave a number of reasons. His son, Dion Luciani, was a rider in a previous race and had received quite substantial interference. In the race immediately following that, Mr Luciani had a horse entered which received interference, by way of another rider going to the front and slowing the pace.

Immediately before the words the subject of the charge, the Appellant had been discussing with another leading trainer the subject of jockeys riding dangerously in those two races, and as well over the previous weeks. The appellant was of the opinion that the Stewards had failed to act to curb what he perceived was dangerous riding. The discussion with the other trainer ended by way of the Appellant being angry. He took out that anger on the Stewards. The Appellant said at T6:

"I was naturally by this stage pretty upset about what was, what was happening and our discussions revolved around the fact that Mr Parnham as leading trainer, had made several

approaches in the Stewards' room over the previous few weeks in regards to interference to his horses, his sons being badly interfered with. In some cases no action, and in one case absolutely no action because of a lack of films. We were getting quite, to use the term 'pissed off' was, was a, would be light way of putting it. We continued into the mounting yard, we were continuing to talk about the, the interference and the apparent lack of action taken by Stewards in our opinion. We continued to talk about the fact that the riders were being allowed to ride in a way that was very much like children being raised, testing the boundaries and unless parents control the boundaries the kids will always test them and that was exactly what was happening, in our opinion, in the racing industry on the racetrack. And so the parents being the Stewards, were not setting stern enough boundaries. This was our general discussion. At this point Mr Lewis came into the mounting yard with Mr Timperley, I believe, and I approached Mr Lewis and I think what he said there, I have my, I think words were to the effect that what is it going to take for you to start taking more severe action, I'm not sure if these exact words, but I know this is the general intent."

At T5, the Appellant was asked whether he disputed the evidence against him:

CHAIRMAN *"So, you don't dispute what Mr Lewis says in any way?"*

LUCIANI *"No, I don't think so. I think he's probably covered it like it happened. I mean it was, yeah, what's there is pretty good, pretty good."*

The Appellant's evidence focussed on what he saw as his justification for acting in the way he did. There was no factual dispute for the Stewards to resolve.

THE APPEAL

At the hearing of the appeal, no submission was made that the Appellant's actions were justified. Rather, the Appellant's grievances were presented as genuine, supported by evidence, and deserving of mitigatory effect in the fixing of a penalty. In addition, the appeal grounds assert that the penalty was manifestly excessive, in that it was not commensurate with penalties previously imposed for similar offences.

Ground 1(a) asserts that there was a *"...background of increasingly dangerous or careless riding by Perth jockeys at Ascot over a period of some weeks."* The Appellant made that assertion at the Stewards hearing. He said at T7:

"I did continue after Mr Lewis, not warned me, but asked me to, to settle down and I believe I was reacting purely and simply to what I was reading as a very dangerous, was becoming totally unacceptable, it was becoming dangerous. We've seen approaches from a number of trainers to Stewards over the past few weeks in relation to interference and the apparent view is of absolutely nothing being done, certainly nothing near on enough being done."

The Chairman of Stewards agreed that riding in the recent past had been of concern, and that the riding on the day of the incident was "disgraceful". The Chairman said at T8:

"Now, the Stewards and I head the Stewards, we have been concerned with the style of riding and that culminated in last Saturday Mr Lewis addressing the jockeys in regards to the standard of riding and I added my comments to it and we outlined what the Stewards intended to do. Now, Saturday was a very good day of riding. There were a few incidents that gave us concern. So the Stewards believe that they might have been on the right track. Wednesday was a disgraceful day and at the end of the day SECRET VAULT did receive severe interference and I've asked Mr Lewis the consequence of that."

At the appeal, the Appellant tendered a number of exhibits in support of his assertion that riding had become increasingly dangerous. Exhibit 3 is an email copy of a newspaper report from 10 February 2007 (before the event). The Chairman of Stewards is reported as saying that jockeys had been racing too tight in recent weeks, and by doing so causing casualties (to horses). Exhibit 1 is a newspaper report after the event in which the Chairman of Stewards is reported as having been concerned about increasingly poor riding since the Perth Racing summer carnival.

These public statements by the Chairman, together with his acknowledgement at the Stewards hearing, mean that there was no dispute between them and the Appellant as to the fact of increasingly dangerous riding. There had been *"...a background of increasingly dangerous or careless riding by*

Perth jockeys at Ascot over a period of some weeks". The other matter of concern to the Appellant, namely his perception that the Stewards had not taken sufficient action to curb the dangerous riding, is not repeated in the grounds of appeal. It needs no further consideration. Grounds 1(b) and 1(d) assert that the Appellant's horse in the race in question had been placed in a position of significant danger by the careless riding of other riders, and that the Appellant's son in the preceding race had been placed in a situation of danger as a result of the careless and dangerous riding of other riders. As to 1(b), the hearing, the Chairman of Stewards agreed that Secret Vault (ridden by the Appellant's son) had received "...severe interference." (T8). As to 1(d), the Chief Steward Mr Lewis said at T9: "Yes, I'd just watched the Aquanita and yes, I was unhappy with the pace, everything to which Mr Luciani was referring to, the Stewards were on top of." There is therefore no dispute between the Appellant and the Stewards on the facts referred to in grounds 1(b) and 1(d).

I would not agree that the Appellant's conduct was spontaneous, as referred to in ground 1(c). The Appellant's outburst towards the Stewards, on his own evidence, was the end result of events which had been going on for a number of weeks. However, it can fairly be said that he was "overcome", or as he described it in his evidence "... my emotions happened to run free" (T14).

There is no doubt that the Stewards did not take the above facts into account in setting the penalty. There is no mention of them in the Chairman's remarks when he was announcing the penalty. However, in my view the Stewards did not have to take them into account, because they were not mitigatory. They do not decrease the Appellant's culpability. The gravamen of the offence committed by the Appellant was the verbal attack on Mr Lewis and the Stewards in their professional capacities. It was calculated to offend the Stewards in the way they carried out their work. The verbal attack was not by way of mere abuse, or foul language, which might be seen as less serious. Further, the riding behaviour which triggered the outburst was known to the Stewards and had already been acknowledged to be of concern. In my opinion, no mitigation is to be found in the facts the subject of ground 1 and the Stewards were correct in not taking those facts into account.

I would not uphold ground 1.

Ground 2 requires an examination of penalties imposed for previous offences of this type. If the penalty imposed in this case is demonstrated to be outside the range of penalties previously imposed for similar offences, then it should be set aside.

In Allen (Appeal No 481), the Tribunal considered an appeal against a fine of \$1000 for a breach of ARR 8(d), which was the previous version of the rule under consideration here. In that case, the Appellant there had abused and threatened the curator of a country track. The fine was reduced on appeal to \$300, after consideration of the range of penalties imposed in cases prior to that. In Davies G.N. (Appeal No 524), the Tribunal again was considering an appeal against a penalty imposed for breach of ARR 8(d). The conduct in question there was verbal and physical abuse, towards an apprentice and another trainer. The fine of \$2500 was reduced to \$1250 on appeal.

A printout of records kept by the West Australian Turf Club going back to 2002 for offences against ARR 175(j) shows that a fine was imposed in the vast majority of cases, with a suspension being imposed in two cases and a disqualification once. Older records, produced on a table supplied by the Stewards, show a similar pattern.

There is a clear pattern in the penalties imposed, the higher fines and the suspensions/disqualifications being imposed where the "victim" of the improper behaviour was an official. For example, in Jennings (Stewards 25/11/97) a stablehand was suspended for 6 months for particularly offensive comments towards an assistant racecourse investigator. In Davies C.M. (Stewards 10/1/02), a jockey was suspended for 1 month verbal abuse to an assistant starter.

In my opinion, that is a proper approach. A more severe penalty is warranted because improper behaviour towards officials tends to undermine their authority and make regulation of the industry more difficult. In this case, there is no doubt that the fine imposed was at top of the range. So far as I can ascertain, it is the highest fine imposed for a breach of ARR 175(j). But the range of penalties includes suspension and disqualification, and a fine is lower down the scale than either of those. When looked at in that light, it is obvious that the fine imposed here is within the range of penalties commonly imposed.

What made this offence more serious, and deserving of a severe fine, was the nature of the particular offence. As noted above, the offence committed by the Appellant was a verbal attack on Mr Lewis and the Stewards in their professional capacities. It was not mere abuse.

I would not uphold ground 2.

DECISION ON APPEAL

Despite the grounds of appeal not being made out, I would in the circumstances of this case vary the penalty. I would suspend half the amount of the fine for 12 months from the date of his conviction on condition that the Appellant initially provide a written apology to Mr Lewis and the other Stewards present on the day, and then not commit an offence against ARR 175(j) or any similar provision of the Rules for the 12 month period. I reach that conclusion because the substantial merits of the case require it.

In the course of committing the offence, the Appellant challenged the Stewards to deal with him as they did. As Mr Lewis' report said at T2: "...Mr Luciani ignored my repeated requests and he said several times that he didn't care if he was told to shut up and he was not worried if he was to be fined for his actions". Even more, the Appellant himself suggested that he be fined. As Mr Lewis said at T4: "Yeah, that's right. Mr Luciani, I think he may have even suggested it himself that he should be fined and that didn't worry him, he just kept continuing." The incident went on in the presence of other licensed persons, who therefore were well aware of the Appellant's attitude towards being fined. In those circumstances, the imposition of the fine loses some of its effect as a deterrent to others.

What is needed is a penalty which will be a deterrent to others and to the Appellant himself. If the Appellant accepts the financial benefit of the period of suspension on good behaviour, it will be a deterrent to others because the clear message is that he has retreated from the challenging position he adopted during the incident. That will be reinforced by the written apology, and that is why I have included it as part of the condition of suspension. As to personal deterrence, there is the obvious fact that if the Appellant does not offend during the period of suspension, he stands to keep his \$2500. He will have a strong motive not to offend again.

It may be that the Chairman of Stewards had in mind the possibility of a suspension of the fine or part of it, when he asked the Appellant (T22) whether he could give an assurance that it wasn't going to happen again. The Appellant gave no firm commitment in answer to the Chairman's question. Notwithstanding that reluctance, the Appellant should be given the chance to redeem himself and take the benefit which will follow from an apology and continued good behaviour.

CONCLUSION

I would allow the appeal. I would vary the penalty in the following way:

\$2500 of the fine be suspended for 12 months from the date of conviction on condition that:

- (a) the Appellant provide a written apology to the satisfaction of the Stewards and addressed to Mr Lewis and the other Stewards present on the day, within 2 weeks of the date of this decision.
- (b) the Appellant not commit an offence against ARR 175(j) or any similar provision of the Rules for the 12 month period.



PATRICK HOGAN, MEMBER

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR W CHESNUTT (MEMBER)

APPELLANT: LUIGI PASQUINO LUCIANI

APPLICATION NO: A30/08/668

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Mr T F Percy QC appeared for Mr Luciani.

Mr R J Davies QC appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

I have read the draft reasons of Mr P Hogan, Member.

I agree with those reasons and conclusions and have nothing further to add.



WILLIAM CHESNUTT, MEMBER