APPEAL NO. 811

RACING PENALTIES APPEAL TRIBUNAL DETERMINATION

APPELLANT:	**DYLAN QUADRIO**
APPLICATION NO:	**A30/08/811**
PANEL:	**MR P HOGAN (ACTING CHAIRPERSON)** **MR AE MONISSE (MEMBER)** **MR R NASH (MEMBER)**
DATE OF HEARING:	**4 MAY 2018**
DATE OF DETERMINATION:	**8 JUNE 2018**

IN THE MATTER OF an appeal by DYLAN QUADRIO against the determination made by the Racing and Wagering Western Australia Stewards of Harness Racing (RWWA Stewards) on 7 March 2018, disqualifying him for a period of 9 months for a breach of RWWA Harness Rule of Racing 240(c).

Mr S Quadrio appeared for Mr Quadrio.

Mr D Borovica appeared for the RWWA Stewards.

Introduction

1. Dylan Quadrio, the Appellant, is a licensed trainer under the Racing and Wagering Western Australia Rules of Harness Racing ("Rules").

2. By notice of appeal dated 19 March 2018, the Appellant appealed to this Tribunal against the penalty imposed by the RWWA Stewards ("Stewards") on 7 March 2018 in which they disqualified the Appellant as a trainer for a period of 9 months for a breach of rule 240(c) of the Rules.

3. Rule 240(c) is in the following terms:

> *'A person shall not, whether alone or in association with others, do, permit or suffer anything before, during or after a race which in the opinion of the Stewards or Controlling Body:-*
>
> *....*
>
> *(c) is improper.'*

4. The particulars of the charge were as follows:

> *'[The Appellant] did send a text message to [Isaac Edwards, the driver of the horse Our Big Slow] in relation to race 7 at Kellerberrin on 22nd October 2017 with intent to influence his driving tactics in a manner that would have assisted [the Appellant's] runner which in the opinion of the Stewards was improper."*

5. The Appellant pleaded guilty to the charge.

6. The Appellant appeals against the severity of the 9 month disqualification contending in his grounds of appeal that it is "incredibly severe". Accordingly, as I see it, the question for this Tribunal is whether the penalty of 9 months disqualification imposed by the Stewards is manifestly excessive.

7. Mr Shane Quadrio Snr, the Appellant's father, was granted leave by the Tribunal to appear for the Appellant at the hearing of the appeal. Mr Quadrio Snr ably presented the appeal on behalf of the Appellant.

8. The Stewards were represented by Mr Denis Borovica, the Chairman of Stewards and General Manager of Racing Integrity in WA, who (as always) presented the Stewards' case articulately and succinctly.

Background

9. The Appellant is 30 years of age.

10. Until his disqualification he had four (4) horses in work, being family owned horses. He is a hobby trainer and has employment outside the Harness Racing Industry with his father's business, 'Jim's Test & Tag".

11. The Appellant, until his disqualification, trained the horses from a property owned by his father in Henley Brook. He has been involved as a trainer for some 10 years.

12. On 22 October 2017, the Appellant sent a mobile phone text message to Isaac Edwards, who was the driver engaged for the drive, OUR BIG SLOW, in Race 7 at Kellerberrin which was to be run later that day. The Appellant was the trainer of another horse being driven in that race, EXTREME TIMES.

13. The text message was in the following terms:

> *'You gonna hand up with the bigslow?*
>
> *Just thought I would ask because I said the same thing to ya when you drove nothing in between and my horse sat outside it and crunched it the whole way and my hose is only going to sit outside you and crunch you into the ground again.*
>
> *But if you hand up this time at least you have a chance of still beating us due to the sprint lane.*
>
> *I am only telling ya this as I Not trying to be a cunt but that's the way the horse has gotta run so yeah thought I would do the righty and message ya before the races'*

14. Isaac Edwards was 20 years of age at the time and it was common ground that he was a relatively inexperienced driver in harness racing. He knew the Appellant from involvement in the industry, but they didn't know each other well. The Appellant told the Stewards during the course of the Inquiry on 1 March 2018:

    a. that he knew Mr Edwards,
    b. they were not friends but merely acquaintances,
    c. they both used the same track at Wanneroo for track work,
    d. that Edwards had driven a horse for him previously,
    e. he was aware Edwards was an inexperienced driver; and
    f. that he was aware that '[Edwards had] some personal and mental sort of issues'.

15. There had been an earlier conversation between the Appellant and Edwards prior to a race at Gloucester Park on 6 October 2017 in which race Edwards' drive, NOTHING IN BETWEEN, had drawn the front. The Appellant admitted he had approached and said to Edwards prior to the Gloucester Park race that he was hoping to draw his drive alongside

and eye ball him the whole way. That was the significance of the reference to NOTHING IN BETWEEN in the text message sent to Edwards on 22 October 2017 prior to the race at Kellerberrin.

16. At the hearing of the appeal the Tribunal received into evidence as Exhibit A, a note that we were told had been written by Isaac Edwards. In the note, Mr Edwards referred to the two incidents and said understood that the Appellant's purpose was to explain to him why his horse would be driven in the manner proposed, namely to give the Appellant's horse the best chance of winning and that he didn't want Edwards to have any ill-feeling about it. Edwards stated that he did not consider there was any malice on the part of the Appellant and said he did not feel intimidated or threatened by the text message.

17. The Appellant cooperated with the Stewards in their investigation of the matter. He accepted that the text message was improper and said he regretted having done it.

18. Although he was reluctant to do so, the Appellant did on my reading of the Stewards Inquiry transcript concede that his intention was to influence the result of the race by sending the text message. At page 21 of the transcript there is the following exchange between the Chairman and the Appellant:

> *Chairman*
> *'What were you hoping would be the outcome of having sent this message?*
>
> *Appellant*
> *'Well I guess I was hoping that he would hand up and I get the front and I'd have a better chance of winning the race….'*

19. The Appellant did go on to say that he did not think that Edwards would accede to what he was asking in the text and that he still expected that Edwards would lead the race. However, that that doesn't, in my opinion, detract from his stated intention in sending the text.

20. Having pleaded guilty to the charge, the Appellant emphasised to the Stewards, the following matters in relation to the issue of penalty:

    a. he had pleaded guilty to the charge and cooperated with the Stewards;

    b. that he made a mistake which he regretted;

c. that apart from a couple of "misdemeanours" he contended that he had a good record in upholding the rules of the harness racing over the 10 years he had been involved;

d. he was 30 years of age, had a partner and four (4) young children to care for;

e. he had substantial financial commitments and was suffering financial stress;

f. he had already suffered an extrajudicial financial penalty because when he handed his mobile phone over the Stewards during the investigation he had not been able to organise work for the rest of the week and had, as a result, suffered a loss of income;

g. he would prefer to "cop time away" rather than be financially burdened with a fine; and

h. the Harness Form Analyst, Mr Styles, had concluded that the Appellant's actions had not had an impact on the running or outcome of race 7 at Kellerberrin or in respect of the betting on the race.

Stewards Penalty Reasons

21. The Stewards published comprehensive written penalty reasons which were attached to a letter sent to the Appellant dated 7 March 2018.

22. The Stewards noted that the Appellant did not have the benefit of a blemish free record. There were three convictions for breaching the rules; one being a TCO_2 violation for which he was disqualified for 6 months in 2012; another involved the presentation of a horse with phenylbutazone for which he received a $5000 penalty in 2007; and a third involved him being involved in a verbal altercation in 2010 for which he was removed from the premises at Gloucester Park and was fined $1,500 of which $1,000 was suspended.

23. The Stewards (amongst other things) said they had regard to the following mitigating factors in determining the appropriate penalty:

a. the Appellant was 30 years of age and spent a significant portion of his time involved in the harness racing industry;

b. the Appellant pleaded guilty immediately on being charged;

c. his involvement was at the hobby level and he had 4 horses in work;

d. he had various financial commitments and was suffering from financial stress;

e. to his credit, he had fully cooperated with the Stewards in their investigation and was honest and frank in the way he presented before the panel of Stewards;

f. Edwards had not acted on the text and the race outcome was not affected; and

g. there was no unusual betting on the race.

24. In considering the appropriate penalty, the Stewards also made observations to the following effect:

a. the fact that the text message did not result in the race being affected was more good luck than good management since it was the decision of Edwards not to let it influence the way he drove that meant it had no impact;

b. such a text is not a "good look" for the harness racing industry;

c. the industry relies on public confidence that the racing is fair;

d. the terms of the text were such that they had the potential to intimidate an inexperienced driver like Edwards whose age and inexperience made him vulnerable to act on such a text and alter his racing tactics;

e. the sending of texts of the kind the Appellant sent gives rise to the potential for race fixing;

f. there were no precedent cases of particular assistance to guide the Stewards in respect of their assessment of the appropriate penalty. Accordingly, the Stewards were to act having regard to their combined industry experience and expertise as to where they saw the offending sat within the overall scheme of offences and its potential to damage the industry;

g. there was a need to set a penalty not only for personal deterrence but also general deterrence and denunciation of what the Stewards considered was a serious offence; and

h. although the Stewards did not consider a fine an appropriate penalty, they noted that any fine would have to be substantial to reflect the seriousness of the offending and in view of the financial circumstances of the Appellant and his stated preference for a suspension or disqualification over a fine, a fine was not a viable option as a penalty.

25. The Stewards concluded that a disqualification was the only appropriate penalty having regard to the seriousness of the offence. They considered a disqualification of up to 12 months to be the range and after taking into account the level of cooperation and other

factors in the Appellant's favour, concluded that the appropriate penalty in all the circumstances was a disqualification of 9 months.

The Appeal

26. At the hearing of the appeal, Mr Quadrio Snr endeavoured to emphasise that the Appellant's purpose in sending the text was to explain why he needed to drive his horse in the manner proposed with the aim of avoiding ill-feeling on the part of Edwards towards the Appellant (and the Quadrio family). He tendered the letter from Edwards, Exhibit A, which is referred to above. He described the hardship that the penalty has given rise to for the Appellant and the difficulties it presents in that he cannot attend his parents' property with his partner and children.

27. Mr Quadrio Snr, referred the Tribunal to a decision of the Victorian Stewards in the matter of Brad Angrove dated 5 April 2018. In that case Mr Angrove pleaded guilty to a charge under rule 240(c). The allegation was that Mr Angrove had before a race approached another driver, whose drive had drawn to the immediate inside of his drive, in order to ascertain the other driver's race tactics which the Stewards said led Mr Angrove to change his race tactics. The Stewards noted that Mr Angrove had a clear record, had fully cooperated, pleaded guilty, and was considered by the Stewards as still being relatively inexperienced. In that case the Stewards suspended Mr Angrove's licence to drive for a period of 3 months emphasising that such conduct was serious and there was a need for the wider industry to understand that it was unacceptable.

28. It is apparent from the fairly brief Steward's report that Mr Angrove's conduct was not directed at trying to pressure another driver to change his tactics in order to gain an advantage. In my view this is a significant and material distinction.

29. Although this Tribunal respects the standing and judgment of the Victorian Stewards, a decision of the Victorian Stewards has the same standing in Victoria as a decision of the RWWA Stewards has in Western Australia. Accordingly, such a decision is likely to have little persuasive influence on this Tribunal if it is at odds with an approach adopted by the RWWA Stewards in a matter we are considering on appeal relating to the racing industry in Western Australia.

30. Mr Quadrio Snr referred to the personal and financial hardship the Appellant has suffered as a result of the disqualification and the strain it has put on his relationship. Mr Quadrio Snr said that he has now been granted a trainers licence and would like to be able to

employ the Appellant as a stable hand which would be possible if the penalty was reduced to a suspension rather than a disqualification. He indicated that when the Appellant was training the horses he paid him $250 per week which he no longer receives now he is disqualified.

31. In response, Mr Borovica argued that the Stewards decision on penalty should not be readily dislodged and that there was a need for general deterrence in cases like this. He said that the Stewards had taken a number of steps the alleviate the hardship for the Quadrio family by allowing Mr Quadrio Snr to train the horses and also to allow the Appellant to attend the property at limited times in order to undertake his work duties with his father's business, Jim's Test and Tag. Further, Mr Borovica said there was no impediment on the Appellant's partner bringing the children to the property to visit and spend time with their grandparents.

32. Mr Borovica said that it was important in terms of general deterrence and the message being sent to the industry, that the Appellant be seen by other members of the industry to be out of it for a period. If he were able to act as a stable hand that would effectively allow him to become involved again and to attend races. That would send the wrong message to the industry.

Approach to the Appeal

33. In determining any appeal, the Tribunal is required to act according to *"...equity, good conscience and the substantial merits of the case", (s 11(1)(b) of the Racing Penalties (Appeals) Act 1990*).

34. The approach that this Tribunal is to take in reviewing discretionary judgments of the Stewards was the subject of analysis by Murray J in *Danagher v Racing Penalties Appeals Tribunal (1995) 13 WAR 531 at 554.* In that case, Murray J said that the Tribunal should approach the matter in the same way as an appellate court would review a discretionary judgment of a lower court where the appeal is by way of rehearing. In this respect he referred to the decision in *Australian Coal and Shale Employees Federation v Commonwealth (1953) 94 CLR 612 at 627,* where Kitto J said:

> *'the manner in which appellate jurisdiction is exercised in respect of decisions involving discretionary judgment is that there is a strong presumption in favour of the correctness of the decision appealed from, and that that decision should*

therefore be affirmed unless the court of appeal is satisfied that it is clearly wrong. A degree of satisfaction sufficient to overcome the strength of the presumption may exist where there has been an error which consists in acting upon a wrong principle, or giving weight to extraneous or irrelevant matters, or failing to give weight or sufficient weight to relevant considerations, or making a mistake as to the facts. Again, the nature of the error may not be discoverable, but even so it is sufficient that the result is so unreasonable or plainly unjust that the appellate court may infer that there has been a failure properly to exercise the discretion which the law reposes in the court of first instance'

35. This Tribunal will not merely substitute its own opinion for that of the Stewards simply because it may disagree with the Stewards' opinion as to what the appropriate penalty ought to be. The Stewards' deep understanding of the industry and how actions of its participants impact the industry and perceptions of the industry, are matters which are accorded considerable weight by this Tribunal. However, if it is demonstrated that a penalty imposed by the Stewards is manifestly excessive, or if the Stewards have misdirected themselves in some material way, or their decision has been the product of taking into account an irrelevant consideration or of a failure to take into account relevant consideration, then it is open for this Tribunal to reconsider the Stewards' determination of the penalty imposed. That is consistent with the approach that appeal courts take in reviewing criminal sentences on appeals: *Dinsdale v R [2000] HCA 54 at 57 to 58,* and reflects what has been said in numerous previous decisions of this Tribunal.

Conclusion

36. Although I have some sympathy for the fact that the Appellant is presently experiencing significant hardship as a consequence of the penalty which has been imposed, I cannot see any error in the approach to penalty taken by the Stewards and am not satisfied that the penalty they imposed is demonstrated to be manifestly excessive. Further, I note that the Stewards, to the extent they reasonably can, have endeavoured to mitigate some of the consequences of the penalty by allowing the Appellant to attend the property (at limited times) for the purposes of his usual employment and have granted a training licence to Mr Quadrio Snr so that the horses on the property can continue to be trained

37. In my view, the appeal against penalty should be dismissed.

ROBERT NASH, MEMBER

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RACING PENALTIES APPEAL TRIBUNAL
REASONS OF DETERMINATION OF MR AE MONISSE (MEMBER)

APPELLANT:	**DYLAN QUADRIO**
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Mr S Quadrio appeared for Mr Quadrio.

Mr D Borovica appeared for the RWWA Stewards.

I have read the draft reasons of Mr R Nash, Member.

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

A C Monisse

ANDREW MONISSE, MEMBER

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RACING PENALTIES APPEAL TRIBUNAL
REASONS OF DETERMINATION OF MR P HOGAN
(ACTING CHAIRPERSON)

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

Seal of the Racing Penalties Appeal Tribunal of WA

PATRICK HOGAN, ACTING CHAIRPERSON