

RACING PENALTIES APPEAL TRIBUNAL DETERMINATION

APPELLANT: JASON CAVALLARO

APPLICATION NO: A30/08/812

PANEL: MS K FARLEY SC (CHAIRPERSON)

DATE OF HEARING: 11 JUNE 2018

DATE OF DETERMINATION: 29 JUNE 2018

IN THE MATTER OF an appeal by JASON CAVALLARO against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing to impose a \$1,000 fine, with \$500 suspended for two years, for breach of Rule 175(q) of the Australian Rules of Thoroughbred Racing.

Mr J Cavallaro appeared in person.

Mr B Lewis represented the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

1. On 21 March 2018, Stewards wrote to the appellant Mr Cavallaro following enquiries held by Stewards Mr B Lewis and Mr H Taylor on 5 February 2018 and 16 March 2018. In that letter, Stewards advised Mr Cavallaro that they had found him to be guilty of an offence under ARR 175(q) insofar as he had been found to have engaged in improper conduct in relation to Mr Patrick Corbett.
2. ARR 175(q) states:

'The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise:

(q) any person who in their opinion is guilty of any misconduct, improper conduct or unseemly behaviour.'

3. Following a hearing as to penalty on 28 March 2018, Stewards again wrote to Mr Cavallaro on 29 March 2018 advising that the Stewards had decided to impose a fine of \$1,000, with \$500 of this amount being suspended for a period of two years on the condition that Mr Cavallaro did not breach any of the conduct related Rules during that period. Mr Cavallaro was advised of his right of appeal to the Racing Penalties Appeal Tribunal.
4. By appeal notice dated 3 April 2018, Mr Cavallaro lodged an appeal in the Tribunal. The grounds of appeal as stated in Mr Cavallaro's notice of appeal are:

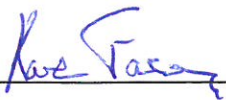
'(1) The stewards did not interview my witnesses; and

(2) The complainant lied numerous time (sic) in his complaint at the enquiry and this was not taken into consideration.'
5. The appeal was heard by the Tribunal on Monday 11 June 2018. Mr Cavallaro represented himself and Mr B Lewis represented the Stewards.
6. At the hearing of the appeal, Mr Cavallaro confirmed that his main complaint was in relation to his conviction for improper conduct under the Rule. Whilst initially he indicated that he also had difficulty with the penalty imposed upon him, it transpired that Mr Cavallaro was of the view that, if he had in fact been guilty of the breach of the Rule as suggested, he should have received a more severe penalty.
7. The matters leading up to the conduct giving rise to the Steward's inquiry commenced on Friday 15 December 2017 when tragically and unexpectedly, Mr Cavallaro's father, a licensed trainer, passed away.
8. During the course of that weekend, Mr Cavallaro, who was a licensed stable employee was caring for a horse previously trained by his father, FreeCell. FreeCell had a crack in his heel and Mr Cavallaro was involved in the treatment and care of the horse.
9. On 18 December 2017 Mr Cavallaro, his mother, his brother and his sister were in meetings in the morning to plan for Mr Cavallaro Senior's funeral arrangements. At some time during the morning, Mr Cavallaro left the property to run some errands, including attending RWWA Head Offices in relation to the horse FreeCell. It appeared that there was some issue with the ownership or changes of ownership of that horse at the time which was causing some difficulty in allowing it to be presented for racing.

10. What follows is a summary of what occurred thereafter insofar as it was undisputed by Mr Cavallaro.
11. Mr Cavallaro attended the RWWA office and spoke to Mr Lewis at some length, during the course of which he appeared to Mr Lewis to be in a sad and sombre mood.
12. At some point during the morning, having attempted to contact some of the connections of FreeCell, Mr Cavallaro had a telephone conversation with Mr Corbett.
13. That discussion did not go well and upset Mr Cavallaro. Mr Cavallaro advised Mr Corbett to arrange for someone to collect FreeCell from his father's property in a short time period.
14. It would appear that, following that conversation, Mr Corbett not only arranged for Ms Monica Tyson, a licensed trainer, to collect the horse but took it upon himself to also attend at Mr Cavallaro's property. He was at the very least directly outside of Mr Cavallaro's parents' home, if not physically on the property.
15. When Mr Corbett arrived, Mr Cavallaro was not present and Mr Cavallaro's sister, Ms Sonia Taylor, attempted to contact him as she and her mother were unaware of the arrangement to collect the horse that Mr Cavallaro had imposed upon Mr Corbett during the course of the telephone discussion.
16. Shortly thereafter, Mr Cavallaro arrived home and was, understandably, given the nature of the prior telephone conversation, upset to find that Mr Corbett himself had arrived at the property and that his sister and his mother appeared to be confused and upset.
17. Words were exchanged between the two men, they drew physically close to one another, and Mr Cavallaro pushed Mr Corbett, causing him to take a couple of steps backwards. Mr Corbett then left the property in his motor vehicle, and Mr Cavallaro immediately accompanied Ms Tyson to collect FreeCell and to provide her with information as to the horse's care and feeding, etc.
18. Mr Corbett thereafter made a complaint to Stewards (as well as, it would appear, the police). At the enquiry on 5 February 2018, Mr Cavallaro immediately admitted to pushing Mr Corbett once. Stewards heard evidence from Mr Cavallaro and also Ms Tyson and read into evidence a statement of Ms Sonia Taylor and also of Mr Corbett.

19. At the hearing recommencement on 16 March 2018, Mr Cavallaro gave further evidence and Mr Cavallaro's solicitor, Mr Yin, was able to cross examine Mr Corbett on his statement. It was after that hearing that Stewards advised Mr Cavallaro of the finding of guilt and thereafter the hearing of 28 March 2018 was solely relevant to the penalty to be imposed.
20. For the purpose of this appeal, it is not necessary for the Tribunal to make a finding further than those uncontested facts as to what actually occurred on the day of the 18 December 2017 between Mr Cavallaro and Mr Corbett. On the basis of the undisputed facts, I am of the view that it was open to the Stewards to make a finding that Mr Cavallaro's conduct or behaviour was improper or unseemly for the purposes of ARR 175(q). This Rule is particularly broad and covers a wide range of behaviour which may be of quite different degrees of seriousness. It is in the Tribunal's opinion, at the very least unseemly behaviour for licensed persons associated with the industry to be pushing and shoving one another in or close to a public street.
21. I note in passing that the behaviour may of itself have offended against ARR 175(A) which states:
- 'any person bound by these Rules who either within a race course or elsewhere in the opinion of the Principal Racing Authority (or the Stewards exercising powers delegated to them) has been guilty of conduct prejudicial to the image, or interests, or welfare of racing may be penalised.'*
22. Again, behaviour involving pushing and shoving between licensed persons or persons involved in the racing industry could well be seen to be prejudicial to the image of the industry.
23. There is certainly precedent for persons being charged and convicted and penalised under this Rule for similar behaviour both on and off the race course.
24. Dealing with Mr Cavallaro's particular grounds, I find that, although the Stewards did not interview the witness Ms Taylor, her written statement was read into the transcript and she confirmed at the hearing of the appeal that it contained her full recollection of events. I am of the view that had she given oral testimony at the inquiry, the matter would have been taken no further.

25. The only other potential witness would have been Mr Cavallaro's mother. At none of the hearings did Mr Cavallaro ask to have his mother give evidence. In any event, it would appear that she would have given evidence similar to that of Ms Taylor.
26. In relation to Mr Cavallaro's second ground of appeal, namely that the complainant 'lied' and that this was not taken into consideration, the Tribunal finds it impossible to decide the truth or otherwise of that allegation. Stewards heard evidence from both Mr Cavallaro and Mr Corbett and were themselves unable in relation to some matters to decide which was correct and which was not. As the Stewards say on numerous occasions, this was a highly charged situation at a time when Mr Cavallaro was grieving the recent demise of his father and was understandably upset, particularly when he had made it clear to Mr Corbett that he wished someone else to collect the horse and then arrived home to find Mr Corbett on or near his property.
27. Whilst Mr Cavallaro was perhaps justifiably upset and angry and may well have been provoked by Mr Corbett's presence on or near his father's property, I have no doubt that in pushing Mr Corbett, his conduct was improper or his behaviour unseemly for the purpose of the Rule. The Tribunal would therefore dismiss the appeal against conviction.
28. In relation to the penalty, given Mr Cavallaro's comment at the hearing of the appeal, and having heard from Mr Lewis in relation to penalties generally, the Tribunal would also not interfere with the penalty imposed by the Stewards. The Tribunal therefore takes no further action in relation to the penalty imposed.
29. In so doing, I would comment that I would believe it is highly unlikely that Mr Cavallaro will run the risk of incurring the further suspended penalty. This was a breach of the Rules that occurred at a time when, and in circumstances in which, his normal good sense and mild manners were greatly compromised. The ensuing inquiries have clearly had a significant impact upon him. I am confident that he is unlikely to behave in a similar manner in the future.



KAREN FARLEY SC, CHAIRPERSON

