

DETERMINATION AND REASONS FOR DETERMINATION OF  
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT:                      **KEVIN PLUNKETT**  
APPLICATION NO:              **A30/08/296**  
PANEL:                              **MR D MOSSENSON (CHAIRPERSON)**  
DATE OF HEARING:              **21 MAY 1996**

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**IN THE MATTER OF an appeal by Mr K Plunkett against the determination made by Western Australian Turf Club Stewards on 19 February 1996 imposing a fine of \$400 under Rule 175(j).**

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Mr P Jordan was granted leave to represent the appellant.

Mr R J Davies QC represented the WA Turf Club Stewards.

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This matter arises out of a complaint made by the Chairman of the Western Australian Turf Club, Mr Wilson Tuckey, in relation to Mr Plunkett's conduct which occurred at trackwork at Ascot Racecourse on the 30 December 1995. The Stewards enquired into the complaint on 12 January 1996 and 19 February 1996.

According to Mr Tuckey, around 6.30 am on the day in question, whilst Mr Tuckey was outside the Racecourse coffee area conducting a conversation with someone, Mr Plunkett came up to Mr Tuckey and stated words to the effect that "*if you ever remove my ropes again I'll knock your bloody head off.*" At the inquiry Mr Tuckey told the Stewards that he "*... found that quite a threatening remark...*".

During the inquiry Mr Tuckey explained that it was part of his duty to ensure that decisions of the Committee were implemented. As Mr Tuckey recalled matters the decision of the Committee not to allow tie ropes to be left overnight in the stalls was taken under the chairmanship of Mr Bob Peters.

After admitting to the Stewards that he did say to Mr Tuckey "*if you ever touch my gear again I'll knock your bloody head off*", Mr Plunkett explained that:

*"... he can take that as a threat, he can take it how he likes, but in (sic), I spoke to Mr. Tuckey as I would to any Stablehand who removed my gear, or any other common thief that stole it and I am not in the habit of spending money on leads and in such for Mr. Tuckey to steal."*

The Stewards charged Mr Plunkett with a breach of Rule 175(j) of the Rules of Racing. That Rule states that:

*“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 laid by the Stewards against Mr Plunkett were that:

*“In the Stewards opinion you spoke to and conducted yourself in an aggressive and offensive matter towards the Chairman of the WA Turf Club Mr. Wilson Tuckey at Ascot track work on the morning of 30 December 1995.”*

In response to the charge Mr Plunkett stated *“... I didn't insult Mr. Tuckey as the Chairman of insulted (sic) him as a Strapper as I told in the evidence.”*

Mr Plunkett was convicted and a penalty of \$400 was imposed. The penalty was reduced by \$100 on the basis that it was necessary for Mr Plunkett to purchase some replacement ropes for those which were not ultimately able to be returned to him by the Turf Club.

The grounds of appeal are that:

*“The Stewards denied the Appellant natural justice in hearing and considering the charge against him in that it might reasonably be suspected that the Stewards could not act impartially.*

*The Stewards incorrectly interpreted Rule 175(j) to apply to the Appellant's behaviour in that there was no evidence that the Complainant, Charles Wilson Tuckey, was acting in relation to his duties as a member of the Committee of the Western Australian Turf Club.*

*The Stewards incorrectly applied Rule 175(j) in considering the behaviour in question as improper in that such a finding was against the evidence and the weight of the evidence.*

*The penalty imposed was in all the circumstances excessive.”*

Senior Counsel for the Stewards argued that it is clear from the transcript that the appellant was not only attacking the Chairman of the Turf Club whom he accused of *“pinching his gear”* but also attacking the integrity of the Stewards by asserting that *“I've heard about a bloody kangaroo court and now I've sat in one. Mate this is a joke.”* I agree with that argument just as I agree that there is no one else empowered by the Rules of Racing to hear Mr Tuckey's complaint other than the Stewards of the Turf Club. The Stewards clearly have an obligation under the Rules to perform their duty irrespective of the special relationship that does exist between them and Chairman of the Turf Club. There is nothing to suggest from a close examination of the transcript of the Stewards' inquiry

or from the submissions put to me on Mr Plunkett's behalf that the Stewards were in any way inhibited or intimidated by the presence of Mr Tuckey at the inquiry.

Whilst from some viewpoints it could be said that Mr Tuckey's behaviour in relation to the tie ropes was somewhat unorthodox, I am satisfied that Mr Tuckey was acting within the scope of his authority as Chairman and that he had the affairs of the industry in mind when he took it upon himself to assist the administration of a policy which one might normally have expected to be left to others.

In order for discipline to be maintained in the racing industry the Rules clearly envisage that "... *at any time...*" members of the Committee in relation to their duties shall be immune from insulting and threatening behaviour of the type which occurred here.

The transcript reveals that the Stewards carefully conducted their inquiry and gave Mr Plunkett all reasonable opportunity to explain his position and to present such evidence as he considered appropriate. From the viewpoint of natural justice and Mr Plunkett's rights there was nothing untoward or adverse that occurred at the inquiry.

I am satisfied that at the time Mr Tuckey took action in relation to the tie ropes and later that morning while engaged in conversation outside the coffee area that he was acting as a member of the Committee. I am satisfied the Stewards have correctly interpreted and applied Rule 175(j) to the relevant facts.

Nothing of substance was put to me to support the first three grounds of appeal.

I am satisfied that the penalty was not excessive in the circumstances bearing in mind the language used, the serious and threatening manner in which it was communicated and the complete lack of remorse on Mr Plunkett's behalf weeks later at the Stewards' inquiry. Due allowance appears to have been made by the Stewards as compensation for lost ropes.

For these reasons the appeal fails and is dismissed.

The fee paid on lodgement of the appeal is forfeited.



DAN MOSSENSON, CHAIRPERSON

8 / 7 / 96

