

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF
MR D MOSSENSON (CHAIRPERSON)

APPELLANT: DANIEL STAECK
APPLICATION NO: A30/08/555
PANEL: MR D MOSSENSON (CHAIRPERSON)
DATE OF HEARING: 22 JANUARY 2002
DATE OF DETERMINATION: 22 JANUARY 2002

IN THE MATTER OF an appeal by Daniel Staeck against the determination made by the Stewards of the Western Australian Turf Club on 30 December 2001 imposing 8 weeks suspension for breach of Rule 83(a) of the Australian Rules of Racing.

Mr T F Percy QC, assisted by Mr M N Caratti, instructed by J F O'Halloran, Solicitor, appeared for the appellant.

Mr W J Delaney appeared for the Stewards of the Western Australian Turf Club.

This is an appeal against the severity of the penalty imposed by the Stewards of the Western Australian Turf Club in relation to an incident that occurred in the Jockeys' Room following the running of Race 5 at the Bunbury Turf Club on 30 December 2001. A short Stewards' inquiry took place after the meeting. The Stewards then deliberated. Mr Staeck was called back in. Rule 83(a) of the Australian Rules of Racing was read to Mr Staeck. That Rule states 'every jockey or apprentice may be punished if he misconducts himself in any way'. The Chairman of the inquiry then went on to say to Mr Staeck:

'After considering the evidence tendered to this stage of the Inquiry, Stewards feel you have a charge under the provisions of that Rule. The specifics are that following the running of Race 5 at Bunbury this afternoon, you misconducted yourself in the Jockeys' Room by punching Apprentice Giadresco in the head on several occasions.'

Mr Staeck pleaded guilty to the charge. After hearing submissions from the appellant in respect of penalty the Chairman announced the decision of the Stewards in these terms:

'In considering a penalty here, we've deliberated long and hard. This in our view is a most serious offence. It involved an Apprentice having his first race ride. In our view it is totally unacceptable that such behaviour by a senior Jockey occur in the Jockeys' Room, or anywhere for that matter. The incident occurred in full view of other riders and inexperienced apprentices and as such portrayed a very poor image. Against that you have acknowledged your guilt, you are remorseful and have apologised to Apprentice Giadresco for your conduct. It is a first offence of this nature and we acknowledge that it was out of character. However, as I stated we do see this as a most serious offence that's in the upper echelon of severity and the penalty should reflect that. Accordingly we are imposing a suspension of your licence for a period of eight weeks.... Now in conceding that we are mindful of the major inconvenience that would have occurred to the connections of your Perth Cup mount FINITO had the penalty commenced immediately...'

Mr Staeck lodged a notice of appeal on 3 January 2002 against the severity of the penalty. He did not seek a stay of the penalty. The amended 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 Appellant's plea of guilty and remorse;*
 - (b) *the unpremeditated nature of the offence;*
 - (c) *the apology to the complainant;*
 - (d) *the degree of provocation under which the offence was committed; and*
 - (e) *the fact that the Appellant was a first offender.*
2. *The Stewards erred in placing the offence into the "upper echelon" of offences of its type.*

Particulars

- (a) *The offence was not at the upper echelon of offending as it –*
 - (i) *did not take place in public;*
 - (ii) *did not involve any form of (sic) injury to the complainant;*
 - (iii) *lacked any degree of premeditation and was completely spontaneous; and*
 - (iv) *occurred as a result of provocation which whilst short of being a complete defence, constituted a significant mitigating factor.*
- (b) *By imposing a penalty which was at the very upper level for penalties commonly imposed under this Rule, the Stewards fell into error.'*

After hearing submissions from both sides I upheld the appeal on the basis that the penalty which had been imposed was too severe, substituted a 4 weeks suspension and undertook to publish reasons in due course, which I now do.

There is no dispute on the salient facts. It is in essence summarised by the following passages from the transcript where the apprentice states:

Giadresco 'I came in, well before I came in I was told to get dressed and I put my clothes, cause I had to go out and strap a horse and I went in there and I took all my clothes off, all my racing gear off and I put my normal clothes on, then everybody was giving me shit because I didn't have a shower and, Daniel was being really abusive and I told him to wipe his mouth because he was dribbling shit and he said "What did you say" and I said "You heard me your dribbling shit" and he came over to me and started laying into me.

...

Staeck I wasn't abusive in any way when a few of the boys said to him oh I think it's best that you have a shower that's all that was said, he then returned with the rude comment perhaps (inaudible) off my chin because there was shit coming out of my mouth, then it got a bit fra, furious from that and I, I went over and pushed him and punched him once.'

It is clear from the transcript that:

- the appellant took offence at the offensive language and struck the complainant a few times to the head
- the incident occurred spontaneously and was over very quickly
- the appellant pleaded guilty at the first opportunity, apologised to the complainant and showed genuine remorse
- the appellant has been out of his apprenticeship but 2 years and is only 22 years of age
- the appellant pleaded guilty to assault in the Court of Petty Sessions and was placed on a 12 month good behaviour bond with no conviction recorded
- the complainant did not explain to the jockeys that he had been instructed by his father (his Master) to get dressed and strap a horse for the next race

Mr Delaney relied on the penalties in Lynch (Appeals 531 & 532). That case involved a senior licensed person who was a stable foreman who had enacted some retribution behind the scenes on a 17 year old apprentice. The penalties of 1 month and 2 months suspension were confirmed on appeal. I am satisfied the circumstances of that case are totally different. Mr Staeck is very much younger and holds no position of authority or

responsibility over the person he struck. The striking was not premeditated, was not in public view and was provoked.

I agree with the assertions made in the first ground of appeal. I have taken into account other penalties for breach of the same Rule. Mr Staeck was fully cooperative at the inquiry and readily admitted his response to the situation was far from appropriate. He went on to say *'I've never been a violent person at all and I'd like to apologise to Matthew for the way I carried on, I didn't handle myself well. I'm sorry I should never have done what I did'*. The appellant, whilst a senior jockey is after all only aged 22 years. He clearly was justified in suggesting the younger man should take a shower after his ride. Mr Staeck did not deserve the insulting reply from the younger man. The appellant was not the only one to suggest a shower to the apprentice.

There is no room in racing for licensed persons to engage in fisticuffs anywhere at a race course. More experienced participants should display leadership to their junior counterparts. Whilst the incident was not in public view the industry became aware of it and no doubt is damaged by it. However, it is far from *'a most serious'* offence as the Stewards claimed, when compared to some others. There is merit in the second ground of appeal.

In all of the circumstances I am satisfied the Stewards erred in imposing the penalty which they did. I am satisfied the penalty should be halved.



DAN MOSSENSON, CHAIRPERSON

