

RACING PENALTIES APPEAL TRIBUNAL DETERMINATION

APPELLANT: MR GRAHAM JORDAN

APPLICATION NO: A30/08/820

PANEL: MR P HOGAN (PRESIDING MEMBER)
MR R NASH (MEMBER)
MS B ROBBINS (MEMBER)

DATE OF HEARING: 29 NOVEMBER 2018

DATE OF DETERMINATION: 29 NOVEMBER 2018

IN THE MATTER OF an appeal by GRAHAM JORDAN against the determination made by Racing and Wagering Western Australia Stewards of Thoroughbred Racing to disqualify him for a period of two years for breach of Rule AR175(a) of the Rules of Thoroughbred Racing.

Mr G Jordan represented himself.

Mr D Borovica represented the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

ORAL REASONS FOR DETERMINATION ON THE DAY OF HEARING:

1. This is a unanimous decision of the Tribunal. The appellant, Mr Graham Jordan, was found guilty of an offence against rule 175(a) of the Rules of Thoroughbred Racing. The particulars of that charge are set out in page 35 of the transcript of 3 September 2018. Namely, that under that rule the improper action in connection with racing was said to be that Mr Jordan directly approached licensed trackwork rider, Mrs Heather Wheeler, at Ascot track work on Thursday 23 August 2018 and requested her to engage in future conduct which in the

opinion of the Stewards was improper and would have resulted in an act of cruelty through the use of a whip to be modified by himself with a wire attachment and used on the filly, TAKE ANOTHER LOOK had the approach and request been carried out. That was the charge against Mr Jordan who pleaded not guilty.

2. The Stewards found the charge proved. And the reasons for finding the charge proved are at page 54 of the transcript of 28 September 2018. Essentially, the Stewards' decision was by way of findings of fact. In order to successfully make out this appeal, Mr Jordan would have to demonstrate to the Tribunal that there was some error in the decision-making process, such as there is a missing element, or a missing part which necessarily goes to make up the charge, or some technical defect, or Mr Jordan would have to demonstrate to us that the Stewards had no basis for finding the facts which they did.
3. In the appeal notice itself, Mr Jordan has done nothing more than reiterate what his defence was at the Stewards' hearing. When asked to elaborate today on the grounds of his appeal, Mr Jordan has again reiterated what he said in front of the Stewards to the effect that he was not guilty. The factual findings that the Stewards made were based on hearing the trackwork rider, Mrs Wheeler, in person at the inquiry. They were based on hearing Mr Jordan himself at the inquiry. There were also previous statements made by both of those to the investigating Steward, which were tendered in evidence at the inquiry where oral evidence was taken.
4. And all of that is quite proper, because the rules of evidence do not apply, and it was a domestic tribunal, bound to do fairness to all the parties. And so, the previous statements could be taken into account and were. Mr Jordan's conduct in deleting the text message can be taken into account as well. And based on all of the evidence, and in particular hearing Mr Jordan and Mrs Wheeler in person, the Stewards made findings of credibility. They decided that Mrs Wheeler was a credible and honest witness. They decided as well that the request which they found as a fact was made to Mrs Wheeler, was seriously meant by Mr Jordan. Some of the reason for finding that included that Mrs Wheeler herself took the request seriously, such that she wrote a text the next day, or within a very short time, to Mr Jordan. She also decided to report the matter to Stewards.
5. In a court of law, particularly for example, in a criminal case, that type of evidence would not necessarily be admitted. But as I said earlier, this is a domestic tribunal, the Stewards, and that kind of evidence is properly admissible. So she decided to report to the Stewards. And she sent the text in the next few days. There was also - the Stewards properly took into account, having decided that she was credible, the degree of detail which she said was given

to her by Mr Jordan in order to - as part of his asking her to carry out - to use the modified whip in the manner which he asked her to do it. All of that was relevant, of course, because it was it in context of Mr Jordan's defence. Which was that he meant what he said as a joke.

6. In short, for all of the number of proper and legally admissible reasons, the Stewards found that the request made was not a joke. Sometimes words are spoken in everyday life, and in particular in situations which come to courts where words have to be interpreted and findings of fact have to be made as to what the words really mean. For example, in the common criminal charge of making threats, that is the most common type of case in which the meaning of the words has to be determined, and the correct way to do that is to leave that fact finding to the jury, or the fact finding magistrate, or the fact finding judge. And the fact finder decides whether the words meant what is alleged. In this case, the Stewards did that, that is what they found on a procedure which gave the appellant natural justice, and on evidence which was properly admissible.
7. The appellant, as I said earlier, has to demonstrate some error, and the appellant has not demonstrated any error in the way that the Stewards went about the case and in the decision that they made. So in short, for those reasons, the appeal against conviction is dismissed. We did ask the appellant to talk about penalty. He did not advance the case other than to say that he should deserve no penalty because he did nothing wrong. I do not criticise him for that. However, he is self-represented, that is why the case was put to him, in order to do fairness to him, he did not advance it in any way, shape, or form.
8. The appeal against penalty, if there was one at all, also required that he demonstrate an error on the part of the Stewards by way of any irrelevant factors being taken into account, or relevant factors not being taken into account, or the penalty being excessive. None of those things have been determined. The Stewards' prime analogy referred to penalties to do with electrical devices, which of course are to do with whips. That is the closest analogy they could get. The Stewards also referred to the appellant's personal circumstances in the reaching of the decision. There has been no error made in the decision as to penalty. So the appeal against penalties, so much as it was an appeal against penalty, is also dismissed.



PATRICK HOGAN, PRESIDING MEMBER

