

TASMANIAN RACING APPEAL BOARD

Appeal No 12 of 2013/14

Panel:	Mr T Cox (Chair) Mr G Elliott Mr W Burnett	Appellant:	Miss B Hammond
Appearances:	Mr I Swain on behalf of the appellant Mr A Crowther on behalf of stewards	Rule:	Australia Harness Rule 248
Heard at:	Launceston	Penalty:	A \$1,500 fine plus the activation of the suspended fine of \$250
Date:	12 June 2014	Result:	Penalty varied to a \$750 fine plus the activation of the suspended fine of \$250

REASONS FOR DECISION

1. The appellant, Ms Hammond, has appealed against the severity of a fine in the sum of \$1,750 imposed by the stewards following an inquiry into postings made by her on social media website, Facebook, on 10 October 2013 and 2 March 2014.
2. At the inquiry, the stewards issued a charge contrary to AR248, which provides:

“A person shall not say, publish or write or cause to be said, published or written anything malicious, intimidatory or otherwise improper about the Controlling Body, its members and employees or the Stewards or anyone else associated with the harness racing industry.”
3. The particulars of the charge were not set out in any great detail by the stewards:

“Particulars of the charge are that in Facebook posts, posted by you on 10 October 2013 and again on 2 March 2014 contained ... comments directed at licensed person Tamara Fawdry and registered owner Bill Fawdry, which are malicious, intimidatory and improper (sic).”
4. Doing the best we can, the comments referred to appear to be the following comments, which were read out and put to the appellant at the inquiry:

“Don’t give up buddy not your fault some people are gutless no good cunts which have been dazzled with limelight and people pissing in their pocket”.

“Oh cry me a river Tamara, how do you think Kate felt when she was doing a live interview Monday and I told her Lance was keeping Hugo because you and Bill are too gutless to tell them today.”

“You and Bill have been gutless the way you’ve taken Hugo off Kate. Not once have you sat down with Kate and discussed Hugo’s future with Kate let alone given the option to still be involved with the horse. Kate has had a bad day and wouldn’t you think people who care would touch base.”

“I’ll tell ya you’d have, you’d have to be the second biggest, biggest oxygen thief I’ve ever come across you dirty black mole why can’t you just fucking drop dead nah that be a kinda way for you to die your day will come cunt”.

5. A number of other comments were posted. Those comments, together with the appellant’s evidence, provide context to the comments outlined herein. It appears that, and we accept, the appellant posted the comments as part of a series of postings on another person’s facebook page. Other persons posted comments, some of which were also offensive. She did not make the postings on her own Facebook “wall” in the nature of a declaration. She was motivated to make the comments because she was displeased with the Fawdry’s treatment of a fellow driver, Kate McLeod, who had a horse by the name of *Hugo* “taken off” her by the Fawdry’s. We make no comment about the proprietary or otherwise of that occurrence. We have no information about it. We, like the stewards, have not heard from the Fawdry’s with regard to this matter. All we have is the content of the postings and the appellant’s explanation for them, which we accept.
6. Other matters, which are peripheral to the racing industry, were also at play. For instance, it appears that there was animosity between the appellant and Ms Fawdry relating to the payment of rentals for a certain property. It is unnecessary, and, as we have observed impossible, to go into the detail of that matter suffice to note that it appears to have fuelled, along with the comments concerning Ms McLeod, the appellant’s conduct.
7. There is no doubt that the comments were abusive and improper and, in part, intimidatory. However, we are not comfortably satisfied that the content of the postings was motivated by malice. No doubt the appellant intended to record her displeasure with the Fawdry’s but that is not to say that she was motivated by malice or intended her comments to cause harm or pain to the Fawdry’s. On one view, it may be said that her motivation was to defend a fellow driver from a perceived injustice. Nevertheless, the comments clearly fall within the relevant rule and the stewards were right to find, on the appellant’s plea of guilty, that she was in breach of that rule. Having done so, the stewards proceeded to fine the appellant the sum of \$1,500 and activate a partially suspended fine (in the sum of \$250) for an earlier like offence, committed in March 2013.
8. Against that background, the question for this Board is whether or not the fine, being the sum of \$1,500 and the activated suspended fine of \$250, is excessive.
9. In our view, the fine was excessive for the following reasons:
 - (a) The postings were, on each occasion, published to a limited audience in the order of 80 persons, some of whom may have had no interest whatsoever in their content. Further, the appellant contends, and we accept, that only a small portion of those persons able to view the comments had any involvement or interest in the racing industry. She gave evidence that the number of licensed persons may have been no more than five. On the material before us, there is no suggestion to the contrary.
 - (b) The comments were published about fellow racing industry participants. The comments did not relate to Racing Services Tasmania, its members, employees or the stewards which, if they had, would be viewed more seriously.
 - (c) The postings only came to be known by the stewards as a result of the Fawdry’s presenting them to the stewards.
 - (d) As we have noted, the comments were abusive and improper and, in one respect, intimidatory, but they were not motivated by malice.
 - (e) On one view of things, the comments related to a personal dispute between industry participants rather than a genuine dispute about a matter concerning the industry.

- (f) After the first posting in October the appellant and Tamara Fawdry “defriended” one another on facebook. That should probably have been the end of the matter but a further round of postings occurred, were published to the limited extent we have identified, and made their way to Ms Fawdry.
 - (g) The appellant submitted, and we find, that other “self-help” options were available to Ms Fawdry, such as reporting the postings to Facebook and requesting that they be removed. This is not to excuse the appellant’s conduct but rather place it in context. It was conduct that had a modest connection with the racing industry.
 - (h) The appellant accepted she had breached the rule and indicated her remorse for doing so.
10. Against these considerations, the stewards quite properly took into account the fact the appellant had been in breach of the same rule only 12 months earlier. On that occasion a fine of \$750 was imposed with a further fine of \$250 wholly suspended for a period of 12 months. The stewards activated the suspended fine. In our view, they were quite right in doing so. On that occasion the postings were directed at Racing Services Tasmania.
 11. Having regard to all of the above considerations, we consider a fine in the sum of \$750, plus the activation of the suspended fine of \$250, to be appropriate. Accordingly, the appeal is upheld and the findings of the stewards quashed. The Board orders that the appellant be fined the sum of \$750 in addition to the suspended fine of \$250 which has been activated.
 12. Pursuant to s.34(2)(e) of the Act the Board orders that the whole of the prescribed deposit be refunded to the appellant.