

TASMANIAN RACING APPEAL BOARD

Appeal No 3 of 2013/14

Panel:	Mr R Foon (Chairman)	Appellant:	Ms R Clark
Appearances:	Ms Clark in person Mr A O'Connell on behalf of stewards	Rule:	Australian Thoroughbred Rule AR175(q)
Heard at:	Launceston	Penalty:	A \$500 fine
Date:	3 January 2014	Result:	Penalty varied to a \$400 fine with \$200 suspended on condition that the appellant commit no breach of AR175(q) for a period of 12 months

REASONS FOR DECISION

1. The appellant, Ms Clark, was involved in an incident which occurred at the Melton Mowbray Rodeo on 2 November 2013 involving herself and apprentice Sigrid Carr. Following a stewards' inquiry Ms Clark was found guilty of breaching AR175(q), which provides:

"The Principal Racing Authority or the Stewards may penalise:

Any person who in their opinion is guilty of any misconduct, improper conduct or unseemly behaviour."

2. The matter is somewhat unusual as Ms Clark and Ms Carr were charged out of an incident completely unconnected with racing. It was a private matter between them which became heated in a public setting.

Each of them was fined \$500. The stewards' decision concerning the matter was as follows:

"...stewards have given consideration to this, this matter. We have taken into account the guilty pleas of both you Raquel and Sigrid. We did, or have taken into account that we do believe this is a serious incident...I'm not going to rehash what I've said but we pride ourselves within the industry, not only stewards but Mr Carr's been in the industry for a long time, but we.....we represent ourselves properly to the broader public....racing hasis having a bit of a battle in...winning public appeal especially in Tasmania where they say because it's government funded, some with the funding deed, why the hell you waste it on that and not hospitals and transport and all that sort of stuff, so..... it givessome of the people who criticize racing these sort of incidents fuel for the fire. Yes as licensed people is certainly stewards' accept that the, whilst we didn't get the gravity of the word used, I think we, the evidence that we get by both yourself Sigrid and....Raquel was that neither of you probably were proud of what you said. So that's in, in the stewards' view sort of gives us an indication of how graphic, if I use that term, the language was. And then for that to escalate into a.....an assault from a point of view that there was...man

handling between the two ladies yeah. So taking all that into account, we do believe that appropriate penalties be both fines. And that would be five hundred dollars each. If you agree (sic) you do have your right to appeal."

3. The appeal is against the severity of the penalty imposed by the stewards. The appellant contended that given her personal circumstances, in particular her financial circumstances, the penalty was excessive. In relation to the matter it was apparent that Ms Clark would have preferred a suspension over a fine, whereas Ms Carr preferred a fine over a suspension. At the inquiry the Chairman of Stewards did attempt to elicit information from Ms Clark concerning her financial circumstances, however, no details were provided and it wasn't pressed.
4. At the hearing of the appeal I allowed the appellant to give evidence of her circumstances. She is 20 years old, was earning at the time of the decision at the most \$350 - \$400 per week. Of that income very little of it was derived from racing. The appellant is a trackwork rider only. She rides for her brother for which she received no compensation and rides trackwork for one other person for which she receives \$10 per ride. At the relevant time she was riding only a few times per week. The evidence was unchallenged.
5. The stewards contend that the penalty was not too severe having regard to the fact they were licensed persons and were identified as licensed persons by a member of the public at the rodeo and that their behaviour as licensed persons reflected badly on the industry which they represent and that it is particularly important that standards of behaviour are upheld in an industry which is Government funded.
6. The stewards also submitted that they should not have regard to the differing financial circumstances between Ms Clark and Ms Carr in determining whether a fine was appropriate. Ms Carr, unlike Ms Clark, is an apprentice jockey and it is apparent from the transcript that she has a long history in the industry and there is no doubt that she derives far more income from racing than Ms Clark and that her income would be far higher although I have no knowledge about her expenses.
7. In my view it is appropriate to take into account Ms Clark's age, the lack of income she derives from the industry, her actual income and expenses in determining whether or not the current penalty is appropriate. She pays \$100 per week rent, \$120 per week on a car loan and she has usual everyday expenses including phone, power and food.
8. It is apparent to me that the fine of \$500 is a very significant penalty for her in light of her circumstances. The appellant is now no doubt well aware of her obligations to conduct herself in an appropriate manner when in public whilst she is part of the racing industry. I don't believe we should lose sight of the fact that she is still a young person who has made a mistake and I expect ordinary members of the public would have some sympathy for her.
9. As part of the appeal the stewards provided to me a history of the penalties for this offence in Tasmania and Victoria in the preceding 18 months. It is apparent that the penalties imposed for this type of offence differ markedly depending on the circumstances.
10. In my view the appropriate penalty is a fine of \$400 of which \$200 is suspended on the condition that she commit no breach of AR175(q) for a period of 12 months. In my view that adequately reflects the circumstances and gravity of the offence whilst giving her an incentive to demonstrate that it was in fact an isolated incident and will not reoccur.
11. The appeal is upheld and I instead impose the penalty as set out in paragraph 10 above.
12. Pursuant to s34(2)(e) of the *Racing Regulation Act 2004* I order that the whole of the prescribed deposit paid by the appellant be refunded to her. Given that the appeal was successful, I make no order regarding the payment to the Secretary of the cost of the provision of the transcript.