

TASMANIAN RACING APPEAL BOARD

Appeal No 7 of 2015/16 – DEAN FULTON

Panel:	Mr Tom Cox (Chair) Ms Kate Cuthbertson Mr Rodney Lester	Appellant:	Mr Dean Fulton
Appearances:	Mrs Alana Fulton on behalf of the appellant Mr Cameron Day on behalf of stewards	Rule:	Australian Thoroughbred Rule 175(q)
Heard at:	Hobart	Penalty:	A fine of \$1,000 (\$500 of which was wholly suspended for a period of two years)
Hearing Date:	4 February 2016	Result:	Varied to a \$250 fine (wholly suspended for a period of 12 months)

REASONS FOR DECISION

1. The appellant has appealed against conviction and penalty imposed upon him by stewards following his plea of guilty to a charge under Australian Thoroughbred Rule 175(q).
2. That rule provides that:

“Stewards may penalise any person who in their opinion is guilty of any misconduct, improper conduct or unseemly behaviour.”
3. This particular appeal concerns stewards forming the opinion that the appellant was guilty of misconduct.
4. The circumstances relate to an incident at the Longford track on 16 of October 2015 that occurred during trackwork where there were approximately six industry participants in the vicinity of the exchange between the appellant and Miss Catania.
5. The particulars of the charge levied by stewards were as follows:

“.....So the charge is misconduct in that - In a heated confrontation with Miss Catania at the Longford track on the 16th of October 2015, you swore and threatened to damage her property, namely her ute.”
6. The complaint was brought to stewards’ attention by Miss Catania herself. Her evidence was that she went to say hello to the appellant during trackwork. As she went to speak to him, he turned his back on her and when she asked what was wrong she said that the appellant told her to come and get her fucking ute before he smashed it. She did not think that he was serious at the time. Later on she spoke with the appellant on his own and asked him if he was angry with her for having a few mornings off as she had an injury problem with her hand. The appellant then asked her, “How the fuck *Zemiro* could have improved out of sight and win Wednesday night and beat *Olly’s A Star?*” He continued to allege that the other horse must have been “jacked up” and should never have won and suggested that Miss Catania’s pockets were full as

a consequence. He also accused her of being “a fucking liar and a cheater”. He then apparently repeated his threat about her ute telling her to go and get it and to see whether another trainer would look after her ute just as well as he did. He also told her that she should just go back to where she belonged with “those mongrels”. She said that the appellant was loud and aggressive and would not leave her alone. She was crying and upset.

7. Mr Schuurin, who is a licensed trainer and who was also at trackwork that day, gave evidence that he heard some of what had occurred and had told the appellant to ease up. Another trainer who was present indicated that he heard a confrontation but was not able to make out any of the words spoken by either of them.
8. It would appear that the background of this incident was that Miss Catania had been the jockey of one of the appellant’s horses during a previous race meeting. The appellant was unhappy with the way that she had ridden the horse and harboured suspicions about her not giving the horse the best opportunity. As already stated, the appellant apparently suggested that she may have benefited financially by, in effect, throwing the race.
9. Miss Catania had been working for the Fulton’s for some time. It seemed they were fond of each other and had a close family-like relationship with each other.
10. While the appellant disputed in part the exact terms of the threat regarding Miss Catania’s ute and the extent of the language used, he admitted at the inquiry and before this Board that he had threatened to “cut up” Miss Catania’s ute and that he had sworn at her during the course of the altercation.
11. Stewards fined Mr Fulton \$1,000 with \$500 of that fine wholly suspended for two years provided that he did not re-offend under the rule. In arriving at that decision they said they took into account that Mr Fulton had a clean record and his time in the industry which they thought at the time of the inquiry to have been 15 years but later discovered he has been licensed for a period of seven years. They also referred to the nature of the offence, his personal circumstances, penalty precedents under the rule, his guilty plea and the fact that the penalty must act as a deterrent.
12. The appellant has submitted before the Board that the penalty was excessive due to a number of matters. They are:
 - that the incident did not occur in the presence of the race-going public. It is noted that it was a trackwork event.
 - that the incident was a verbal one and did not involve any actual or threatened physical violence.
 - that Miss Catania had stated throughout the inquiry that she had not felt physically threatened by the appellant but was concerned about her property. This was said to be evidenced by the fact that she followed the appellant out of the track, and evidently had no concerns for her personal safety.
 - that the penalty imposed appeared to be based on the appellant’s capacity to pay rather than the actual offending conduct. Reference was made to a previous decision of this Board in *R Clark* Appeal No. 3 2013/14 where a penalty of \$500 was reduced to one of \$400 with \$200 suspended. The conduct involved an incident with two jockeys having a physical and verbal fight with each other at a rodeo.
13. Further it was submitted by the appellant that Miss Catania was motivated to complain out of revenge for not getting further rides from the Fulton’s stable. For the purposes of determining this appeal, Miss Catania’s motive to complain is not at all relevant given that there is no question that the appellant engaged in the conduct in question. Miss Catania had every right to refer the appellant’s conduct to the stewards.

14. Stewards submitted that the penalty imposed ought be upheld as the exchange occurred for an extended period and was audible to others. It was further submitted that because the incident occurred at a workplace, it was necessary for stewards and this Board to send a message that that people and “especially young ladies”, should be allowed to go about their business in that workplace. The Board accepts that these are relevant factors, though notes that *all* participants in the industry are entitled to go about their work unmolested by others at the workplace.
15. The Board notes that the range of penalties imposed in respect of breaches of this rule vary enormously, reflecting the wide range of circumstances in which complaints arise. In light of the matters set out in paragraph 12 above, the Board is, however, satisfied that the penalty imposed was excessive in the circumstances. Although it was not a brief incident, the conduct was confined to a verbal exchange. It was clearly unpleasant and one that upset Miss Catania but given the appellant’s lack of prior offences and the penalties that, to our knowledge, have been imposed in similar cases, it is our view that the appropriate penalty is one of a fine of \$250 wholly suspended for twelve months on condition that the appellant does not commit a further breach of Rule 175(q) in that time. In our view, a reprimand would not be a sufficient penalty. The behaviour warrants punishment, but the circumstances are such that a suspension of the penalty is appropriate.
16. We have taken the view that the appeal was effectively one against penalty and is therefore wholly successful. Accordingly the appellant’s deposit will be returned to him pursuant to s.34(2)(e) of the *Racing Regulation Act 2004*.

Dated: 12 February 2016