Appeal decision

Date: 27 September 2013

Code of racing: Thoroughbred

Appeal panel: Judge W Carter (chair), Mr P Elliott and Mr R Dickinson.

Appearances: Ms V Keegan, barrister, appeared on behalf of stablehand Shane Colahan.
Mr N Torpey, senior stipendiary steward, appeared on behalf of the stewards.

Decision being appealed: Disqualification of stablehand Shane Colahan's licence for a period of six months – AR175(q).

Appeal result: Appeal upheld. Conviction and penalty set aside.

Extract of proceedings – in the matter of an incident at Cluden Park race course, Townsville, on 17 July 2013. Stablehand: Shane Colahan

THE CHAIRMAN: My colleagues and I have thoroughly considered this appeal. The relevant material before the stewards came from 16 witnesses. It occupies 168 pages of transcript, evidence which was given over many, many hours on three different occasions. At the same time we are conscious of the statutory obligations which are imposed on us by Section 149ZE, sub-section (2), sub-paragraph (d), which reads that we are required to act as quickly as possible, with as little formality and technicality as is consistent with a fair and proper consideration of the issues. I know, and I'm sure you know too, that sometimes appeals of this kind develop into major cases. On the other hand, I think the legislation makes it plain that there is a need for a different process, and we would consider that that is appropriate in the circumstances of this case.

Any reasonable observer considering all of this material could only be left with the clear impression that what occurred at Cluden Park race course on the morning of 17 July 2013 was at best a confusing scenario in which two or more protagonists were engaged in a fight, a wrestle or in some sort of melee, watched by others, some of whom were aligned in terms of personal interest to one side or the other. Perhaps the most valid description of the event in question was given to stewards by Miss Darlene McKenzie, the operations manager of the Townsville Turf Club, who was at the course that morning on behalf of her employer, and who herself says what she saw. She was angry as to what had occurred, and what had occurred, in her view, she said was disgusting. We tend to agree with that. So too does the evidence make tolerably clear that the background relationship between these parties was a toxic one, and was marked by animosity and ill will.

We refer here to what was well known, not only in Townsville but elsewhere, that what can only be clearly described as bad blood existed between the Cairns stable and the Kenning stable, both considered to be leading stables in the Townsville racing community. It was against that confusing body of evidence, all or most of which came from witnesses whose impartiality was largely determined by whose side they were on, that the stewards had the unenviable task of determining culpability for the event in question. Add to that the further point that the immediate catalyst for the ensuing melee was apparently a sarcastic and inappropriate remark made by trainer Kenning to jockey Edwards, the core feature of which was to denigrate what was alleged to be trainer Cairns' training methods, and in particular the feeding procedures for her horses, one which was, so it was implicitly alleged, inferior to Mr Kenning's own methods.

The charge laid against the appellant was that he had engaged in improper behaviour within the meaning of the rules. Any fair and just assessment of the event, and of all that was relevant to its background, might well have resulted in the appellant, trainer Kenning and perhaps at least one of the other licensees, being charged not with the criminal offence of assault but with improper conduct within the meaning of the rules.

Impropriety in respect of one's conduct might well take many forms. The mere fact that the first punch was thrown by a particular person in a volatile situation or environment does not necessarily conclude the issue of impropriety, nor does it necessarily follow that that person only, rather than others involved in the same event, was the only one to have acted improperly. The wider circumstances in which that occurred necessarily required an examination of the whole, and the inquiry revealed some, if not all of the background in which the melee occurred and it identified several others who were involved, either in it or who were engaged on the periphery. They too might well have been charged as part of the same allegation of improper conduct.

These proceedings therefore, in our view, focused, so it seems to us, wrongly on the one matter only, namely, who was person who threw the first punch? Had the inquiry and the totality of the evidence in relation to the relationships been more closely considered, a charge of impropriety might readily have been identified on the part of, say, trainer Kenning, namely his somewhat insulting and inappropriate comment to the Cairns stable. That seems to have been the immediate cause of what ensued, and improper behaviour was indulged in by not only the appellant but also trainer Kenning and others.

We therefore are of the view that the proceedings before the stewards miscarried in that one only of the protagonists was charged and the other or others were not charged nor convicted nor visited with any penalty.

That, in our view, was, having regard to the provisions of that section 149ZE(2)(d) of the Act, not consistent with a fair and proper consideration of all the issues.

The situation was further aggravated by the nature of the plea made by the appellant, namely, "I plead guilty to hitting him - like in self defence though" and again, "I plead guilty to hitting him but it was in self defence." Such a plea to a charge of improper conduct based on an alleged assault should have not been accepted by the stewards.

We understand also that in this appeal the appellant would apply to this board to change his plea.

We would allow that application, and further, given the details of the inquiry evidence and the particulars of the charge against the appellant, we would conclude that the state of the evidence is such that any fact-finding tribunal could not be satisfied in accordance with the necessary standard of proof that the appellant alone to the exclusion of all others was guilty of impropriety. Whether or not one uses the terminology of the criminal law, whether what occurred was provoked or involved self-defence even in layman's terms, we are of the firm view that the conviction of the one person and the penalty imposed on the one person on the basis of an alleged assault should be set aside.

Accordingly, we, after due consideration of all of the issues, would make the following orders:

1. That the appellant should be permitted to change his plea; and

2. On that basis and on the material before the stewards, the conviction of the appellant and the penalty of disqualification for six months should be set aside.

Before leaving the matter we wish to advise as follows. All of the circumstances relevant to the events in question are matters of the utmost concern and cannot but be prejudicial to the best interests of the racing industry.

The fact that two leading stables in any racing community conduct themselves and their business and relate to each other in an environment which was clearly toxic and characterised by overt personal animosity and intense feelings of ill will, cannot expect to go by default.

The fact that it occurred in Townsville - a racing centre which has long been regarded as a leading provincial centre - is an aggravating factor.

The material before the stewards includes the evidence of Mr Michael Charge, the CEO of the Townsville Turf Club. He and his staff, and no doubt the stewards as well, have been very properly concerned about the state of this relationship between these two trainers in particular and its impact on racing in Townsville. Mr Charge himself has attempted, but obviously to no avail, to mediate, if not reconcile the issues and the relevant parties. Clearly his best efforts have been in vain.

We are of the view therefore that it is our obligation to ensure that the thoroughbred control body and the principal racing authority, the Queensland All Codes Racing Industry Board, are fully informed as to the conduct of these adult licensed persons in Townsville who have so conducted themselves in such a way as to become involved in a foolish and childish episode which can only tarnish the reputation of racing and that of the protagonists themselves.

Accordingly, I propose to send to the control body the transcript of evidence in this case and a copy of my remarks today. It will be for the licensing authority to consider all of the issues and for it to take such action, if any, as it may be advised.

Further right of appeal information: The appellant and the stewards may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **14 days of the date of this decision**. Information in relation to appeals to QCAT may be obtained by telephone on (07) 3247 3302 or via the Internet at www.qcat.qld.gov.au