

**RACING APPEALS TRIBUNAL
QUEENSLAND
NOTICE OF DECISION**

APPEAL NO: RT016-09
DATE: 15 July 2009
APPELLANT: Andrew George Sawden
RESPONDENT: Queensland Racing
APPEARANCES: Mr Andrew Sawden on his own behalf
and Mr N Torpey on behalf of the
respondent Queensland Racing

REASONS FOR JUDGMENT

Mr Leo Williams AO – Chairman

Mr Brockwell Miller – Deputy Chairman

Mr Dennis Standfield - Member

The appellant Andrew George Sawden was an employee of trainer Brian Wakefield and at the relevant date of this offence he had allowed registration of his licence with Queensland Racing to lapse. The issue relative to the licence has little relevance other than a suggestion was raised during the course of the original inquiry that the stewards may well have had no power to impose any penalty on a person who was not at the relevant time licensed under the Rules of Racing. The Tribunal makes no finding in respect to that issue but simply opines that at the relevant time Mr Sawden did come within the confines of the Rules of Racing and was at that time the stable foreman for trainer Wakefield.

It is apparent from the transcript that a complaint was made to Queensland Racing by Ms Eraina Temple. She was also, at the time an employee of trainer Wakefield. The complaint is contained in Exhibit 1 which is an email submitted to the Administrator at Queensland Racing and

detailed that there had been verbal and physical abuse towards herself and also cruelty towards her cat. It was alleged that the incident happened on Friday 23 January at approximately 3.15 pm at the stables registered to trainer Wakefield and acknowledged that the appellant was at the relevant time in charge of those stables and the staff for the week while trainer Wakefield was absent in New Zealand.

Upon receipt of the complaint an investigation was undertaken by stewards acting on behalf of Queensland Racing and various people were interviewed and statements obtained from them during the course of an Inquiry. The first interview was conducted by senior steward Mr B Turner in company with Ms J Pick of Integrity Services on Friday 30 January 2009 when stablehand and complainant Ms E Temple was questioned. Subsequently on 30 January (after conclusion of the first interview) a second interview by those same persons was conducted of the appellant Andrew Sawden. It is not relevant to embark on a protracted discussion on what was said other than to identify that at no point in time was Ms Temple present whilst Mr Sawden was being interviewed. A third interview was undertaken on 4 February by Mr B Turner when a stablehand Chris Chandler was interviewed by way of a phone conversation.

As a result of this interview process the stewards opened an Inquiry into the incident in question which Inquiry commenced on 12 February 2009 at which Mr Sawden and Mr Wakefield were questioned. The Inquiry was reconvened on Thursday 26 March when a charge was laid against Mr Sawden under Australian Rule of Racing 175(q) which stipulates

The Committee of any Club or the Stewards may punish:

- (q) *Any person who in their opinion is guilty of any misconduct, improper conduct or unseemly behaviour.*

The stewards identified improper conduct as being the significant element of the charge in that on the day in question Mr Sawden acted improperly in that after entering into a verbal altercation with fellow employee Ms Eraina Temple *you did then make physical contact with Ms Temple by grabbing her on the upper arms and pushing her away.* That Inquiry became somewhat heated as it was alleged initially that there was no evidence of any attack, assault or other incident other than an admission by Ms Temple that she had thrown a bucket at Mr Sawden. Eventually there was an acknowledgement that some verbal attack had been entered into between the two parties and that, by his own admission, the appellant had pushed Ms Temple. There was no evidence that she had been injured however she did make a complaint to the police which did not proceed.

On 8 April 2009 Mr Wade Birch provided written confirmation of the charge that had been levelled at the Inquiry hearing on 26 March. The letter again identified the basis of the improper conduct charge and offered Mr Sawden the opportunity to defend the charge and suggested that submissions in defence could be in a written form to be forwarded to the stewards by close of business on Friday 24 April. Mr Sawden responded in writing on 23 April and confirmed that the primary submission related to the fact that he was not at the relevant time a person licensed under the Rules. He did make some submissions relevant to the event in question and confirmed that there had been no witness to the event and no evidence produced that favours Ms Temple's version of events over that of Mr Sawden. On Friday 29 May the Inquiry resumed when the Chairman of Stewards telephoned Mr Sawden and confirmed that by letter of 1 May the stewards had determined:

After taking into account all the relevant evidence, we hereby find you guilty of the abovementioned charge for the following reasons

The letter dated 1 May identified a number of other issues. One of those was summarised on page 2 in the following manner:

In regard to the evidence relating to the event, Stewards have found that your conduct in “pushing” Ms Temple was improper. You admit in your evidence on 12 February 2009 that you did in fact “push” Ms Temple. Taking into account your physical stature and the fact, that as Mr Wakefield’s foreman, in his absence, you were Ms Temple’s supervisor, we believe your conduct was improper in relation to racing.

The stewards in the letter also determined that in fact Ms Temple did throw a bucket at Mr Sawden and found that they could not be satisfied that the actions of Sawden were proportional to those of Ms Temple. The letter then embarked upon an issue concerning procedural fairness and invited subsequently written submissions from Mr Sawden in respect to a penalty that may be imposed.

That penalty was imposed during the phone enquiry resumption of 29 May when Mr Sawden’s licence was disqualified for a period of three months.

This appeal was lodged as a result of that determination.

The incident occurred in January and a finding of guilt was imposed on 29 May. It appeared from all of the evidence in the transcript and supporting exhibits that the Inquiry itself was somewhat convoluted and disjointed. Of concern to the Tribunal was the apparent lack of opportunity afforded to Mr Sawden to enable him to actually confront his complainant and cross-examine her. It is accepted that she was telephoned during the course of his evidence being given but that, in our opinion, is not appropriate.

There is no doubt that Mr Sawden acted in a manner contrary to accepted principles. Had he simply not entertained a disputation process with Ms Temple and left the matter to abide the return of Mr Wakefield then that would have been the end of the issue altogether. He elected however to

take matters into his own hands and he did, as the stewards subsequently found, act improperly in all the circumstances.

The matter raised considerable difficulty for the stewards to determine. In reaching the penalty that was imposed the perception was that there was no doubt that Mr Sawden was the sole aggressor and it was completely overlooked that there had been a personal relationship between Sawden and the complainant, that the complainant had contributed to the exacerbation of the dispute. It is for that reason that this Tribunal considers that the penalty of three months disqualification was not appropriate. The penalty more appropriately should have been two months and that period of time is substituted by way of penalty together with an order that the deposit be refunded to Mr Sawden.

Mr Leo Williams AO

Mr Brockwell Miller

Mr Dennis Standfield
