

RACING APPEALS TRIBUNAL

QUEENSLAND

NOTICE OF DECISION

APPEAL NO: RT021-07

DATE: 20 August 2007

APPELLANT: Ms Angela Maria Stephens

RESPONDENT: Queensland Racing

APPEAL FROM: Decision of the First Level Appeals Committee to uphold a decision of the Stewards for a breach of Rule AR175(q) and the imposition as a penalty a fine of \$1,000 of which \$250 was to be paid within two months and the balance suspended for 12 months conditional upon no further breach of a misconduct rule.

BREACH OF RULE: AR175(q)

DECISION: Appeal upheld.

APPEARANCES: Mr PG Boyce Solicitor of Butler McDermott and Egan appeared on behalf of the Appellant.

Mr M Tutt, Steward appeared on behalf of the Respondent.

REASONS FOR TRIBUNAL'S DECISION

Mr Brock Miller - Deputy Chairman

Mr Dennis Standfield - Member

The 9th June 2007 was an eventful day for the Stewards on duty at the Rockhampton Jockey Club Meeting. Not only were there Inquiries in the morning but also the Rockhampton Cup Meeting during which there was a major fall involving a number of riders which resulted on the abandonment of the meeting. There was also the reporting to them of an incident which is the basis of this Appeal. That incident was from Trainer Clinton Garland and concerned threats made to him by Trainer Angela Stephens, Mr Garland's older sister.

While the initial reporting of the incident was made shortly after it allegedly occurred at around 3 pm to Steward Matthew Tutt the matter was not formally dealt with until later that afternoon because of the pressing commitments of the Stewards concerning the race fall. The matter was dealt with by the Stewards by recording a transcript of the complaint of Trainer Garland.

The relevant matters of the complaint as recorded in the transcript taken by the Stewards on 9th June 2007 is (from page 1 line 6 of the Transcript):

“THE CHAIRMAN: Mr Garland, obviously it has been reported to my by Mr Tutt that you wish to address the stewards in regards to another matter.

MR GARLAND: Yes, sir. I know you said - I don't believe I am in trouble any more, but just our talk this morning, sir, about stay away and just walk away, as soon as I come on course to find out what was going on I approached the stewards - the jockeys' room and Johnny Stephens was there and I have always talked to Johnny, I have never had a problem with Johnny, and I asked jockey John Stephens, I said, “What do you think of the track?”, and he told me his opinion - inquiring about whether they were going to race or not, because my father had a starter in the last race - and then trainer Angela Stephens came up to me, right up in my face, and threatened me and told me not to speak to jockey John Stephens and if I did - really not meaning it, but threatened me saying she will kill me, and she is not scared of me.

THE CHAIRMAN: What were her actual words, Mr Garland?

MR GARLAND: She said to me, “Don't talk to my husband. You have got a hide. I am not scared of you, you fat bastard. Stay away, otherwise I will - yeah, I don't want to trouble you sir, I know --
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On 27th June 2007 Deputy Chief Steward Mr John Hackett was Chairman of an Inquiry held at Rockhampton into the incident. At that Inquiry the Stewards charged the Appellant with a breach of Australian Rule of Racing 175(q) which reads:

“The Committee of any Club or the Stewards may punish any person who in their opinion is guilty of any misconduct, improper conduct or unseemly behaviour.”

The particulars given by the Stewards at the Inquiry were stated as (page 49 from line 14 of the Stewards Inquiry Transcript (“SIT”)) as:

“As a licensed trainer, we charge you with a contravention of 175(q), improper conduct, in that on Saturday, 9 June, in the scales area of the Rockhampton Jockey Club, you verbally abused trainer Clint Garland. Now, that is the charge, and I read you the rule. We specify that the charge is that you abused Garland by threatening to kill him and called him a fat bastard. Now, that is the threat and the abuse - the verbal abuse.”

The Appellant pleaded not guilty to the charge denying that she ever said the words specified as she consistently stated throughout the Stewards Inquiry.

The Stewards Inquiry was a lengthy Inquiry with the transcript going to 79 pages. At the Inquiry both before and after the Appellant was charged the Stewards called Trainer Garland and presented a written statement by Apprentice Adrian Coome who was also contacted to give evidence by telephone. While there was evidence taken from Tim Cook, John Stephens (the Appellant’s husband), Natasha Stephens (the Appellant’s daughter), John Wigginton, Mary Hassam and Steve Bryant, it was the evidence given by Trainer Garland and Apprentice Coome which was damning to the Appellant. None of the other witnesses stated that they had heard any confrontation between the Appellant and her brother. The Stewards adjourned the Inquiry and deliberated on the matter and upon resuming the Inquiry stated (at page 73 from line 11 of the SIT):

THE CHAIRMAN: Thank you, Mrs Stephens. This panel has been hearing a complaint that has been lodged by Clinton Garland following an alleged incident that has occurred in the weighing room or the scales region of the Rockhampton Jockey Club on 9 June 2007. The stewards have investigated a complaint of Mr Garland’s who has alleged that he received a threat from Angela Stephens

that in his words she threatened to kill him and used the words "fat bastard".

Now, the concern that the stewards have that we laid a charge of improper conduct is that this matter has occurred in the scales area, that's an area where business is done between trainers and jockeys and it is not an area for trainers to be conducting themselves improperly. We find that that area is a relatively confined area and we are mindful of where it has been alleged that the participants were.

We have also heard evidence here today of an alleged feud that has been going on for a number of years between the parties and in fact only a week before the stewards were called on to inquire into an incident involving the same families and Mr Garland and Ms Stephens's husband John were both penalised.

It appears that that matter did not end there and an incident has taken place in the scales room. We have heard evidence from Coomes and we have also received a written statement from Coomes that was signed, and we have also had the opportunity of hearing his evidence on the telephone.

We have also had the opportunity of hearing evidence from Mrs Hassam, Mr Wigginton, Mr Bryant, Mr Stephens and Ms Stephens on behalf of Mrs Stephens, and we also heard a witness Timothy Cook on behalf of Mr Garland.

The standard of proof is on the balance of probabilities and the stewards have considered all the evidence and we are satisfied that an incident did take place and that your conduct, Mrs Stephens, was improper. Accordingly, we find you guilty of the charge as charged.

The Stewards then went onto impose a penalty of a fine of \$2,000 of which \$1,750 was suspended for 12 months conditional on the Appellant not breaching conduct rules over that 12 month period.

From that decision the Appellant appealed to the First Level Appeals Committee (First Level) with the appeal being conducted at the Queensland Racing Rooms at Deagon on 19 July 2007. The Appellant was represented by Mr Boyce at that Appeal. Essentially at that Appeal (as at this Appeal) Mr Boyce's grounds of appeal related to two matters. The first being that the Appellant was denied natural justice as she wanted to call further witnesses at the Stewards Inquiry and was prohibited from doing so and the second being that the evidence presented to the Stewards did

not meet the required standard for the Stewards to make a finding against the Appellant.

The Appeal before the First Level proceeded by re-hearing with further evidence given by the Appellant, Mr John Day, Mr David Stafford and Jockey Nathan Evans. None of those witnesses gave evidence that they heard the confrontation between the Appellant and her brother.

The First Level considered the matter and dismissed the Appeal against the breach of the rule and in the Information Notice of the First Level stated their reasons as:

“The Appellant was charged The Appellant was charged under ARR 175(q) in that on Saturday 9 June 2007 in the scales area of the Rockhampton Jockey Club she verbally abused Trainer Clint Garland specifying that the charge was that she abused Garland by threatening to kill him and calling him a “fat bastard”.

We the committee have carefully considered the whole of the evidence and we are reasonably satisfied applying the standard of proof required by *Briginshaw v Briginshaw* that the charge preferred by the Stewards can be sustained.

We are satisfied that the Appellant approached the complainant Garland in the scales area of the Rockhampton Jockey Club shortly after he had inquired of the Appellants husband Jockey John Stephens as to the state of the racetrack. We accept that she has uttered the words the subject of the charge and that at the time she was in a state of frustration. We also accept the corroborative evidence of Apprentice Jockey Coomes as to the manner in which the words were uttered and as to their content.

We find that there is confirmatory evidence by the complainant as to her using the derogatory remark “fat bastard” in her evidence to the stewards; we were at a loss for her failure from the outset to raise with the stewards her allegation that the complainant had initiated the verbal exchange between them by using obscene language towards her. Whilst acknowledging her denial throughout the evidence of her using threatening language towards the complainant we do not accept her evidence on the point.

The appeal is dismissed.”

With respect to penalty the First Level did alter the penalty imposed by the Stewards by stating in the Information Notice:

“We consider the submissions of the parties and whilst we do not think that the original penalty imposed by the stewards is manifestly excessive we do feel that they were justified in imposing a sentence which would serve as a detriment to future offending by the appellant in view of the background of family feuding which precipitated the incident the subject of the charge.*

* We believe that a penalty is required which is appropriate to ensure the professionalism of all registered parties conducting their business at racecourses. We believe the appropriate penalty would be a fine of \$1000.00, \$250.00 of which is to paid within 2 months with the balance suspended for 12 months condition upon the appellant not breaching a rule of a similar type.”

It is from these decisions and background that the Appellant appeals to the Tribunal.

The Appellant’s first ground of appeal is the denial of natural justice at the Stewards Inquiry. While the Appellant did repeatedly request an adjournment of the Inquiry stating that she was only given three business days to organise her witnesses, the Tribunal cannot see that there was any prejudice caused to her. Looking objectively at how the Inquiry was conducted the Tribunal is of the opinion that the Stewards treated the Appellant fairly. It is clear that the origins of the complaint is a “family feud” and one can imagine the frustrations of the Stewards being embroiled in the matter particularly when the Appellant wanted to bring up past incidents over many years. While the Appellant continually insisted that three business days was not sufficient notice the Tribunal believes that in the circumstances of the matter it was and it was incumbent on the Appellant to have her witnesses available. There have been many past occasions when witnesses have been organised in a shorter period and no doubt there will be many instances in the future when this occurs. The Tribunal is of the opinion there was no denial of natural justice to the Appellant by the manner in which the Stewards Inquiry was conducted. In any event it is noted that the Appellant called further witnesses at the First Level Appeal Hearing and under

Section 98(3) of the Racing Act 2002 the First Level was obliged to make the decision unaffected by the Stewards decision.

The Appellant's second ground of appeal has more favour with the Tribunal. The breach of misconduct rules such as AR175(q) is a serious matter. Threats such as "I will kill you" can be the basis of criminal proceedings. A breach of the misconduct rule also affects an unblemished record and a person's standing in the industry. For the Tribunal to be reasonably satisfied that there has been a breach the evidence must be such that its at the higher end of the balance of probabilities in accordance with the principles enounced in *Briginshaw v Briginshaw* (1938) 60 CLR 336 and what has previously been referred to by this Tribunal on many occasions as the *Briginshaw Test*.

With the alleged incident occurring between 2.15 pm and 2.45 pm and the fact that Mr Garland made his complaint at 3 pm would favour the acceptance of the complaint it is noted that full details of his complaint was not formally taken until some hours after. While the Tribunal finds no fault with the Stewards in this regard because of the pressing commitments involving the race fall it is unfortunate that the exact complaint was not recorded and witnesses contacted when Mr Garland first raised the matter. The Tribunal notes that the initial complaint was made on 9th June 2007 and the Inquiry did not take place until 27th June 2007. While this is understandable with the need to travel from Brisbane such a delay can effect the recollection of witnesses at an Inquiry.

If the only evidence which the Stewards had was the complaint by the Appellant's brother Trainer Clinton Garland then in view of the background to the matter the Tribunal could not be reasonably satisfied with the truth of evidence in view of the denials by the Appellant. There is however the evidence of Apprentice Coome and

the statement by him was presented as Exhibit 2 at the Stewards Inquiry. That statement states:

“RE: Incident between Clinton Garland and Angela Stephens

I was in the entrance to the Jockey room where the saddles are picked up.

The following is my account of events which occurred on Saturday 09 June 2007.

I heard Clinton Garland ask John Stephens, “Did the Horse slip or what is the track slippery John”.

John answered “No Clinto it just slipped”

Angela then started and came right up into Clinton’s face and said “How dare you speak to John or me you no good fat bastard. I am not scared of you. If you talk to him again I’ll kill you.

They were very close – nose to nose.

Clinton said “Just get”.

John was in the background saying, “Come on Angela, come on Angela”

They left then and Angela was still mumbling and carrying on.

Adrian Coome
25 June 2007”

While Apprentice Coome qualified his statement by saying its his account of the events which occurred the Tribunal notes that statement is set out in quotations and the Tribunal can only take it to be the exact words which the Appellant recalls as being said. It is understood that this statement was presented to the Stewards on the morning of the Inquiry on 27th June 2007. It is unknown who prepared it. While Apprentice Coome did give telephone evidence at the Stewards Inquiry it is clear that he is also aware of the family dispute and while he states he definitely heard the words “I will kill you” by the Appellant he stated (page 15 from line 6 of the SIT) “I can’t be sure if it is a serious threat or just telling him to back off.”

At the Stewards Inquiry there were questions asked as to the position of Apprentice Coome when he heard the confrontation between the Appellant and Trainer Garland. While he stated that he was no more than a metre and a half from where the confrontation occurred it is clear from the photographs tendered and the evidence of the other witnesses that he was further away being near where the scales were situated and not near the “flip door” of the counter in the room.

While the witnesses called by the Appellant cannot cast any light on what was said it is clear from where they were situated that if Apprentice Coome heard what was said during the confrontation then those witnesses also would have heard what was said. While Apprentice Coome has had some past involvement in the “family feud” that cannot be said for the witnesses John Wigginton, Mary Hassam, John Day, David Stafford or Nathan Evans. While the Tribunal accepts that there was commotion in the room that day it also accepts that those witnesses were much closer than Apprentice Coome when the Appellant spoke to her brother. In view of this and the date the statement was made by Apprentice Coome the Tribunal cannot accept as fact what he stated as to the conversation between the Appellant and her brother.

With the vehement denials of the Appellant and doubts cast on the complaint made by her brother the Tribunal is not reasonably satisfied that the Appellant stated the words “I will kill you”.

The Appeal against finding is therefore upheld.

While the Tribunal is not required to advise on the penalty imposed it is of the opinion that in the circumstances of this matter if the evidence was sufficient to find against the Appellant that the penalty of \$1,000 with \$750 suspended for 12 months pending no further conduct breaches is an appropriate penalty.

The order of the Tribunal is:

1. The Appeal against finding is upheld.

2. The Appeal deposit fee as is the Appeal fee paid for the First Level Appeal is to be refunded to the Appellant.

Mr Brock Miller
Deputy Chairman

Mr Dennis Standfield
Member