



INTERNAL REVIEW DECISION

(Internal Review Decision Notice in response to an Application for Internal Review)

PART 1: Details of Internal Review	
Internal Review Number:	Internal Review 0077-17
Applicant's Name:	J Brassington
PART 2: Decision History	
Original Decision:	Breach of Rule 175(k) of the Australian Rules of Racing
Original Decision Makers:	R Hitchener, B Cooke, J Childs
Date of Original Decision:	15 August 2017
Internal Review Decision:	Original decision of charge confirmed, original decision on penalty amended
Internal Review Decision-Maker:	Mr Kane Ashby, Internal Adjudicator, Queensland Racing Integrity Commission
Date of Internal Review Decision:	24 October 2017
PART 3: Summary of Internal Review Application	
<p>The Applicant, stable hand Mr John Brassington, was involved in a physical altercation with stable hand Mr Ron Maund in the tie up stalls at the Toowoomba Turf Club on 12 August 2017. The Applicant was charged under Australian Rule of Racing 175(q) and was subsequently found guilty of the charge at an adjourned stewards' inquiry conducted on 15 August 2017.</p> <p>Australian Rule of Racing 175(q) states:</p> <p><i>"The Principal Racing Authority or the Stewards may penalise:</i></p> <p><i>(q) Any person who in their opinion is guilty of any misconduct, improper conduct or unseemly behaviour.</i></p> <p>The specifics of the charge were that following Race 1 at the Toowoomba Turf Club meeting on 12 August 2017, the Applicant did strike Mr Maund in the vicinity of the race day tie up stalls, who was performing his duties as a stable hand, on more than one occasion in the head and body.</p> <p>Stewards conducted an inquiry on 12 August 2017 and 15 August 2017 whereby evidence was taken from the Applicant, Mr Maund and Ms Yvonne Robinson-Higgins, a witness to the incident. After considering the evidence tendered, the Applicant pleaded guilty to the charge. When considering an appropriate penalty, Stewards took into account the Applicant's personal circumstances, and forthright evidence, together with the recognition that breaches of this kind have a negative impact on the image of the racing industry.</p>	



Stewards subsequently disqualified the Applicant for a period of four months commencing 15 August 2017. Further, Mr Maund was found guilty of a charge of improper conduct under AR175(q) for striking the Applicant with a lead rope and was subsequently fined \$400.00.

The Applicant sought a review on penalty on the basis the severity of the penalty was grossly unfair and unduly excessive, with consideration to the relatively light punishment afforded to Mr Maund.

PART 4: Reasons for Internal Review Decision

The Applicant and Mr Ron Maund, a licensed stable hand, were involved in an incident at the Toowoomba Turf Club race meeting conducted on 12 August 2017. The incident occurred in the tie up stalls following the running of the first race on the program.

During the initial stewards' inquiry conducted on 12 August 2017, Mr Maund in summary stated *"Sir, this fiasco with Pickers (Applicant) - which is the only name I knew him as - has gone on for several months. (Inaudible) should stay here for a little bit because he came into the stables there one day and I was holding a horse and he waded into me and punched me several times and was screaming abuse at me. He said it's something to do - he's got this fetish about me and thinking I should have my head knocked off. I've never had trouble with him. I never did anything to him. Now we come tonight and - about 2 weeks ago when I was at the track here with Kenji working a horse, I heard someone scream out my name, and - and I was over at the eating shed, and it was Pickers, and I just turned the other way."* Mr Maund added *"I ignore him as much as I can, but he has carried on with this now for some months. (Inaudible) came up to me - he was already in the stall and when I walked in he said, "Don't you push in front of me effing again", and carried on. I said, "What are you talking about? Don't be such an idiot. What are you talking about?" With that he waded into me and smacked me fair in the mouth. King hit me. I said, "Get away, you idiot. The stewards will have you in and you won't get away with it again." Last time he did it he went crying to Alex Frazier and Neville Saunders asking them that they didn't report him to the stewards. Here he comes in front of everybody today and wades in to me again. Wades into me again. I said, "Get away you idiot." He was carrying on like an idiot to me, and he charged in again and waded into me and I smacked him across the face with the lead after he hit me again and (inaudible) my lip. Split in several places. A lesser person would have fell to the ground I promise you, but (inaudible)."* In response to a question *"what facilitated this"* Mr Maund stated *"I don't---No. Not in the slightest. He said I pushed in front of him."*¹

The Applicant's evidence in summary stated *"Well, I walked in - we were out in the mounting out and he's cut in front of me with his horse. Then I've come back to the stalls. I've tied up and I was about to put the raring bit and stuff on him in the horse's mouth. Then I said something to him about cutting in front of me and he's called me a fuckwit, and then he started smacking me across the arm with the fuckin' lead so I smacked into his head. That's what went on, because he's a liar ----."* The Applicant added *"All I said was, "Don't push in front of me again because I'm having trouble with the horse. Then he has called me a fuckwit and started smacking me across the hand with his lead, and I've got the marks to prove it on my thing. So I smacked him in the nose."* In response to a question *"in your opinion, it wasn't until such time as Mr Maund struck you with the lead rope"* (that you smacked/punched him) the Applicant replied *"Yes. Then I hit him."*

¹ Transcript of stewards' inquiry dated 12 August 2017, page 2 and 3



The Applicant concurred with Mr Maund's aforementioned evidence noting there had been other incidents between the parties stating *"But there has been a lot of other things too"* and recalled a previous incident Mr Maund referred to in evidence stating *"I do remember that day and -----."*²

In response to a question to both parties *"anyone else present at the time (of incident)"* Mr Maund stated *"There were quite a few people around there but I didn't actually look. He was charging me like a madman."* The Applicant stated *"No. I'm saying no more (inaudible) trouble."* When further questioned *"Do you have witnesses to back up your version of events"* the Applicant stated *"No."*³

The stewards obtained photographic evidence of Mr Maund's apparent injuries and provided the Applicant with an opportunity to photograph or show any apparent injuries sustained, to which he declined. In response to a question *"do you have any marks on you that you showed us something before in the original inquiry"* the Applicant stated *"No. Don't worry about it."*⁴ There was no evidence that either party was examined or attended to by the on-course club doctor or any post medical diagnosis or reports from their respective general practitioners. The photographic evidence of Mr Maund's face shows a small superficial mark to the upper left side of his lip.

The evidence not in dispute following the initial steward's inquiry is the Applicant instigated the verbal confrontation by stating words to the effect *"don't push in front of me again"* in reference to Mr Maund (knowingly or unknowingly) cutting in front of him when parading the horses in numerical order for the first race on the program. The Applicant does not dispute he *"smacked"* Mr Maund in the *"head"* or *"nose"* but alleges such action followed Mr Maund initially calling him a *"fuckwit"* and started *"smacking"* him across the *"arm"* or *"hand"* with his lead rope. Mr Maund, likewise, does not dispute *"smacking"* the Applicant *"across the face with the lead"* rope but alleges such action was in self defence following the Applicant initially *"wading into me (on two occasions) and smacked me fair in the mouth."*⁵ The initial steward's inquiry was subsequently adjourned to enable stewards or the relevant parties an opportunity to seek any witnesses to the incident.

During the adjourned inquiry conducted on 15 August 2017, neither party provided any witnesses, however, at the request of stewards, Ms Von Robinson-Higgins, who officiated as the Clerk of the Course and witnessed the incident on the night in question, provided evidence. Ms Robinson-Higgins in summary stated *"I walked from my post at where the ponies get tied up close to the mounting enclosure. I walked down to check on a horse that I ride work, which was down near the wash bay down at the other end. I saw John and Ron get close. I saw Ron flicking a lead rope and then I heard yelling, which was coming from John. Then I saw John drop the lead on his horse and come back to Ron to get close, and then there was a bit of a scuffle. Then John went back to collect his horse. He was going in towards it. They were close together and they got cut off. I'm not sure whether it was Ron that cut him off or John. They were close together, and then there was a bit of abuse. I didn't - I wasn't close enough to hear what it was, but it was kind abuse. Then I saw Ron flicking the lead, which actually contacted with John, and then I heard yelling and swearing, and that is when John came back to Ron."*⁶

² Transcript of stewards' inquiry dated 12 August 2017, page 3 and 4

³ Transcript of stewards' inquiry dated 12 August 2017, page 6

⁴ Transcript of stewards' inquiry dated 12 August 2017, page 7 and 8

⁵ Transcript of stewards' inquiry dated 12 August 2017, page 2, 3, 4 and 5

⁶ Transcript of stewards' inquiry dated 15 August 2017, page 12



In response to a question “can you elaborate on what you mean by flicking it” Ms Robinson-Higgins stated “Well, it was more - it was intent to hit John” when further questioned “was it like an underarm spinning motion or was it over the top or -----” Miss Robinson-Higgins stated “Yes, over the top ---- Yes. To point it in the direction to hit somebody, yes.”⁷ Ms Robinson-Higgins added “ -- there was punches involved, but they weren't like, you know, proper boxing punches. They were attempted to punch, so ----- Mr - John was sort of - yeah, was going towards him and punching him and Ron was defending himself. There was a lot of people that were standing like where Rex Lipp was and strappers saying, you know - all saying, “Let it go, John. Let it go, John.” You know, “Walk away”, and stuff like that. People were sort of ----- I did see the bruising on John's arm afterwards because he came down to where Tony Sears was tied up and he showed us his bruising, and it was evident that he got hit by the lead.”⁸ Ms Robinson-Higgins later in the inquiry confirmed Mr Maund initially struck the Applicant with the lead stating “Ron was flapping at his lead, and that's when I saw it strike John and then John was really angry and yelling, and that's when he let his horse go. He turned towards Ron. He came at him aggressively, flapping, you know punching - throwing punches, and Ron was trying to defend himself---.”⁹

The Applicant's submissions in summary state “I never provoked Ron Maund in any way and there are a number of witnesses who can attest to this, including Allan Mills and Yvonne Higgins, both people of high regard. Contrary to his claim at the investigation, I have never had an altercation with Ron Maund, let alone having punched him in the stomach. I love my work with horses and am currently engaged by Tony Sears, with whom I have an excellent working relationship. I am unskilled in all other areas and finding an alternative job will be highly problematic. As such, it is highly likely that I will be homeless as I cannot afford to sustain myself without work. I do not have a criminal record and have never had allegations of criminal behaviour levelled against me. Further, I have never been involved in aggressive behaviour and shun violence. As such, I consider myself to be a person of good character and it aggrieves me that I have been wrongly accused of being the provocateur in this matter, which is implied by my relatively excessive penalty. On that matter, I believe that my penalty is unduly excessive because of the consequences of my action, namely, the injury suffered by Ron Maund. Had Ron Maund damaged my eyesight with the wanton flailing of his lead, and I had missed when attempting to defend myself, I expect that my penalty would have been considerably less than his. Ron Maund hit me with a blow that was not particularly well aimed; and without training, my hitting him on the nose was not the consequence of a well-aimed blow. I hold that both, Ron Maund and I, acted in an uncontrolled manner, and as stated, it is only the consequences that are proving to be the difference in determining the variations in punishment. As it stands, the loss of earnings from incurring the 4 month suspension will be in excess of \$8,500, which is over 21 times that incurred by Ron Maund. I also suffer the indignation of being unemployed and unable to sustain myself as a result. As such, I appeal for a significantly lighter punishment, which should be no more than that afforded to Ron Maund. I base this plea on the ethical argument of “moral luck”, which holds that two people ought not to be morally assessed differently if the only other differences between them are due to factors beyond their control.” The Applicant requested a review of the penalty imposed.¹⁰

⁷ Transcript of stewards' inquiry dated 15 August 2017, page 13

⁸ Transcript of stewards' inquiry dated 15 August 2017, page 14, 15 and 16

⁹ Transcript of stewards' inquiry dated 15 August 2017, page 34

¹⁰ Internal Review Application dated 27 September 2017



The reviewer acknowledges horses are required to be paraded in numerical order when parading in the mounting enclosure. This is done in a courtesy manner ensuring a common sense approach is applied when dealing with the unpredictability of the animal.

The evidence is not disputed by Mr Maund that either knowingly or unknowingly he pushed in front of the Applicant when parading their respective horses in numerical order in the mounting enclosure. Mr Maund stated "*John believed that I cut in front of him in the mounting out, which I was directed to by the steward to take my place behind number 2.*"¹¹ This action (pushing in front of the Applicant) initiated the Applicant approaching Mr Maund in the tie up stalls following the race to express his frustrations.

The evidence as to what transpires following this point is conflicting by the parties. In brief, the Applicant states his actions in striking Mr Maund to the head resulted from Mr Maund initially striking him with the lead rope, and Mr Maund states his actions in striking the Applicant with the lead rope was in self defence following being struck by the Applicant. The reviewer is satisfied, on the evidence, the Applicant initially approached Mr Maund in the tie up stall following the race to express his frustration that Mr Maund cut in front of him whilst parading their respective horses. The evidence of Ms Robinson-Higgins, an independent witness to the incident, is accepted, in that following the verbal altercation, Mr Maund initially struck the Applicant with his lead rope before the Applicant retaliated and punched Mr Maund. Ms Robinson-Higgins' evidence relating to the bruising or welt marks on the Applicant's arm is accepted, stating "*I did see the bruising on John's arm afterwards because he came down to where Tony Sears was tied up and he showed us his bruising, and it was evident that he got hit by the lead.*"¹² The Applicant, by his own admission, states "*I hit him once in the face and once in the guts. And I know I hit him. I shouldn't have done it, but I'm not taking getting whacked by a lead around the arm.*"¹³ The reviewer, having considered the aforementioned factors, is satisfied the charge is proven.

The Applicant's disciplinary history is clear of any offence under the Rules. Precedents for similar related offences have incurred penalties between a moderate fine to a term of disqualification.

The Internal Review Decision of *Lock*¹⁴ confirmed a six-month disqualification that involved a strike/punch to the head of another licensed person. This matter is the subject of further appeal. The Internal Review Decision of *Jenkins*¹⁵ amended a twelve-month disqualification to six-month disqualification that involved placing a hand on the starter's shoulder and a clenched fist with the other hand towards his face in an offensive physical manner. In a Victorian Racing Appeals and Disciplinary Board decision of *Racing Victoria v Cox* dated 29 November 2016, the trainer, in amongst other charges, was issued with a six-month disqualification for physical contact towards an official in the course of their duty. In the aforementioned decisions, there was no evidence of any provocation and in each case a plea of not-guilty was entered with the exception of Cox.

¹¹ Transcript of stewards' inquiry dated 15 August 2017, page 17

¹² Transcript of stewards' inquiry dated 15 August 2017, page 16

¹³ Transcript of stewards' inquiry dated 15 August 2017, page 21

¹⁴ Internal Review Decision 0008-16 dated 24 August 2016

¹⁵ Internal Review Decision 0055-17 dated 2 August 2017



In weighing up the matter of penalty, consideration was provided to the mitigating circumstances of the evidence, in particular, that subsequent to the verbal altercation Mr Maund initially struck the Applicant with a lead rope before the Applicant retaliated and punched Mr Maund. Further consideration was provided to the Applicant's submissions, guilty plea, disciplinary history and precedents for similar related offences. The reviewer finds, irrespective of the circumstances, licensed participants are bound by the Rules of Racing and should be able to attend their workplace and carry out their duties without fear of intimidation or physical harm. Conduct of this nature is a serious offence that adversely impacts the reputation of the racing industry.

Mr Maund was fined the sum of \$400.00 for his part in the incident. The reviewer finds Mr Maund's conduct in the incident was less culpable than the Applicant. The reviewer acknowledges each case is treated on its merits and set of circumstances and, in weighing up the aforementioned factors on penalty, finds the original decision on penalty be amended to an eight-week period of disqualification.

PART 5: Review Rights following Internal Review Decision

In accordance with section 246 of the *Racing Integrity Act 2016*, as the applicant for an internal review of the original decision, you are able to apply to the Queensland Civil and Administrative Tribunal (QCAT) for an external review of the internal review decision.

An external review is commenced by lodging the appropriate forms with QCAT. In accordance with section 33 of the *Queensland Civil and Administrative Tribunal Act 2009*, an application for an external review of an internal review decision is to be made within 28 days from the day this internal review decision notice is provided to the applicant.

For further information regarding the processes for an external review of the decision, please contact QCAT:

Queensland Civil and Administrative Tribunal

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