

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF
MR D MOSSENSON (CHAIRPERSON)

APPELLANT: GEORGE NORMAN DAVIES

APPEAL NO: A30/08/524

DATE OF HEARING
AND DETERMINATION: 9 April 2001

IN THE MATTER of an appeal by Mr GN Davies against the determination made by the Western Australian Turf Club Stewards on 6 March 2001 imposing a \$2,500 fine for breach of Rule 8(d) of the Australian Rules of Racing.

Mr GN Davies appeared in person.

Mr FJ Powrie represented the Stewards of the Western Australian Turf Club.

On the 6 March 2001 the Stewards of the Western Australian Turf Club held an inquiry into a report of an incident which occurred in the mounting enclosure prior to the running of the Eighth Trial at Ascot on that day. Mr Davies is a licensed trainer and Master of pre-apprentice Richard Caddies.

Early in the inquiry the following statement of the racecourse investigator was read out to the Stewards:

I instructed my Apprentice Richard Caddies to lead the horse and mount the Jockey on. When Billy got on, Richard let go of the lead rope and the horse has bolted. I was shouting to Richard because I could see an accident

about to happen. For that split second, no one was in control of the horse. I jumped the fence when I saw Billy get tossed off onto the concrete. I was angry and in the heat of the moment, I went towards Richard. I thought he'd been negligent. It all happened in a short time. I told Richard to piss off, to be honest. I have pushed him away. I said go on piss off and at the time Mr. Davies described to me a swinging arm motion rather than a direct punch which made contact with Mr. Caddies. ...I was shouting at him. Frank Maynard told me not to embarrass the kid, I told him it had nothing to do with him. The thing was that I could see a boy was going to get hurt.'

Mr Davies showed remorse for the incident and asked the racecourse investigator to convey his apologies to Mr Caddies. Although the apology was accepted Mr Caddies sought permission to leave the stable. The version of the incident given by Richard Caddies to the investigator states:

'I'm 15 years of age and am a Pre-Apprentice with Mr. Davies at 16 Leake Street, Ascot. This morning I was at trials at Ascot leading a horse around for Mr. Davies in the parade area. I was walking the horse waiting for Billy Wachill to mount up. As Billy got to the horse, as Billy got on, the horse played up and I couldn't hold him any more. I had to let go of the lead rope. The horse ran along pigrooting and bucking a bit and Billy got thrown off. I couldn't do anything. Mr. Davies came up to me and punched me twice to my chest area. One punch hurt me and I have a mark on my right upper chest area. Mr. Davies said get out of my sight. There was a lot of people around everyone was yelling to Mr. Davies saying, leave him alone, it wasn't his fault. Some lady came up to me and told me to go straight over to the Turf Club and tell Mr. Powrie what had happened. Mr. Danny Miller called me and he drove me over here. Mr. Miller was angry with Mr. Davies. I don't like working at the stables with Mr. Davies because he yells a lot at me. I'd like to continue my Pre-Apprenticeship, but with someone else. After this incident, I don't think I would like to stay with Mr Davies.'

Later in the inquiry Mr Davies stated by way of explanation:

'Well I was only shouting, this all went on Sir while the horse's took, you know like this all took place in a, not a long time, but from when I could see this, the horse went right down, you know from the start of the, half way up the ring on the concrete and it's going faster and faster and I mean I could see the boy going to get badly hurt, he could have got killed and it was in the spur of the moment. I realise that, you know once you say something, you can't retrieve it, you know that was, it was in the space of that short time, that all this happened Sir, but I was just so, it just, it's, it scared me, I honestly was scared to see the way that Billy Wachill by this time was on the back of the horse and the horse's letting go, it's bucking and he's got no reins or anything...'

Mr Nalder, one of the Stewards who attended at the trial, agreed with Mr Mance who had stated earlier that he observed Mr Davies jump the fence and was very aggressive and was arguing with Frank Maynard. Mr Nalder went on to state:

'Mr. Davies certainly was, appeared to be extremely upset and calling out quite loudly and there were quite a number of people present at the time, a number of who had, made complaints that Mr. Davies' behaviour was totally unacceptable. It may well have been Mr. Davies he might have been worrying about Mr. Wachill I don't know, but certainly he was calling in a very loud tone and was quite agitated.'

There were some 20 -25 owners, trainers and jockeys present at the time of the incident.

The Stewards decided to charge Mr Davies of a breach of Racing Rule 8(d) which states:

*"To assist in the control of racing, Stewards shall be appointed according to the Rules of the respective Principal Clubs with the following powers.
(d)...To regulate and control, enquire into and adjudicate upon the conduct of all Officials and licensed persons, persons attendant on or connected with a horse and all other persons attending a racecourse and to punish any such person in their opinion, guilty of improper conduct or unseemly behaviour."*

The following charge was laid:

Mr. Davies we charge you in terms of that Rule with improper conduct in that at Ascot Racecourse on the morning of Tuesday the 6th of March, 2001 at the Official Trials held thereon, that you verbally abused Pre-Apprentice R. Caddies; That you made physical contact with a Pre-Apprentice R. Caddies and that further; that you conducted yourself in an improper manner in the continued verbal exchange with Trainer Frank William Maynard ...'

Mr Davies pleaded guilty to the charge. He gave evidence that his only livelihood was racing which he had done all his life, that he had a good record as both jockey and trainer. He felt sorry for himself for being so silly. He had an unblemished record and had ridden in a number of countries and extensively around Australia for some 39 years.

In deciding on penalty the Stewards reached the following conclusion:

'Mr. Davies, a public display of verbal abuse and an aggressive conduct at a very significant place on any, on a Racecourse is great concern to the Stewards and indeed, the Stewards in considering the charge accept that it was not a punch action, but rather we, with what Mr. O'Reilly had said in relation to the action. Now had it been a punch action, quite simply the, the issue and indeed the penalty would have to be of the highest level. The Stewards have taken into consideration your remorsefulness which appears to have surfaced or been displayed at the very earliest outset following the incident and indeed, we're well aware of what you say in terms of you're (sic) shame, that you're now showing and indeed the fact that you're sorry for, genuinely sorry for your actions not sorry necessarily just for yourself, but sorry for the way that it has transpired. The fact that you've apologised is also a circumstance that the Stewards are well aware of. You say, it's out of character and quite simply from the knowledge of the Stewards of you Mr. Davies as a person, we believe it is definitely out of character. Mr. Nalder and Mr. Mance have put forward that, they too thought that Wachill was injured and as such, you're (sic) actions as you put forward been borne out of the fear for the wellbeing of Wachill appear to be of, have some legitimacy. Stewards have taken into consideration your plea of guilty also as a mitigating circumstance any you're, it is quite true that you have simply, a very high level of record being that it is unblemished over a period of 39 years. The Stewards believe that the fact that the charge relates to a minor, however in the Pre-Apprenticeship programme and indeed under your care as such that you should be precluded from having a Pre-Apprentice or Apprentice for a period of two years and in relation to the penalty, the Stewards believe that the incident is such that, that it should attract a penalty of disqualification or at least a suspension, however in saying that Mr. Davies the fact that there are mitigating circumstances as I outline, that the Stewards are of the opinion that it being out of character. The fact that it is out of character and the fact that you are highly regarded within this Industry as a gentleman and the Stewards believe that. The Stewards believe that a monetary penalty should apply instead of any period of disqualification or a suspension of licence and in considering what fee should apply, the Stewards believe that the appropriate penalty would be a fine of \$2,500.'

In appealing against the severity of the fine imposed Mr Davies put forward very little compelling argument to justify altering the penalty. Despite that he did however impress me with the sincerity of his regret and his embarrassment over the incident.

Mr Powrie left me in no doubt that whilst the behaviour was unacceptable it was unlikely that Mr Davies would offend again. Indeed I was told that "... it is probably hard for the Stewards to think of someone that would be less inclined to offend than Mr Davies." Mr Powrie went further than that in stating:

'... you couldn't find a Steward in Western Australia that wouldn't speak highly of this man. So somewhat of an aberration.'

...
Well Mr Chairman, I came down here with an aberration and you dealt with me harshly but I accepted that because I had made a mistake. And I would have preferred if you had gone about it another way and given me a second chance, but if you are to apply it by giving Mr Davies a second chance, we wouldn't have a problem with that as long as the Industry knows that it is unacceptable behaviour.'

Clearly Mr Davies must be punished for his behaviour. Such a public outburst by a trainer directed to other licensed persons cannot be tolerated in the industry. The circumstances leading to it were however rather extraordinary. No doubt Mr Davies was genuinely concerned for the jockey's welfare and upset to see the chain of events which led to the jockey landing on the concrete.

Racing is an industry which is controlled by rules which must be universally obeyed for the good of all participants. In such an industry the behaviour in question cannot go unpunished. This is despite the fact that the prospect of Mr Davies repeating this aberrant performance is very slim. Mr Davies needs no reminding of his duty to behave differently from how he conducted himself during this brief unhappy period. His long and distinguished career and coupled with the respect with which he is held in the industry must be balanced in the equation as well.

In the light of Mr Powrie's comments, coupled with all of the other relevant factors, I believe it is appropriate to halve the fine. The appeal succeeds. The fine shall be reduced to \$1,250.



DAN MOSSENSON, CHAIRPERSON

