

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION

APPELLANT: STEVEN KEVIN LYNCH

APPLICATION NO'S: A30/08/531 & 532

PANEL: MR D MOSSENSON
(CHAIRPERSON)

DATE OF HEARING 19 JUNE 2001

DATE OF DETERMINATION: 19 JUNE 2001

IN THE MATTER OF appeals by Steven Kevin Lynch against the determinations made by the Stewards of the Western Australian Turf Club on 29 May 2001 imposing two periods of suspension for one month and two months, respectively, to be served concurrently for breaches of Rule 8(d) of the Australian Rules of Racing.

Mr BJ Singleton QC appeared for the appellant.

Mr F J Powrie appeared for the Western Australian Turf Club Stewards.

This appeal was heard 19 July 2001. At the conclusion of the proceedings I dismissed the appeal and undertook to publish reasons, which I now do.

On 29 May 2001 the Stewards of the Western Australian Turf Club conducted an inquiry into 2 incidents involving Apprentice William White and Stable Foreman Steven Lynch. Mr White at the time was apprenticed to Mr L Luciani. Mr Lynch

is the foreman at Mr Luciani's stables. The incidents had been the subject of an inquiry and report by the racecourse investigator Mr Phil O'Reilly. Mr O'Reilly had obtained statements from both parties to the incidents. The 2 statements were read out during the Stewards' inquiry. In his statement Apprentice White states:

'I am 17 years of age and am an apprentice jockey with Mr Luciani.

On Saturday morning, I was at the stables with Mr Luciani and "Stretch". Stretch is Steven Lynch the stable foreman,

There were some stable hands around at the time but they did not see the incident.

I asked 'Stretch' around 7.30 am if I could go to the track. I had a trial booked for today and wanted to see the trainer of the horse I was to ride.

"Stretch" said 'no'. You didn't do the work on Thursday night.

The work I forgot to do was put a rug on a horse.

He wasn't in a good mood on Saturday morning.

Stretch grabbed the dipper and hit me twice to my head. The blows were with force and hurt.

Then Stretch kicked me on my backside. It was a hard kick and it hurt me.

He told me to run and do my work.

I walked off and he ran up and kicked me again.

It hurt me again.

He then pushed me against a stable fence head first but I had my skully on and it protected my head.

When I was against the wall Stretch punched me and kneed me in my left leg.

I have got swelling to my right eye and my left leg still hurts.

He walked off and left me crying.

I got my gear and left.

I walked to McDonalds.

I went to Mr Parnhams house and spoke to the apprentice there.

I rang my mother in Sydney and told her what happened.

She told me to go and stay with my Aunty.

My uncle picked me up and I have stayed with them over the weekend.

I've spoken to Mr Luciani about this. He apologised for what had happened.

He asked me to come back but I didn't want to and I don't want to continue here.

I feel stressed about being around Stretch.

There have been two occasions that Stretch has hit me.

This time and about three weeks ago when Stretch hit me with a whip.

He hit me twice on the leg and once on my face.

I had worked a horse at trackwork one morning and it had got away from me. When Stretch found out he was angry with me because I told him the horse worked OK and he found out later it had bolted.

I am not comfortable here any more and I would like to work somewhere else.'

Apprentice White added the following to his statement:

'I would like the Turf Club to deal with this issue rather than report the matter to the Police.'

Mr Lynch's statement is as follows:

'I am a licensed stable hand and foreman for licensed trainer Lou Luciani.

Willy White is an apprentice jockey at the stables. I currently live in a house at 6 Aurum Street with Willy.

Last Thursday afternoon Willy was asked by me on the instruction of Lou to ride a hack before he finished for the day.

Willy knows that the horse needs to be rugged when he finishes his work and everything to be locked up. I shouldn't have to chase him around and tell him because he knows the routine.

On Friday morning I noticed his horse was not rugged, rubbish bins were still out on the street and the saddles were not soaped. There were a couple of things that didn't get done that he knows he has to do. It was his day off Friday and his work had to be done by others.

I saw Willy at the house Friday afternoon but didn't mention it at the time. I was always going to address it with him later at work.

On Saturday morning we finished a bit late at the track. Willy came into the feed room and was loping around. Things at the stable run pretty quick and Willy was not helping.

Willy asked me if he could go back to the track to ride work.

I said no and get and help out with everyone.

I had the dipper, which is a plastic container I use to scoop the chaff out in my hand. I struck him a couple of times on the head. I think I hit his scully more than I hit his face.

At the same time I was giving him a real good blast about the jobs he hadn't done the day before. I was swearing at him as well.

Willy walked off real slow as if to say "stuff you for not letting me go to the track." I threw the dipper at him and it missed so I chased after him and gave him a boot up the arse. I pushed him into the fence near the yard. I was telling him to f ing move.

As I pushed him into the fence I probably kneed him. He bent over and the scully fell off his head. I thought to myself oopps that's enough.

As I was running towards him I could have swung my arm and given him a punch across the head.

When I realised I had done a bit much to him I walked back and finished off the feeds.

I saw Willy go towards the yards and could hear him opening the gates. I later found out that the other staff had seen him cleaning the yards and crying or was teary eyed.

Lou came out of the house and asked me what had happened. I told him I'd given the kid a rev up.

About 15 minutes later all the staff were in the coffee room. I asked where Will had gone. We had our coffee and realised that Will was not around.

We started picking horses and Lou came out asking where Willy was. We said he'd done a runner. I think Lou checked the house and came back "saying yeah he's gone."

Lou asked me what happened and I told him exactly what I just told you.

We all continued doing what we had to do, to get ready for the races.

I saw Willy this morning for the first time since the incident. I apologised for what I'd done. He said "that's alright I don't want to be with Louy anyway. I'd like to get a transfer."

He came to Louy's with his Aunty to talk with Lou.

That's all I know about the incident.

About three weeks ago I found a horse he rode in track work had not done the right work. Willy came in and told me a lie about it.

I gave him a blast and took a whip off the rail and hit him across the legs and one across the face. I think it would have been half across his scully and half across his face.

That's the only time it's ever happened and Willy seemed fine after that. He knew he was in the wrong."

After the statements were read a series of questions were asked to clarify matters. In the course of the Stewards' inquiry Mr Lynch expressed remorse for his conduct.

Clearly Mr Lynch is an integral part of Mr Luciani's operation. Mr Luciani was asked by the Stewards whether he would re-employ Mr Lynch if he were disqualified, to which he replied:

I certainly would, but I mean, it would completely throw my stable into chaos. I mean he's a very integral and very important part of the running of the stable. I mean I've had Steve, I had Steve work for me, he'd probably be the first person I'd employ in any way in Western Australia. He's you know, he's, his level of commitment is unquestioned and I don't think that you, I mean this may sound strange after what he's done that I don't think there would be a foreman in Western Australia who would come within cooee of him. He's certainly, he's certainly an important part of my stable and I can't afford, I couldn't afford to not have him there.'

After the Stewards finished their deliberations on the evidence the Chairman of Stewards announced the penalty in the following terms:

'The Stewards have taken some time to deliberate in relation to an appropriate penalty, Mr Lynch. The Stewards are conscious of the fact that you pleaded guilty to both charges at the earliest instance and quite simply the, your evidence at the inquiry and to the Racecourse Investigator was very forthright and true, we believe in all aspects.

You're obviously very remorseful for the issue, or of both incidents.

However, in the light of the Stewards, and the eyes of the Stewards both incidents are very serious.

The second incident quite simply appears to be worse in terms of the impact upon Apprentice White and effectively becomes worse again, when considering that it was preceded by an incident three weeks before, which might have otherwise highlighted to you that there was some form of problems with your conduct and your attitude.

It is agreed that the conduct was not acceptable and indeed, it was certainly never suggested that it be condoned.

The Stewards' task is the protection of young persons in stables and especially apprentices under the control of a trainer, or in this particular instance, the delegated power through to you as the foreman for Mr Luciani.

Now the appropriateness of each type of penalty has been considered and the Stewards do not believe that disqualification would be appropriate and we believe also that a fine would be inappropriate.

We believe that a period of suspension of your licence would be appropriate and in considering the period of such suspension, the Stewards have taken into consideration certain aspects of your mitigation which were: your clean record, effectively is unblemished in your period within the industry which effectively amounts to 12 years. The Stewards are conscious of the penalty in inverted commas as imposed by Mr Luciani which was a monetary penalty of a gratuity and indeed a sling.

Whilst that does not necessarily impact on the penalty itself, it is, the Stewards are conscious of it when coming to a decision related to the period of suspension of licence that should apply.

The Stewards believe that a period of suspension for three months should apply in relation to the first incident, and a penalty of one month should apply to the issue related to the first, the second incident, the with the whip, I'll call it the "whip" incident. Both of those penalties should be served concurrently but in assessing the penalty in totality, the Stewards believe that instead of imposing the three month penalty because of your clean record and your strong remorse related to this and what Mr Luciani put forward on behalf of you, we believe that it should be discounted by a period of one month to be a period of two months' suspension in total.'

The transcript of the Stewards' inquiry, particularly the early part of the proceedings, is a very poor record of what transpired. The laying of the charges, the pleas and the findings as to guilt are not to be found in the transcript. In fact Mr Powie describes its quality as 'abysmal'. Despite this the appeals were able to be proceeded with after some clarification by Mr Powrie. In particular Mr Powrie confirmed the fact that both charges were for improper conduct. The fact that the appeals were both only as to penalty and not conviction meant the transcript aberration was not really an issue in the appeal.

Mr Lynch appeals against the severity of both penalties on the following grounds:

'That the penalty was disproportionately severe and given the nature of the offence did not adequately take into account my previous good record, my

admission of guilt, my apology to the apprentice and my genuine contrition.

Rule 8(d) of the Australian Rules of Racing states:

'8. To assist in the control of racing, Stewards shall be appointed according to the Rules of the respective Principal Clubs with 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.'

There is no dispute as to the details of the 2 incidents. The first, which occurred early in May 2001, related to Mr Lynch striking apprentice White with a whip 3 times after apprentice White had returned from working a horse. One blow was to the head. The second incident, which occurred on the 26 May 2001, involved a series of assaults on apprentice White, again at the stables of trainer Mr LP Luciani.

Mr Singleton QC at the outset of his submissions compares the 2 participants by age and stature. Although the apprentice was aged 17 years 9 months at the relevant time, whereas Mr Lynch was aged 26 approximately, there is no significant height differential between the two. Mr Lynch has been in the industry for some 10 years. The implement which was used second time around, the 'dipper', is a plastic ice-cream container.

According to senior counsel, Mr Lynch is a person of no education, sophistication or maturity. The incidents cost him not only his weekly salary but also benefits associated with his work. One such benefit he lost as a consequence was a trip to Broome.

Mr Singleton QC also argues that there is no difference in substance between a disqualification and a suspension. It is said that there was no suggestion of a deterrence to others in arriving at the penalty. Mr Lynch's penalty is said to be excessive compared to that meted out to Mr George Davies (Appeal 524) where a fine of \$2,500 was reduced on appeal to \$1,250. Senior counsel complains that in

their reasons the Stewards have not explained why a fine is not appropriate and why a suspension is appropriate whereas a disqualification is not. There have been cases where fines have been imposed for whipping a horse.

According to senior counsel, the Stewards failed to give significant weight to Mr Lynch's openness, his plea of guilty, his early admissions and the fact that there were no witnesses to the incidents. Another element to the mitigation was the fact that Mr Lynch had apologised at the first opportunity and had exhibited genuine remorse. It is argued that whilst the Stewards did acknowledge some discount it is not sufficient in the circumstances. The appellant did not, as others allegedly often do, join issue with the other side leaving the adjudicator to decide which version should be believed. The Stewards' requirement that Mr Lynch obtain independent professional counselling has now been attended to. Finally, three references were tendered to the Tribunal to show the background character of Mr Lynch.

Mr Powrie explains that Mr Lynch was in a position of control over all the other staff in the most powerful stable in Western Australia. This position of power is significant. It is a high profile position. Despite the acknowledgments in the reasons why the penalty should be mitigated, both incidents were very serious cases involving assaults. The Davies' case on the other hand was verbal abuse with no physical contact. Accordingly, Mr Lynch's offences are of far greater seriousness. Further, there was no public element in this case as the incidents with Mr White both unfolded in the privacy of the stable. The physical aspects were entirely improper. The second incident was the more serious because of the more aggravated nature of the physical assault. It is pretty rare to encounter a case of such physical contact. It is inappropriate for a case of physical assault of an apprentice to attract a fine according to Mr Powrie. After all jockeys who strike horses over the head with a whip are usually suspended 1 month.

In Davies' case I stated:

'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.'

The trigger for Mr Davies' aberrant behaviour was spontaneous and potentially serious for the jockey who was mounted and in danger when the lead rope was released by the apprentice. Nothing like this occurred to trigger Mr Lynch. Indeed the Davies' case is different in any number of material ways from Mr Lynch's. Firstly, Mr White was assaulted on two separate occasions in private. There was no one around to observe and lend support to the young man in trouble. Both episodes of physical bullying by Mr Lynch were much more serious than what happened in the other case bearing in mind the physical actions involved and the respective roles and relationship of the participants.

The same type of physical behaviour was repeated by Mr Lynch. On the second occasion a series of contacts occurred including striking with an object, kicking, pushing, punching and kneeing. Whilst Mr Lynch clearly is respected by Mr Luciani he does not yet enjoy the description of having a '*long and distinguished career*' when compared to Mr Davies' length of service in the industry.

There have been over the years a number of misconduct cases which have sufficient relevance to this matter to be worth referring to in passing. In Ball (Appeal 336) an experienced jockey was disqualified for 3 years for the intimidation of 2 apprentice jockeys. Unfortunately, it is not too helpful due to the issue of the duplicity of the charges. The Tribunal sent the matter back to the Stewards for re-hearing. The charges were not proceeded with. In Harvey (Appeal 460) a 1 month suspension was imposed on an apprentice jockey for an altercation in the jockey's room after a race. It was considered in the circumstances of that case that a 2 week suspension was appropriate although the ultimate penalty took into account rides that had been missed. In Usher (Appeal 190) a 2 month disqualification for breach of Rule 83(a) was reduced to 1 month for misconduct by a jockey engaged in a fracas with his mount's owner where provocation was involved. In Cousins (Appeal 189) a 6 month disqualification

was reduced to 3 months for the owner of the horse ridden by Mr Usher who was abused and involved in the altercation. In Oram (Appeal 35) a 12 month disqualification for striking a committeeman at a tavern was imposed.

It is helpful briefly to put into some context the role of apprentices in racing. The apprenticeship process is essential to the industry. Apprentice jockeys are put through a training system which involves them being contracted to an employer whilst learning the trade. Without a continuing bank of qualified riders who possess the necessary level of riding and horse handling skills the industry would wither. The reputation of the industry needs to be fostered if it is to attract and retain suitable candidates for apprenticeship.

On the other hand aspiring jockeys need to be attentive and responsive to the reasonable commands made of them during their training. This is to enable them to develop a sense of responsibility and discipline in all the tasks leading to the ultimate responsibility of riding competitively and safely under the pressure of a race. As part of the process apprentices are placed with host employers for daily on the job training. The evidence in this case indicates Mr White did not responsibly carry out all of his duties at the stables. Further, he was not truthful at the relevant time. In view of these factors Mr Lynch was entitled to feel let down and disappointed with Mr White. These feelings, however, in no way justify this outrageous conduct. Such conduct between two persons of roughly equal circumstances is intolerable. But in this case the inequality of the parties is an aggravating factor, made all the worse by Mr Lynch's repeated bullying and abuse of responsibility. Stiff penalties are clearly called for and the Stewards would be derelict to fine in a case like this. Further, there clearly is a distinction between a disqualification and a suspension, the former being a more serious penalty under the rules. Disqualification should be meted out in the more serious of cases.

Mr Lynch as foreperson at the stables clearly has considerable responsibility in running the operation. He exercises authority and has responsibility over other employees. He holds a prominent position in one of Western Australia's leading establishments. The role of foreman is a particularly dominant one compared to that of an apprentice. The 2 positions arguably are almost at opposite ends of the stable staff spectrum. The trainee jockey's position of subservience is highlighted by the age differential.

Far from being persuaded that the Stewards were in error I am inclined to the view that Mr Lynch is fortunate in receiving relatively light treatment considering the factors applicable here and bearing in mind the other cases referred to earlier. I am satisfied the Stewards not only did take into account all of the mitigating factors but that they made full allowance for them.

The appeal lacks merit.



DAN MOSSENSON, CHAIRPERSON

