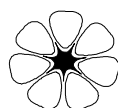


- (e) *conduct which threatens, disparages, vilifies or insults another person ("other person") on any basis, including but not limited to, a person's race, religion, colour, descent, national or ethnic origin, special ability/disability, or sexual orientation, preference or identity, while the other person is acting in the course of his or her duties in the racing industry.*
4. The particulars of the charge were:
- He did engage in improper behaviour, being that at the oncourse stables of the Darwin Turf Club on the morning on Friday, 24 March 2023 in the presence of multiple licensed persons, he did speak to Senior Stewards R Hamilton and P Carroll in an abusive manner, using offensive language when they were conducting race morning stable inspections.
5. Mr Masten plead not guilty to the charge.
6. The Stewards found Mr Masten guilty and imposed the following penalty:
- A fine of \$5,000, partially suspended in the amount of \$2,000 for a period of two () years on the condition that Mr Masten is not found guilty of any further charge under AR228.
7. In determining the penalty, the Stewards indicated that they took into account the following matters:
- The serious nature of the offence;
 - That Mr Masten's conduct was detrimental to the image and interests of racing;
 - The incident took place on a racecourse whilst the Stewards were performing work duties;
 - The improper behaviour was unprovoked and in the presence of multiple licensed persons;
 - Whilst not licensed, as an owner Mr Masten is bound by the AR;
 - Mr Masten's personal circumstances; and
 - That the penalty must serve as a general and specific deterrent.

Jurisdiction

8. Pursuant to section 145(D) of the *Racing and Betting Act 1983* (NT) (**Act**):
- A person or the owner of an animal aggrieved by a decision of a steward or an official of a club made in respect of that person or that animal, as the case may be, may, subject to this Part, appeal from the decision:*
- (a) *to the appropriate appeal committee; or*
- (b) *where the decision of the steward or official was:*
- (i) *to impose a fine greater than \$1,000 or such other amount as may be prescribed;*
or
 - (ii) *to impose on the person a suspension or disqualification for a period longer than 3 months; or*
 - (iii) *subject to subsection (3)(c), to impose on an animal a disqualification or suspension; or*
 - (iv) *to warn off the person for more than 12 meetings; or*



- (v) *to impose on the person a fine of more than \$500 or such other amount as may be prescribed together with a suspension or disqualification for longer than one month,*
to the Tribunal.

9. Further, section 145(D)(4) provides:

An appeal shall be commenced by lodging a notice of appeal and the prescribed fee with, where the appeal is to:

- (a) *an appeal committee, the secretary of the committee; or*
(b) *the Tribunal, the Secretary,*

not later than 7 days after notice of the decision by which a person is aggrieved has been delivered to that person.

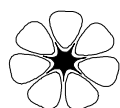
10. Mr Masten, a person aggrieved by a decision of the Stewards (being a fine of more than \$1,000), brought his appeal on 20 April 2023, that is, within seven (7) days of being notified of the decision appealed against. Accordingly, the Tribunal has jurisdiction to hear the appeal and neither party has contended to the contrary.

Hearing

11. The Stewards were represented by Mr David De Silva of De Silva Hebron and Mr Masten was not represented. During separate proceedings on this issue, Mr Masten indicated that despite the Tribunal's views on the strict non-compliance with the Act regarding legal representation, the Tribunal should determine that matter without a rehearing.
12. Both parties provided written submission prior to the hearing and further oral submission at the hearing.
13. Neither party sought leave to introduce new evidence at the hearing, which was conducted on 17 July 2023.
14. Mr Masten objected to the Chairman on the basis that he believed Ms Hall had a conflict of interest. This was on the basis that Ms Hall represented a third party in a commercial transaction with Mr Masten for the sale of property, which concluded before the date of this hearing. Ms Hall did not recuse herself from hearing the matter as member of the three (3) person tribunal as she determined that circumstances of her involvement with Mr Masten did not give rise to a situation where a fair-minded lay observer might reasonably apprehend that she might not bring an impartial mind to the resolution of the matters that the Tribunal is required to decide.

Mr Masten's appeal grounds

15. The written submissions of Mr Masten set out two grounds of appeal:
- The Stewards finding that Mr Masten had breached AR 228(c) was erroneous; and
 - The penalty was manifestly excessive.
16. Written submission in support of the appeal grounds included argument that:
In respect of the finding of guilt:



- The charge of a breach of AR 228 (c) by the Appellant was not proven on the balance of probabilities.
- The Stewards in making their decision ignored the Rules of Evidence.
- The decision by the Stewards was manifestly incorrect and had no basis in fact or law.

In respect of the penalty:

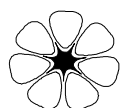
- A penalty in the sum of five thousand dollars only (\$5,000) is manifestly excessive.
- The Incident was not a serious matter:
 - (The Incident only occurred because of a chance Meeting between the Appellant and Stewards Hamilton and Carroll;
 - The Appellant had a legal right to be present at the Fannie Bay Racecourse Training Complex on the date of the Incident and a legal right to engage in dialogue with Stewards of the TRNT;
 - The Appellant had a commercial right to raise an issue of concern with the Stewards which in hindsight was a potential breach of the Policies of the TRNT;
 - The Incident occurred over a duration of just over two and a half (2.5) minutes and ended with the Stewards walking away;
 - The Appellant is a legally trained commercial lawyer and of European heritage, and is expressive in his communication when passionate about an issue;
 - On the evidence both parties used inappropriate language; and
 - The Stewards owed the Appellant a duty to act in an appropriate manner.
- The Penalty is not consistent with other penalties administered by the Stewards in other breaches of the Rules of Racing.

Steward's submissions

17. Mr De Silva made submission on behalf of Stewards submitting that:

In respect of the finding of guilt:

- The Stewards are recognised as being those participants in the racing industry who ensure compliance with the rules of racing, maintain probity at racecourses, hold inquiries, adjudicate upon charges they lay and impose appropriate penalties in the event of breach.
- The various cases have settled that stewards are empowered to fill the various roles and by doing so they do not infringe upon the rules of natural justice. Stewards, however, must adopt a procedure when undertaking inquiries or hearing charges for breach which is fair. Fairness involves the person affected to be informed of:
 - (a) the nature of the charge; and
 - (b) the opportunity to correct, contradict or explain the evidence or information available.
- AR228(c) specifically identifies Steward independently from other officials or persons involved in the racing industry. This is in recognition of the special position they hold in



the industry. Undermining the authority and standing of Stewards has the very real potential of damaging the integrity and image of the racing industry.

- The civil standard of proof is the balance of probabilities which has been codified within the *Evidence (National Uniform Legislation) Act 2011 (Evidence Act)*. Under section 140 of the Evidence Act, a finder of fact must take into account the nature of the action or the defence; the nature of the subject matter of the proceeding and the gravity of the matters alleged.
- The finder of fact must be satisfied that one case is more plausible than the other and that there is a foundation for the case which is backed up by the evidence. Where there is sufficient argument and sufficient evidence there is greater likelihood the threshold will be met.

In respect of the penalty:

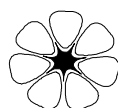
- An application for reduction of a penalty on the basis of it being manifestly excessive requires the Appellant establishing that the finder of fact was in error in imposing the penalty and not just the penalty imposed was arguably excessive. In other words, that the exercise of discretion in the imposition of the penalty by the finder of fact has in some way been unsound.
- The penalty imposed on the Appellant in the instant matter by regards to the penalties in the penalty precedents is well within the acceptable range. In considering the range, it should be noted that disqualification is viewed as the high point and a fine as the low.
- The penalty imposed against the Appellant sits comfortable with the findings of the Racing Penalty Appeals Tribunal in the Luciani case (*WA Racing Penalty Appeals Tribunal dated 28 May 2007*), noting the fine imposed upon the Appellant including the proportion suspended is largely consistent with the penalties in the Luciani matter notwithstanding the passing of time.
- By pleading not guilty to the charge, the Appellant lost the right to a discount on penalty which would ordinarily accrue to a person entering a plea of guilty.

Evidence

Mr Masten

Mr Masten did not provide further evidence; however, he did speak to his written submissions and discussed the incident which resulted in the charges. In his oral submissions, his written submission and the TRNT hearings, Mr Masten makes the following admissions:

- that he "used inappropriate language"; however, that it was inappropriate language of Mr Hamilton that escalated the incident (*written submission pg12*).
- "...look it became animated and I know that when I get animated, I can appear aggressive" (*TRNT Hearing transcript pg8 para 25*).



- "I'm a very passionate person and when I advocate a position I can at times appear aggressive to the casual person, it is part of my legal training." (*Email apology to Steward dated 28 March 2023*).
- "there was a mutual exchange of inappropriate language between the parties" (*Recording of Tribunal hearing at 7minutes 30 seconds*).
- "The language used was elevated and direct and that's not denied by me " (*Recording of Tribunal hearing at 14minutes 4 seconds*).

Mr Masten contended that he has spoken with a number of other people who were witnesses to the incident and that those parties had indicated they were not offended or upset by the exchange between the parties.

Stewards

The evidence provided by the complainant Stewards at the TRNT hearing, was mostly consistent with their written complaints.

Mr De Silva did not introduce any new evidence at the hearing.

Jarrod Todd, Ella Clarke and Chris Pollard

Mr Todd, Senior Jockey, gave evidence at the TRNT hearing which included the following statements:

- Mr Masten said "...who the f are you and Mr Ron Hamilton said, well, I'm a Steward..." (TRNT hearing *page 27 lines 25-10*).
- "... well like I said the first half of it just came out of nowhere. Mr Hamilton said look, you know, you have no right to speak to me like that there was no swearing from Mr Hamilton in that first half. There was a lot of swearing from the other party aiming at Mr Rob, he got, like he may have said a swear word towards the end, there might have been a, you know, he might have said don't f-in swear to me, or something like that. But if he did it was only the once. So Rob got spoken to multiple times in a disorderly manner." (*TRNT hearing page 30 lines 1-12*)

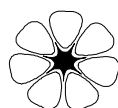
Ella Clarke, Licensed Trainer, gave evidence at the TRNT hearing that she felt as though an apology to the Stewards was the right thing to do because Mr Masten was one of her owners and she trains his horses.

Chris Pollard, Licensed Trainer, gave evidence at the TRNT hearing, he admitted to not hearing the specific words being used at all times but concluded that Stewards shouldn't be spoken to that way.

Determination

Finding of Guilt

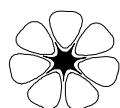
18. Improper behaviour is defined by the Macquarie Dictionary as not in accordance with propriety of behaviour, manners, etc., swearing and or using offensive language towards the Stewards in an elevated exchange, would satisfy a charge of improper conduct in the opinion of the Tribunal.



19. There was some contention as to whether or not Mr Hamilton swore first at Mr Masten, or whether he swore in response to Mr Masten or even if he swore at all in the exchange between the parties. While it is critical to the Stewards' role that they remain professional at all times, in the view of the Tribunal the matter does not turn on this issue.
20. The hearing conducted by the Stewards are not bound by formal rules and the conduct of the hearing afforded Mr Masten procedural fairness, noting that the Stewards adjourned the hearing to allow Mr Masten time to produce further evidence.
21. On the balance of probabilities, taking into consideration the evidence of the complainants, the witnesses and the admission made by Mr Masten the Tribunal finds that Mr Masten did engage in improper behaviour by swearing at and using offensive and/or abusive language to towards the Stewards.
22. In accordance with the Tribunal's powers under section 145ZE of the Act, the Tribunal upholds the decision appealed against.

Penalty

23. Whilst it appears on the face of the evidence that Mr Masten may have had a genuine grievance with TRNT, those grievances should have been raised via the appropriate channels.
24. Stewards should feel safe at all times while in the workplace and licenced person and racing participants must respect them at all times without exception. Improper behaviour, intimidation or purported intimidation of Stewards, especially whilst they are conducting their duties, must be dealt with in a manner which provides for specific as well as general deterrence (noting that this conduct occurred in the presence of other licenced persons).
25. Mr Masten made submissions at the hearing to the affect that, the Stewards were in a customer service role and he was a difficult customer (*Recording of Tribunal hearing at 25 minutes 55 seconds*) this demonstrated his lack of insight into the role of the Stewards in upholding the integrity of racing.
26. The Tribunal agrees with the submissions of the Stewards that undermining the authority and standing of Stewards has the very real potential of damaging the integrity and image of the racing industry. The penalty imposed should reflect the special role held by the Stewards.
27. The range of penalties for similar offences range from a \$1,000 fine to disqualification of up to 12 months.
28. Whilst the Tribunal is of the view that the penalty is at the higher end of the scale, it was within the range of penalties appropriate for the offending and therefore unable to determine that the penalty was manifestly excessive.
29. At the risk of repeating the Tribunal's position in recent judgements it is the function of the Stewards to police the operation of the racing industry, to uphold and enforce standards that meet industry expectations and to protect the integrity and image of the sport, and that in the absence of error on the part of the Stewards, this Tribunal will not intervene to interfere with a penalty that the Stewards believe is consistent with the discharge of those functions.



30. In accordance with the Tribunal's powers under section 145ZE of the Act, the Tribunal upholds the decision appealed against.
31. There is no order as to costs.
32. Section 145ZF of the Act provides the determination of the Tribunal is final and conclusive.

Teresa Hall

TERESA HALL
CHAIRMAN

