

TASMANIAN RACING APPEAL BOARD

Appeal No 22 of 2007/08

Panel:	Mr R Pearce (Chairman) Mr B McKay Ms R Green	Appellant:	Mr F Mitchell
Appearances:	Mr Tyson for the Stewards	Rule:	Thoroughbred Rule AR175(q)
Heard at:	Launceston	Penalty:	\$2,000
Date:	Monday, 21 April 2008	Result:	Dismissed

REASONS FOR DECISION

Mr Mitchell, the appellant, is the registered owner of a thoroughbred horse, *Urban Waltz*. The horse was entered to race on 2 December 2007 in Launceston. Mr Mitchell attended the race meeting. His conduct whilst there came to the attention of the stewards who, following an inquiry, found that he had been guilty of improper conduct and unseemly behaviour contrary to R175(q). The stewards imposed a \$2,000 fine against which Mr Mitchell has appealed.

The stewards' case is that Mr Mitchell, prior to and following the running of Race 8, used abusive and offensive language towards a TOTE operator, Mrs Leslie Bennett, in relation to the bet that he had attempted to place.

Mr Mitchell attended the race meeting intending to place a substantial bet on his horse. In order to determine as best he could what the TOTE odds would be Mr Mitchell left it until the last minute to bet. He was in the grandstand. Mrs Bennett was one of the nearby TOTE operators. As Mr Mitchell approached Mrs Bennett's panel there was one other lady already there. He was in a hurry to place his bet and became frustrated because he thought the person in front of him was chatting and taking too long. He called out that he wanted a bet on. As Mrs Bennett was conscious that the race was about to start she pushed his bet through. She knew that Mr Mitchell wanted to bet \$5,000 which she converted to 10,000 units. Unfortunately, because she was in a hurry and in the process of getting used to a new system, she made an error and entered 1,000 units. The quickest way to fix this, she thought, was to push the button that repeated the bet. She succeeded in having more tickets printed, making a total of 5,000 units or \$2,500, before betting on the race closed.

Mr Mitchell was angry about what had happened. He had intended to bet \$5,000 but only \$2,500 had been placed. He called Mrs Bennett a "fucking useless TOTE operator" and suggested to her, even before the race, that she had cost him money. As the race had started he left the money and his tickets with Mrs Bennett and went to watch.

Mr Mitchell's horse won the race. As a consequence, when he returned to the TOTE window he was even more angry. He again told Mrs Bennett that she had "cost him money" and asked that she call for her supervisor. Mr Mitchell said that he only swore at her twice. Having heard from Mrs Bennett we are satisfied that Mr Mitchell swore at her, as he addressed her, repeatedly and did

so by shouting. His manner was aggressive and confronting. She said that she had worked for TOTE for 30 years and had not been treated in such a way before. Mrs Bennett was so upset by what had happened that she was unable to continue working that afternoon. She told this Board that, after some months, although she has tried to put the incident behind her she is only just getting her work confidence back.

Mrs Bennett's version of events is confirmed by another witness, Mr Walley. He observed Mr Mitchell's conduct towards Mrs Bennett. He was about eight metres away. Although he did not hear the words used he described Mr Mitchell's conduct as "directing a torrent of very loud abuse". He described Mrs Bennett as being "in tears and obviously distressed". Steward, Bruce Free, was working in the area. He observed Mrs Bennett to have been crying and upset, although he did not see Mr Mitchell's conduct towards her. Both Mr Walley and Mr Free also described Mr Mitchell's subsequent conduct towards others which, whilst it tends to confirm the level of Mr Mitchell's anger and his manner, did not form part of the stewards' charge against him.

Mr Mitchell did not dispute, in the main, the conduct that was described. He told us, and we accept, that he subsequently apologised to Mrs Bennett. However, even during this appeal he tended to blame others for what had occurred. He referred to Mrs Bennett as being "not up to the job" and asked rhetorically how others may react to an "incompetent operator". He also suggested that those who sought to intervene after his exchange with Mrs Bennett had inflamed the situation.

The basis of Mr Mitchell's appeal is that the amount of the fine is excessive. He referred to the case of Peters 24/2006-07 in which Mr Peters was fined \$500 for suggesting during an acceptance speech on Hobart Cup day that a jockey had on an earlier ride failed to allow a horse to run on its merits. Mr Mitchell also asked us to take into account that, in the area near this incident, there were not a great number of people. He said that he regretted the incident.

Mr Mitchell is a licensed person. He must have known that his behaviour was unacceptable. What characterises his behaviour, in our minds, is that it was in public, it was loud and aggressive, and, most significantly, was such as to reduce Mrs Bennett to an extremely distressed state. His behaviour was persistent and prolonged and directed towards someone in no position to defend herself. The result of the incident has had a continuing effect on Mrs Bennett.

Although the amount of the fine is greater than that imposed by this Board in Peters we see this case as quite different. We do not accept that Mr Mitchell shows any genuine remorse for what happened. He is a person who is plainly able to pay a fine. The amount of the fine should be sufficient to discourage him, and others who may consider behaving in a similar manner, from such behaviour. We do not see any reason to interfere with the penalty that the stewards have imposed. The fine of \$2,000 is appropriate. The appeal is dismissed.

Mr Mitchell's deposit will be returned to him.

DATED: 22 April 2008.