

TASMANIAN RACING APPEAL BOARD

Appeal No 40 of 2007/08

Panel:	Mr T Cox (Deputy Chairman) Mr G Elliott Ms R Green	Appellant:	Mr J Austin
Appearances:	Mr K Austin for the appellant Ms A Hill for the stewards	Rule:	(1) Harness Rule AR231(2) (2) Harness Rule AR187(3)
Heard at:	Launceston	Penalty:	(1) \$1,500 fine (2) \$500 fine
Date:	17 June 2008	Result:	Dismissed with condition that half of both penalties suspended provided that Mr Austin commit no further offence contrary to either AR231(2) or AR187(3) for a period of 12 months.

REASONS FOR DECISION

This is an appeal by Mr James Austin against a fine for \$1,500 imposed on him by the Harness Racing Stewards for misconduct contrary to AR231(2) and a further fine of \$500 imposed on him for failing to comply with a direction given by the stewards contrary to AR181(3).

On 2 June 2006, Mr Austin pleaded guilty to both offences.

Mr Austin has only sought to appeal the severity of penalty on each offence. Further, he has not submitted that the Board consider a period of disqualification in lieu of the fines, but, instead, he has sought a reduction in the amount of each fine.

The circumstances giving rise to each offence occurred at the conclusion of an inquiry into Mr Austin's drive during Race 5 at the Devonport Harness Racing Club on 19 May 2008.

The relevant facts are agreed with one exception.

Immediately following the conclusion of the inquiry into Mr Austin's drive in Race 5, he was disqualified for 4 weeks and issued with a 'notification of offence'. At that point Mr Austin snatched the notification from Mr Andrew Hayles, a steward, and stated words to the effect:

"It is the biggest load of bullshit I have ever seen."

Following Mr Austin's initial outburst Mr Shane Larkins, the Chairman of Stewards, directed Mr Austin, who had commenced to leave the stewards' room, to sit down. Contrary to that direction Mr Austin proceeded to leave the stewards' room. As he did he slammed the door and said:

Either:

"Nah, fuck yourself."

Or:

“Nah, fuck it.”

It is clear from the alternate versions above where the disagreement lies. Mr Larkins maintains the former version while Mr Austin maintains the latter.

In our view, it is not necessary to make a finding between these versions. Both are offensive and directed at the stewards, be it personally in the case of the former version, or at large with respect to the latter version. What is more important is a consideration of the circumstances in which the words were spoken. As to this we find that whatever version was actually spoken it was said as Mr Austin left the stewards' room, with his back turned to the stewards. It was not said, for instance, in a confrontational manner to Mr Larkins or any other steward. In those circumstances the difference in content between the versions is negligible.

As to penalty, the stewards say that the amount of each fine was originally imposed to act as both a personal deterrent to Mr Austin and a general deterrent to other industry participants who may conduct themselves in like fashion.

The stewards also say, quite properly, that the conduct occurred in their workplace and that they should be protected from conduct of this sort.

Mr Austin has asked the Board to reduce the fines on account of his pleas of guilty and his financial circumstances. He advised the Board that he earns approximately \$600-\$700 per week, from which approximately \$400 is spent in expenses.

The statements made by Mr Austin were offensive and showed a lack of respect for the authority of the stewards. His conduct was completely inappropriate in the situation in which he found himself. He also knew that any grievance he may have had as a result of his disqualification could have been pursued by alternative means.

What is also of considerable concern to the Board is that Mr Austin, despite being a young man, has two prior offences for misconduct contrary to AR231(2). That said, if not for Mr Austin's prior breaches for misconduct the fines originally imposed by the stewards would have been excessive.

We have considered the above matters at length. The conduct was offensive and petulant and reflects poorly on the industry and more so Mr Austin.

In all of the circumstances, we propose the following course. The original penalties will stand, but in an effort to alleviate the financial burden imposed by the combined amount of the fines and encourage Mr Austin to curb his behaviour part of each fine will be suspended on condition.

The following orders are made:

1. In breach of AR231(2), Mr Austin is fined in the sum of \$1,500 of which \$750 will be suspended on condition that he commit no offence contrary to AR231(2) for a period of 12 months; and
2. In breach of AR181(3), Mr Austin is fined \$500 of which \$250 will be suspended on condition that he commit no offence contrary to AR181(3) for a period of 12 months;
3. Mr Austin's deposit will be returned.

DATED: 24 June 2008.