



INTERNAL REVIEW DECISION

(Internal Review Decision Notice in response to an Application for Internal Review)

PART 1: Details of Internal Review	
Internal Review Number:	Internal Review 0025-19
Applicant's Name:	Michael Stephens
Original Decision:	Breach of Rule 228(c) of the Australian Rules of Racing
Original Decision Makers:	N Boyle, K Daly
Date of Original Decision:	16 March 2019
Internal Review Decision:	Original decision of charge and penalty confirmed - \$500, \$250 wholly suspended for 2 years.
Internal Review Decision-Maker:	Kane Ashby, Queensland Racing Integrity Commission
Date of Internal Review Decision:	29 April 2019.
PART 3: Summary of Internal Review Application	
<p>The Applicant, Mr Michael Stephens is a licensed jockey within the thoroughbred racing industry and was found guilty of a charge pursuant to Australian Rule of Racing 228(c):</p> <p>Australian Rule of Racing 228(c) states:</p> <p><i>A person must not engage in improper or insulting behaviour at any time towards a PRA, the Stewards, a Club, or any official, employee, contractor or agent of any of them in relation to the relevant person's functions, powers or duties.</i></p> <p>The specifics of the charge was the Applicant as a licensed jockey did speak loud, aggressive and in a manner which was confrontational and disrespectful to Ms Emily Barron in the course of her duties as a Steward officiating at the Rockhampton barrier trials on the morning of 8 March 2019.</p> <p>In determining an appropriate penalty, Stewards were mindful of the Applicant's personal circumstances and the need for a penalty to serve as an appropriate deterrent to prevent similar behaviour from licensees. The Applicant was fined the sum of \$500 with \$250 of that fine to remain suspended for a period of two years under the provisions of AR283(5).</p> <p>The Applicant submitted the following in support of his application:</p> <p><i>"Internal Review for Trainer Angela Stephens - Grounds for Review</i></p> <p><i>1- Lack of evidence and particulars to the charge</i> <i>2- Natural justice</i> <i>3- Circumstances of the incident</i></p> <p><u>Lack of evidence and particulars of the charge</u></p> <p><i>Mrs Stephens and Jockey Stephens do not dispute being loud in their interactions with Stewards.</i></p>	



However, in dispute is the aggressive, confrontational and disrespectful aspects to the charge.

If a person is either loud, aggressive, confrontational or disrespectful alone, this may not constitute improper behaviour.

Mrs Stephens and Jockey Stephens speak loudly which would be evident from the audio of the inquiry.

On the evidence, at no time has either party directed profanities, name calling or threats to Ms Barron. The documentary evidence of Ms Barron does not include any instance in which the actions of either Trainer or Jockey could be considered confrontational other than the way in which she was spoken. Statutory declarations from Jockey Matthew Milford and Stablehand Ms Rachel Hunt provide evidence that neither Mrs Stephens or Jockey Stephens were aggressive or disrespectful.

The evidence does not particularise any action or mannerisms which could be considered aggressive, confrontational or disrespectful other than the way in which they spoke to Ms Barron.

Ms Barron alludes in her documentary evidence that it was her opinion that the manner in which she was spoken to was confrontational and subjective. This is a subjective test which is not borne out of the evidence as a whole.

The particulars of the charge lack clarity in how these attributes would constitute improper behaviour.

Natural Justice

File notes of Stewards Ms Emily Barron and Mr Myles Heath were relied upon (and the audio recording of the incident on the day).

Both documents include the names of several witness who are said to have witnessed the incident in question. No independent witnesses were called to provide evidence on behalf of the Stewards.

At no time was Mrs Stephens or Jockey Stephens afforded the opportunity to ask questions of the authors of either file note as to their observations and opinions.

Further, that Mrs Stephens and Jockey Stephens were not given the opportunity to provide any additional evidence or witnesses in support of their cases.

Both Matthew Milford and Rachel Hunt were on course and available to do so.

Statutory declarations are included as to their version of events.

Circumstances of the incident

The evidence of both Stewards, parties and Mr Milford and Ms Hunt provide the background to the events which lead to the incident. These are not in dispute.

This incident has occurred on the day of a funeral for a person involved in racing and known by Mrs Stephens and Jockey Stephens over 40 years which had a profound and emotional affect of Mrs Stephens and Jockey Stephens.

While this was not the cause of the incident, this circumstance has heightened the emotions of Mrs Stephens and Jockey Stephens.

This circumstance may mitigate the penalty handed down by Stewards.

Mrs Stephens has had one previous penalty with some time having elapsed.



Outcome being sought

In relation to both Trainer A Stephens and Jockey J Stephens that the charge and penalty be set aside.

In the alternative, that the penalty be reduced and/or otherwise amended to a lesser fine without any amount being suspended, or the time of the suspended portion to be reduced from 2 years.”

PART 4: Reasons for Internal Review Decision

The stewards of Queensland Racing Integrity Commission inquired into an alleged incident that occurred between the Applicant and Mrs Angela Stephens (Licensed trainer and wife of the Applicant) and Ms Emily Barron, Stipendiary steward of the Queensland Racing Integrity Commission at the Rockhampton Jockey Club barrier trials on 8 March 2019. The Stewards allege the Applicant spoke in a loud and aggressive manner which was confrontational and disrespectful to Ms Barron in the course of her duties as a Steward officiating at the Rockhampton barrier trials on the subject morning.

During the Stewards inquiry conducted on 16 March 2019, evidence was provided by the Applicant and Mrs Stephens, and a file note of Ms Barron and Mr Myles Heath, Stipendiary steward of the Queensland Racing Integrity was read into evidence. The inquiry further heard an audio recording of the alleged incident between the aforementioned parties.

Ms Barron's file note in part stated “-- *TWISTED CROWN*, was engaged to trial in heat three at the Rockhampton Trials. Subsequently, the gelding was scratched as it refused to load. After the trial was completed, Mr Michael Stephens galloped the horse down the home straight, at the same time as the other horses were pulling up and returning to the enclosure. This stirred multiple horses up and the riders in that heat expressed their concerns. On return to the enclosure, Mr Stephens was very heated and had the opinion that we being Myles Heath and myself “had a set on the horse”. At this point, I directed Mr Stephens to see us after the completion of the trials. As Mr Stephens was heated at the time, I was not sure if he had heard my first direction. While Myles was checking the horses in for another heat, I elected to re-issue the direction to Mr Stephens. As I approached the tie up stalls, Mr and Mrs Angela Stephens commenced talk to me in a loud and in an aggressive manner. I had difficulties to communicating the direction as they were both over the top. I advised that they should not speak to me in that manner and that they should stop. I advised Mr Stephens to come see me after the trials. There were many people in the vicinity at the time who would have heard this. Possibly Adrian Coome, Graham Green, Kristine Dore, Allan O’ Sullivan, Matt Milford and his partner. In my opinion the manner in which Mr and Mrs Stephens spoke to me was very confrontational and extremely disrespectful. Myles notified me that Mr Stephens requested if he could organise 1pm instead as he had other things to attend to. We agreed that Mr Stephens could see us at the requested time. Not long after this Mrs Stephens approached Myles and myself in an aggressive manner advising 1pm would not suite as they had a funeral to attend. I suggested if we could do it later in the day or on Saturday 09/03/19 at Emerald to which she agreed that Emerald would suit. After this Mrs Stephens, continued to call us uncompassionate and continued to speak until I told her to walk away as this conversation had ended. She than told me to go read a book. Mr Peter Fleming and Mr Tim Cook were in a close vicinity when this occurred”.¹

Mr Heath's file note stated “After the third trial, Jockey M Stephens galloped his horse, *TWISTED CROWN*, which was scratched at the barriers after being difficult to load down the straight whilst runners from that trial were returning to the enclosure. Upon entering the enclosure, Jockey Stephens started to use a loud and heated tone towards myself and Emily Barron saying that ‘we had a set on this horse’ and so on. Emily instructed Jockey Stephens to come and

¹ Ms Barron file note date 8 March 2019.



see us after the trials. After getting the next trial in, Emily went to instruct Jockey Stephens again to see us of which she advised me that she had been spoken to in a loud and aggressive manner. After the trials had finished Jockey Stephens asked myself when we will be able to see him after which I told him after the trials. He informed me that he had jobs to do and a funeral to get to after which we organised a time to see him which was 1pm that afternoon. Following this, prior to the first jumpout, Angela Stephens approached Emily and myself and spoke to us in a raised and aggressive tone particularly about when Michael could come see us. On this occasion, Tim Cook, Peter Fleming and possibly Thomas Doyle were in a very close vicinity. She proceeded to call us uncompassionate and a number of other things as well as telling Emily to go and read a book”.²

The Applicant in evidence stated *“What happened was, like Angela (Mrs Angela Stephens) said, we rang up to see whether you had to trial with earmuffs on before we could race. They couldn’t answer us. The horse, from day dot, he had three jump-outs, from memory, and one barrier trial. From day dot, Jimmy and John Smith, the barrier attendants, had handled the horse. The horse, right through from day dot, if you go back through all his trials, he’s a horse – he’s a very high-strung horse. He walks up, puts his head in, looks at the gates, backs up, stands there. He does that two or three times and then they just give him a push and he goes in. So, we went up there. They had trouble with Peter Fleming’s horse, and it was rearing up and carrying on, it was really putting on a turn. And they put the whip and all on it to get it in the barriers. So when they used the whip on it, my horse went to pieces, because he is a very high-strung horse. He went to pieces. So I’ve got to wait a little bit. And then when it was time for me to come up, young Jimmy, the attendant, and the other young fellow Smithy said, ‘I’ll take it on, John, because I know the horse.’ We walked up. The horse walked up, went in like he always does, backed up, went up to go in and backed up again. And when he went up the third time, there wasn’t enough to give him that little push, the steward rings up and says, ‘That horse will be scratched.’ And I said – Jimmy turned around, because he was the starter. Jimmy said, ‘John, we’ve got to scratch him.’ I said, ‘You’re joking, Jimmy.’ I said, ‘He hasn’t had a chance yet.’ He said, ‘I know. He’s doing his usual thing’, he said, ‘he will go.’ But he said, ‘The stewards instructed me to scratch the horse.’ So the horse got scratched. So I give him a gallop after it. I come back in. I come in through that gate there. And her (Ms Barron) and Michael (Mr Myles Heath) were standing there. I never said it aggressive, I never said nothing. Because this goes back to Thangool. As I went past, I said, ‘Not bad’, I said, ‘when you get a set on a horse, you don’t give them a fair chance.’ And they went to say something and I said, ‘Don’t even – don’t go any further. I don’t want to know about it’, and just kept going. I went down – I got to – back down to my wife, the trainer, and I said, ‘They never give us long enough’, I said, ‘he done his usual thing, he wouldn’t go in the barriers, he backed out and backed out.’ I said, ‘Even Jimmy and the starter said, ‘We know what the horse is like, John, he will eventually go but we can’t give him any more time because we’ve been instructed to scratch the horse, he’s got to be pulled out’.” So, as I was saying that, the young steward (Ms Barron) walked around the corner, she walked around ---- Ms Barron walked around the corner. As she walked around the corner, she looked up at me and went to say something. I said, ‘I don’t want to go that way’, I said, ‘you’ve got a set on the horse and once you get a set on a horse, youse won’t do – won’t let the horse have a fair chance.’ She said, ‘He had ample chance to go in the barriers.’ I said, ‘He never.’ And this is how I spoke, like I’m speaking to youse now. I said, ‘He never had ample chance.’ I said, ‘That horse up there of Peter Fleming’s, you give it a lot longer than what he was’ and I said, ‘that horse was rearing up and carrying on, putting on a turn, proper’, and I said, ‘youse put the whip on that horse’, I said, ‘but you never give this horse a chance.’ She said, ‘In the room, you.’ And as she said that, my wife went to say something, and as she went to say something, she said, ‘If you speak, you’ll be in the room, too.’ I said, ‘There’s no reason to take her’ – and this is the way I said it – ‘take her in the room because she wasn’t speaking to you, I was speaking to you. I’m the one you ordered to the room. My wife hasn’t even been ordered to the room. So there’s no reason to talk to her. You’re talking to me. I’ll be up in the room.’ So I come up. And we had a funeral and were all upset I sat around here and sat around here and sat around here. And I said to Myles, I said, ‘Myles, what’s happening?’, I said. He said, ‘John, we’ve got*

² Mr Heath file note date 8 March 2019.



to do the trial and got to jump out before we can do what we've got to do." I said, "Fair enough." I said, "Rightyo." I said, "Well, when are you going to do it?" He said, "We'll do it after." I said, "My horse" – I said, "We've got horses at home that have got to be dealt with." I said, "We've got to get to the funeral. I'm under a lot of stress at the moment." I said, "I'm sick of it all." I said, "I want to get it sorted." And he said, "Well, do it before the funeral." I said, "How can we do it before the funeral?" He said, "Can you be here at" – I said, "The funeral's at 2 o'clock." He said, "Well, you be here at 1 o'clock." I said to him, "Right, I'll be here at 1 o'clock." I went down and told my wife. I said to Angela, I said, "We're doing it at 1 o'clock now." She said, "We can't do it before the funeral, we're under enough stress now, we don't want to go to an inquiry an hour before the funeral and then walk into the funeral after an inquiry." And she said, "I'm" – and I started loading the horse up and Angela went up and spoke to Ms Barron and apparently when she was up there talking to Ms Barron, Ms Barron turned around and said to Angela, "If you keep talking, you'll be in the room as well." --- She (Ms Barron) said, "You'll be in the room as well." So then they said, "Right." They told Angela, "Right, John's going to Thangool on Saturday" ----- Emerald, on Saturday. They said to Angela, "We'll have it before the first race at Emerald on Saturday." I said, "Right." So Angela come down and told me. We went to the funeral and done everything. I was as sick as a dog the next day. And I've never – and you can go back through my records, I've been riding for 40 year, or whatever it is – 40-odd years. I've never booked off. I think I booked off once ever being sick. I was that sick I couldn't go to the races. So I rang up and booked off. And she said, "You'll need a doctor's certificate before you ride again." Never mentioned nothing about this. And then I knew myself, being around, I knew that eventually we would have it, probably at a race meeting. And that's what happened. The Applicant added "Look, this is why I said to Myles and her (Ms Barron) as I come back – and I didn't say it aggressive, I didn't abuse them, I just trotted in the gate and they've been there and I just said, "When youse get a set on a horse, you don't give him a chance." And they went to say something and I said, "Don't worry about talking about it, it's over with", and I went."³

The Applicant's review submissions are outlined in Part 3 of this Decision.

The Applicants legal representative submitted two (2) signed statutory declarations of Mr Matthew Milford and Miss Rachel Hunt, dated 1 April 2019. The reviewer acknowledges the Applicant failed to call Mr Milford or Miss Hunt as a witness during the steward's inquiry.

The reviewer sought an explanation from the Applicant's wife (Mrs Angela Stephens) as a licensed trainer to the status of the relationship between Mr Milford and Miss Hunt, and the Applicant. Mrs Stephens did not respond to this request. The reviewer is mindful of the weight placed on the witness statements considering Mr Milford and Miss Hunt are employed by Mrs Stephens. Notwithstanding, the reviewer is satisfied the audio recording of the incident contradicts their respective statements particular to the Applicant not being aggressive or disrespectful.

The Applicants legal representative in part submitted "*File notes of Stewards Ms Emily Barron and Mr Myles Heath were relied upon (and the audio recording of the incident on the day). Both documents include the names of several witness who are said to have witnessed the incident in question. No independent witnesses were called to provide evidence on behalf of the Stewards. At no time was Mrs Stephens or jockey Stephens afforded the opportunity to ask questions of the authors of either file note as to their observations and opinions. Further, that Mrs Stephens and jockey Stephens were not given the opportunity to provide any additional evidence or call witnesses in support of their views*" The Applicants legal representation added "*On the evidence, at no time has either party directed profanities, name calling or threats to Ms Barron. -- The evidence does not particularise any action or mannerisms which could be considered aggressive, confrontational or disrespectful other than the way in which they spoke to Ms Barron. Ms Barron alludes in her documentary evidence that it was her opinion that the manner in which she was spoken to was confrontational and subjective. This is a subjective test which is not borne out of the evidence as a whole. The particulars of the charge lack clarity in how these attributes would constitute improper behaviour*".⁴

³ Transcript of Stewards inquiry dated 16 March 2019 page 5, 6, 7 and 8.

⁴ Internal Review Application dated 29 March 2019.



The reviewer acknowledges the audio recording of the incident particular to the Applicants alleged conduct and comments towards Ms Barron was not disputed by the Applicant, other than the Applicant was of the view the comments were not delivered in an aggressive or abusing manner. The reviewer acknowledges the Applicant was pre-warned by Ms Barron on multiple occasions to cease the tone of his conduct, and directed by Ms Barron to see her post the completion of the jump outs to discuss any perceived grievances. The reviewer finds the Applicant at no stage during the inquiry sought to question Ms Barron's or Mr Heath's statement, nor was the Applicant denied the opportunity to provide additional evidence or call witnesses as submitted. The Chairman of inquiry provided the Applicant with the opportunity to submit any relevant evidence particular to the inquiry by stating "*Is there anything else you'd like to put forward?*"⁵. The reviewer accepts the audio recording of the incident is a true and accurate account of what transpired during the incident, and is corroborated by the file notes of Ms Barron and Mr Heath. The reviewer acknowledges the Applicant failed to call Mr Milford or Miss Hunt as witnesses during the steward's inquiry and is mindful of the weight placed on their subsequent witness statements considering Mr Milford and Miss Hunt are employed by Mrs Stephens.

The reviewer acknowledges each case is treated on its merits.

The reviewer in considering the totality of evidence and taking into account the aforementioned factors, including the Applicant was warned by Ms Barron on multiple occasions to cease the tone of his conduct, and directed by Ms Barron to see her post the completion of the jump outs to discuss any perceived grievances. The reviewer acknowledges the appropriate forum to voice any perceived grievance is in the steward's room. The reviewer is satisfied to the requisite standard that the charge the subject of review is proven.

The Applicant's held a jockey's licence for in excess of twenty (20) years. The Applicants disciplinary history in that period demonstrates two (2) prior offences particular to misconduct pursuant to Australian Rule of Racing 83 and 175(q) in 2012 and 2016 respectively. The precedent for an offence pursuant to Australian Rule of Racing 228 (c) previously known as Australian Rule of Racing 175(j) is between a monetary fine and period of disqualification.

The reviewer acknowledges the importance of ensuring racing officials are able to attend their workplace and carry out their duties in a safe environment without fear of aggressive, confrontational and disrespectful behavior. The reviewer accepts licensed participants are bound by the Rules of Racing, to ensure, in part, their conduct and behaviour is of a standard that does not adversely impact the reputation of the Thoroughbred Racing industry. Notwithstanding, and by no means condoning the actions of the Applicant under any circumstances, the reviewer acknowledges such improper conduct was at the lower end of the spectrum.

In weighing up the matter of penalty, consideration was provided to the Applicant's submissions, personal and mitigating circumstances, not guilty plea, disciplinary history and penalty precedents. Further consideration was provided to the degree of the Applicants conduct and the implications that such actions place on the integrity of the Thoroughbred Racing industry. The reviewer, having carefully considered the evidence and aforementioned factors, finds the Applicants conduct was to a lesser extent than Mrs Stephens and finds the penalty imposed is considerate in the circumstances, particularly when taking into account the Applicants prior disciplinary history. Accordingly, the reviewer is not satisfied a reduction in penalty is proven in the circumstances and confirms the original decision on charge and penalty.

PART 5: Review Rights following Internal Review Decision

In accordance with section 246 of the *Racing Integrity Act 2016*, as the applicant for an internal review of the original decision, you are able to apply to the Queensland Civil and Administrative Tribunal (QCAT) for an external review of the internal review decision.

⁵ Transcript of Stewards inquiry dated 16 March 2019 page 28.



An external review is commenced by lodging the appropriate forms with QCAT. In accordance with section 33 of the *Queensland Civil and Administrative Tribunal Act 2009*, an application for an external review of an internal review decision is to be made within 28 days from the day this internal review decision notice is provided to the applicant.

For further information regarding the processes for an external review of the decision, please contact QCAT:

Queensland Civil and Administrative Tribunal

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