



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 0028-19
Applicant's Name:	Graham Dwyer
Original Decision:	Breach of 231(2) of the Australian Harness Racing Rules
Original Decision Makers:	D. Farquharson, N. Torpey, D. Kay, G. Goold, N. Finnigan
Date of Original Decision:	30 March 2019
Internal Review Decision:	Original decision of charge confirmed, penalty amended to a \$500.00 fine, \$250 wholly suspended for a period of two (2) years.
Internal Review Decision-Maker:	Kane Ashby, Queensland Racing Integrity Commission
Date of Internal Review Decision:	8 May 2019
PART 3: Summary of Internal Review Application	
<p>The Applicant, Mr Graham Dwyer, is a licensed Grade A trainer and driver within the Harness racing industry and was found guilty of a charge pursuant to Australian Harness Rule of Racing 231(2).</p> <p>Australian Harness Rule of Racing 231(2) states:</p> <p><i>"A person shall not misconduct himself in any way"</i></p> <p>Stewards received a complaint from Ms Kelli Dawson regarding an alleged incident which occurred in the wash bays subsequent to the running of Race 5 at Albion Park on 30 March 2019. Stewards took evidence from the Applicant, Ms Dawson and a number of independent witnesses. After consideration, the Applicant was charged under Australian Harness Rule of Racing 231 (2) for misconduct to which the Applicant pleaded guilty.</p> <p>Subsequent to considering the Applicant's good record under this rule, a fine of \$1000 was imposed. Stewards directed that \$500 of such fine be suspended for a period of 12 months.</p> <p>The Applicant submitted the following in support of his application:</p> <p><i>"I feel disappointed with how the inquiry was conducted and the outcome. Driver Kelly Dawson walked passed my washbay where I was hosing my horse and verbally abused me saying I wet her. She soon returned calling me derogative names, and bring my business into disrepute.</i></p> <p><i>The panel did not question Ms Dawson in how she got wet walking passed the bay. Miss Dawson drove in the previous race and was already wet as it was a rainy night. As I unknowingly wet her and being attacked, I Did point the hose in Miss Dawsons direction. After being charged I learnt that the same person (K Dawson) hosed another licensee Mr Ryan Veivers on two occasions with the hose and wet him.</i></p> <p><i>Miss Dawson received a \$200 fine and \$300 suspended.</i></p>	



I feel disappointed and to some degree set-up by Miss Dawson. I did not pursue Miss Dawson I was provoked. I was verbally attacked on two occasions, and nothing gets done about it by the Stewards.”
The Outcome sought by the Applicant was “*I would like to have the charges dropped, or at least to a lesser value than previously appointed by the stewards.”*

PART 4: Reasons for Internal Review Decision

The stewards of Queensland Racing Integrity Commission inquired into a complaint received by Ms Kelli Dawson into an alleged incident that occurred in the horse wash bay subsequent to the running of this race five (5) at Albion Park on 30 March 2019.

During the Stewards inquiry conducted on 30 March 2019, evidence was provided by the Applicant, Ms Dawson and Mr Ian Gurney, a class A trainer who was witnessed to the alleged incident.

Miss Dawson in evidence stated “*--I walked out of the wash bay with my horse. Mr Graham Dwyer was in the wash bay next to me. I've walked out and I got sprayed with the hose and my horse has got scared. I think it's because he got hosed too. -- Chal Fire, yes. Anyway, he's jumped all over me. Jumped forward and like got a fright. I turned around and I said, "Don't bother hosing us again", or something to those lines. I can't remember exactly the words. He's turned around – I don't know exactly what he said to me – and hosed me like a lot. Ian Gurney witnessed it all. Obviously there was abuse after it but ----”* The Chairman of inquiry questioned “*Abuse from you and abuse from him?”* to which Miss Dawson replied “*I think it was a bit both ways, honestly. I'm very shaken up. I don't really remember. Like he's hosed me and I took the horse back and I said to Ray Law, "Can you take him? I'm going up to the stewards' room".¹*

Mr Gurney a witness to the incident in evidence stated “*I couldn't see him (the Applicant) at the start. -- But I was just – you know where they have that big blower – big fan - I was just there waiting and she's walked out and he wet her and then she said something to him like – I can't remember what she said. It wasn't - didn't swear anything. It was like, "What did you do that for", or something, and then he hosed her. -- Then he came out and I seen who it was. I seen ---- (the Applicant). The Chairman of inquiry questioned “So he (the Applicant) hosed her the first time and she ----”* to which Mr Gurney replied “*Just kind of wet her, and then she said something and then he hosed her again. -- And I actually like Graham, but truth is truth, and I don't like that stuff in the stables. -- I just don't like that stuff because when you're racing for money there is always – and people take people on in races, which is racing, and they get a bit intimidated and they get a bit shitty because of probably having a bit of bad luck, but it doesn't matter. You leave it out on the track.”* The Chairman of inquiry stated “*That's right. It's a workplace down there*” to which Mr Gurney replied “*Professional. ---A hundred percent, and she is very upset, and I – it's not called for that stuff. If you – if he's got a disagreement with someone, come up here and sort it out. -- But that's the truth.”²*

Mr Gurney was questioned “*Was she – Miss Dawson was leading a horse at the time, was she? Did you see her horse's reaction to the spray?”* to which Mr Gurney replied “*Yeah, kind of shied at her, yes. Yeah. Well, she – he kind of – she was coming out like the back – them ones right on the far left hand corner ----- she come – she was in the back – the far one on the left and he was in the one on the right. -- And he's come out and his wet her and the horse kind of shied, and then she said something about – like, "What are you doing", or – I can't remember what she actually said but ----”* The Chairman of inquiry added “*No need for that”, or something ----* to which Mr Gurney replied

¹ Transcript of Stewards inquiry dated 30 March 2019 page 2 and 3.

² Transcript of Stewards inquiry dated 30 March 2019 page 3, 4 and 5.



"Yes. Something similar to that and then he hosed her again. Like hosed her. -- For like 2 or 3 – 2 seconds. Like shoosh".³

The Applicant in evidence stated *"I was just washing the horse and the next minute she walks past and then she's like, "Don't ...' hose me", rah, rah, rah, and she saying this so then you could – she has then turned her head back around and I – mate, I never hosed her at all. I was just washing the horse. I never hosed her – you know, like getting her wet. And if you do get wet from hosing a horse it's not – like usually you don't have to be intentional to hose them there but I never did. But when she stuck her around and she's up me I thought, "F*** you", and so I hosed her. You know, but she come back to me. I didn't even hose her to start with. She just started upping me and I thought, "Blow you". So I just – she stuck her head around the corner so I just hosed it because it was into me. I thought, "Mate, I didn't even hose you to start with." So that's the truth. So I never hosed her at all. I just hosed the horse. She has just gone past. She's blowing up. You could hear her blowing up and then she's stuck her head around the corner. So she's come back to me because she's had to physically come back around, and I thought, "Blow you", and so I just hosed her. You know, because I didn't do anything to her in the first place."⁴*

The Chairman of inquiry questioned *"Well, when there are 2 horses in the wash bay it's not uncommon. I've been down there to get drivers and I've been sprayed. Those sort of things happen but -----"* to which the Applicant replied *"Mate, it was un intentional. I swear to you."* The Chairman of inquiry questioned *"It may not have been on the first occasion ----- The second occasion you deliberately -----"* to which the Applicant replied *"Well, she stuck her head around and was abusing me, and I thought, "Blow you". Yeah."* The Chairman of inquiry questioned *"Well, if she's abusing you and there was bad behaviour in the workplace you can take that and bring it up to us. We can deal with that. You can't – you can't just take things into your own hands ----- and start hosing people"* to which the Applicant replied *"I get that, but these people aren't normal people to deal with. Like, honestly, that had nothing to do with me to initiate it. I had nothing to do with it. When she stuck her head around, yeah, I hosed it, and then I had to deal with the boyfriend, if you know what I mean – like, huffing and puffing and carrying on. Saying how I robbed Rob and done this and done that, and the stupid part is that we are on a b... wage, which is a s.... wage anyway. So they are running around and saying, all this s..., and – and he's coming up wanting to fight me where I am. You know, I'm not going out of my way to them. The way I see it I've already won. If it comes down to that, they are just jealous, egotistic people and they think they have to bring somebody down so they can come up. That's all it is. They came to me; I didn't go to them. And that washing thing, you know, like I did not hose her to start with. When she stuck her head around the corner, yes, I did, you know, because she was just going off her bloody head, and then after that I'm copying all this other stuff from Ray Law and saying all this other crap – saying how about the horse he claimed had broke down and rah, rah and sucked in and all this sort of s.... You know, they're just – the way I see it why start a horse that stuffed anyway, if you know mean."* The Applicant added *"You see this is what I can't understand. She's gone out of her way to make an incident where there wasn't one, and then I've – I've retaliated, so, yes, I've done that. But after that he's then – she sent old mate over and then going on with all this crap about how I've robbed Rob and I've done this and I've done that. None of that is true because we can prove everything because we're on a bloody wage. Rob paid all the bills and we just work the horses. You know what I mean? -- So we are dealing with all that side of it. -- You know, there's – there's a lot more because this bloke was trying to fight me, so, at the end of the day, I'm just retaliating to someone who is trying to abuse me for something I didn't do to start with."* The Chairman of inquiry questioned *"But I wouldn't like to think that tonight's incident was a carryover from that (previous conflict between the Applicant and Miss Dawson)"* to which the Applicant replied *"It's not. You see, this is what I can't understand. She's gone out of her way to make an incident where there wasn't one, and then I've – I've retaliated, so, yes, I've done that. But after that he's then – she sent old mate over and then going on with all this crap about*

³ Transcript of Stewards inquiry dated 30 March 2019 page 5 and 6.

⁴ Transcript of Stewards inquiry dated 30 March 2019 page 7.



how I've robbed Rob and I've done this and I've done that. None of that is true because we can prove everything because we're on a bloody wage. Rob paid all the bills and we just work the horses. You know what I mean? --So we are dealing with all that side of it. ---You know, there's – there's a lot more because this bloke was trying to fight me, so, at the end of the day, I'm just retaliating to someone who is trying to abuse me for something I didn't do to start with".⁵

The reviewer acknowledges it's not unusual that participants in the vicinity of the horse wash bays may unintentionally be sprayed with water as a consequence of a horse being hosed down prior to or subsequent to a race. The reviewer finds there is no compelling or corroborating evidence to determine the Applicant initially intentionally hosed Miss Dawson.

The reviewer finds on the evidence it is reasonable to find Miss Dawson reacted to being unintentionally sprayed with water when hosing down another horse in the opposite wash bay to the Applicant. Subsequently, Miss Dawson voiced her disapproval towards the Applicant and upon a verbal confrontation between the two parties the Applicant deliberately hosed Miss Dawson. The Applicant in evidence stated *"I was just washing the horse. I never hosed her – you know, like getting her wet. And if you do get wet from hosing a horse it's not – like usually you don't have to be intentional to hose them there but I never did. But when she stuck her around and she's up me I thought, "F*** you", and so I hosed her. You know, but she come back to me. I didn't even hose her to start with. She just started upping me and I thought, "Blow you". So I just – she stuck her head around the corner so I just hosed it because it was into me. I thought, "Mate, I didn't even hose you to start with."⁶*

The reviewer acknowledges each case is treated on its merits.

The reviewer finds such incidents pose as a safety concern capable of causing serious harm or injury in the event a horse is unexpectedly spooked by such actions. The reviewer accepts a level of animosity existed between the Applicant and Miss Dawson prior to the incident the subject of review due to previous incidents. Notwithstanding, the reviewer acknowledges the importance of ensuring racing participants can attend their workplace and carry out their duties in a safe environment without fear of aggressive, confrontational and/or disrespectful behavior. The reviewer accepts that licensed participants are bound by the Australian Harness Racing Rules, to ensure, in part, their conduct and behaviour is of a standard that does not adversely impact the reputation of the Harness Racing industry.

The reviewer in considering the totality of evidence and taking into account the aforementioned factors accepts the Applicants guilty plea and accordingly finds the charge the subject of review is proven.

The Applicants held a trainer/drivers licence for approximately 28 years. The Applicants disciplinary history in that period demonstrates no prior offence pursuant to Australian Harness Racing Rule 231 (2). The precedent for an offence pursuant to Australian Harness Racing Rule 231 (2) in Queensland incurred penalties between a monetary \$200.00 fine and period of disqualification.

In weighing up the matter of penalty, consideration was provided to the Applicant's submissions, degree of actions, mitigating circumstances, guilty plea, disciplinary history and penalty precedents. The reviewer by no means condones the actions of the Applicant under any circumstances, however finds mitigating circumstances exist when considering a level of provocation occurred prior to the incident. Accordingly, the reviewer amends the penalty to a fine of \$500.00 of which \$250.00 be suspended for a period of two (2) years under the provision of Australian Harness Racing Rule 256(5) on the condition the Applicant does not reoffend during such period.

For clarity Australian Harness Racing Rule 256(5) reads:

⁵ Transcript of Stewards inquiry dated 30 March 2019 page 7, 8 and 9.

⁶ Transcript of Stewards inquiry dated 30 March 2019 page 7.



“(a) Penalties other than a period of disqualification or a warning off under this or any other rule may be suspended for a period not exceeding two years upon such terms and conditions as the Controlling Body or Stewards see fit;

(b) If the offender does not breach any term or condition imposed during the period of suspension, the penalty shall be waived;

(c) If the offender breaches any term or condition imposed during the period of suspension then, unless the Controlling Body or Stewards otherwise order, the suspended penalty thereupon comes into force and penalties may also be imposed in respect of any offence constituted by the breach.”

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.

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

Registry Location: Level 9, 259 Queen Street, BRISBANE QLD 4001
Postal Address: GPO Box 1639, BRISBANE QLD 4001
Phone: 1300 753 228
Email: enquiries@qcat.qld.gov.au