

## TASMANIAN RACING APPEAL BOARD

Appeal No. 07 of 2019/20

<b>Panel:</b>	<b>Tom Cox (Chair)</b> <b>Wendy Kennedy</b> <b>(Member)</b> <b>Rod Lester (Member)</b>	<b>Appellant:</b>	<b>William Ryan</b>
<b>Appearances:</b>	<b>Tim North (on behalf of</b> <b>the Stewards)</b> <b>Anthony O'Connell (on</b> <b>behalf of the Appellant)</b>	<b>Rules:</b>	<b>AR228 (b) x 2</b>
<b>Heard at:</b>	<b>Tasracing</b> <b>Glenorchy</b> <b>Tasmania</b>	<b>Penalty:</b>	<b>Fine of \$1,000 for the</b> <b>first incident, and</b> <b>Fine of \$4,000 for the</b> <b>second incident</b>
<b>Date:</b>	<b>5 March 2020</b>	<b>Result:</b>	<b>Upheld</b> <b>Fine of \$1,000 for the</b> <b>first incident, and</b> <b>Fine of \$1,000 (wholly</b> <b>suspended) for the</b> <b>second incident</b>

### REASONS FOR DECISION

1. Following two incidents at the Tasmanian Turf Club Meeting in Launceston on 18 January 2020, Stewards conducted an inquiry into the conduct of the appellant in respect of an altercation with jockey, Mr Daniel Ganderton, in the scales area following Race 5, and a further altercation between the men following Race 6 in the same area.
2. A convenient summary of both incidents is set out in the transcript from the inquiry. The first incident was recorded by the Chairman as follows:

*"...so first of all there was an incident in the scales area following the running of race five, this is to you Mr Ryan. Now based on the evidence so far, there was a heated discussion between yourself Mr Ryan and Mr Ganderton relating to some text messages which Stewards have seen. I think there was a bit of sarcasm between both parties within the text messages. That discussion obviously was heated, it resulted in both of you two gentleman using offensive language towards each other. Stewards were called at that stage. Tim North and Ben Plunkett became involved and they had to separate the two of you. At that stage I don't believe there was any physical altercation other than you were quite close chest to chest and having a verbal debate which was I would say most not most inappropriate but inappropriate given the context of what was being said because we could hear it from the Stewards room.*

*Following Mr North and Mr Plunkett becoming involved they had to restrain both yourself Mr Ryan and Mr Ganderton. Following you both being restrained, Mr Ryan you have continued to attempt to grab at or get to Mr Ganderton and initiate some physicality. However as you were both being restrained this was unable to occur, and at that stage when both participants were being restrained Mr Ganderton was continuing on with verbal comments which I believe you may have taken as inappropriate towards yourself or antagonistic I suppose and at that stage Mr Ganderton was required to be physically removed from the area and into the Stewards room."*

3. The second incident was recorded by the Chairman as follows:

*"...Following race 6 Mr Ganderton as he was leaving the scales area crossed paths with yourself. Whilst leaving the scales area Mr Ganderton said to the effect of "see ya bud" or "see ya mate" along those lines. That's something that Mr Ryan you took offence to and I believe that then you may attempted to have struck Mr Ganderton. Mr Ganderton then may have grabbed you and pushed you towards the table where the colours are kept and following that Mr Plunkett, Steward Mr Plunkett and Trainer Mr Brunton then intervened separating both parties. Mr Ryan then continued to attempt to continue on with the physicality, attempting to strike Mr Ganderton as both were being restrained. Again Mr Ganderton may have continued to verbally, and I'll use the word antagonise at this point in time, which required him to be physically removed."*

4. The Stewards issued the appellant with two charges of improper conduct in connection with these incidents. Following the appellant's plea of guilty to both charges, Stewards proceeded to fine him \$1,000 on the first count and \$4,000 on the second count. In arriving at penalty, the Stewards reasoned as follows:

*"Stewards have considered the matter of penalty in relation to both charges and we've considered the same thing for each charge. So what I can state, we have considered your guilty plea and your honesty throughout the two hearings that we've had relating to these matters. We've given consideration to your personal circumstances, the length of time you've held a license within the industry, your record regarding conduct matters and overall record. We've also considered the fact, the damage that these type of incidents can have on the image of our industry and we've also considered the fact that these incidents also place other participants at risk and their safety is at risk. We've also given consideration to the fact that we believe that in both instances you were the main aggressor in both incidents. So in relation to charge one Stewards have given some thought and we did give some serious thought to whether we issue a suspension, however we didn't believe a suspension was appropriate. We felt that a \$2000 starting point was appropriate, however given what I've read out in relation to what we've considered we believe a \$1000 fine is appropriate for charge one. In relation to charge two obviously given consideration to the factors as just read out, we felt that a starting point of \$5000 was the appropriate penalty, however with consideration to all the matters put forward we believe that a \$4000 fine is appropriate for charge two. We believe now that the matter is finalised, you do have your right of appeal. We wouldn't expect any further altercations or comments or anything, we believe that the matter is now done and dusted, the door's closed and we move on and change to a new chapter."*

5. The appellant has appealed to this Board on the basis that the fines were manifestly excessive. We should note at the outset that the “starting position” assessed by the Stewards with respect to each fine has no legitimate basis. There is no precedent in this jurisdiction or for that matter in any other jurisdiction we are aware of, for fines of that magnitude for similar conduct. Having said that, we accept the Stewards’ contention that each case turns on its facts, but notwithstanding that submission, the fines appear on their face to be well beyond the tariff for offences of this type.
6. The appellant makes the following primary submissions:
  - (a) that the Stewards failed to take into account his plea of guilty, his exemplary record (over 50 years), his cooperation, and the fact that Mr Ganderton was the antagonist and, at least, equally responsible for the conduct; and
  - (b) the fines are manifestly excessive having regard to the fact that the Stewards proceeded to fine Mr Ganderton \$500 for the first offence and \$500, wholly suspended, for the second offence.
7. In response, the Stewards say that the appellant’s conduct was more serious than Mr Ganderton’s and warranted a more significant fine. We accept that the appellant’s conduct was more serious. Although Mr Ganderton may be seen as the antagonist, the appellant resorted to physical violence and, but for the fact that he did so, the conduct of the gentlemen would have been regarded much less seriously.
8. It is trite to say that conduct of this sort, at a race meeting, where patrons and other industry participants may observe such behaviour, is totally unacceptable. The conduct may not have been seen by general members of the public, however, it involved employees of the Office of Racing Integrity having to physically restrain both the appellant and Mr Ganderton. That is a significant aggravating factor in our view. Those employees ought to expect to attend their workplace without the risk of having to be involved in a physical confrontation where they may be injured and suffer the stress of seeing or being involved in what were two nasty, unseemly altercations. The fact that the appellant initiated physical aggression in both altercations is also a significant aggravating factor.
9. It is not necessary to go through the precedents in any detail, suffice to note that the appeals of Rohan Hillier (Appeal No. 26 of 2016/17), Troy Hillier (Appeal No. 27 of 2016/17) and Clark (Appeal No. 03 of 2013/14) resulted in fines in the range of \$500 - \$1,000 for similar conduct.
10. In our view, the appellant should be fined \$1,000 on the first incident and, for the second incident, \$1,000, wholly suspended, on condition that he not commit any like breaches of the Rules of Racing for a period of 12 months.
11. The appeal is upheld and the appellant’s deposit will be returned to him.