

RACING PENALTIES APPEAL TRIBUNAL DETERMINATION

APPELLANT: MR RICKY MICHAEL VALENTI

APPLICATION NO: 24/4742

PANEL: MR PHILLIP GLEESON (PRESIDING MEMBER)
MS NATALIE SINTON (MEMBER)
MR BENJAMIN WILLESEE (MEMBER)

DATE OF HEARING: 29 OCTOBER 2024

DATE OF DETERMINATION: 19 FEBRUARY 2025

IN THE MATTER OF an appeal by RICKY MICHAEL VALENTI against the decision of the Racing and Wagering Western Australia Stewards of Greyhound Racing to impose a fine of \$4,000 for breach of Rule 156(f)(ii) of the Rules of Greyhound Racing.

Mr Daniel Mezger and Mr Paul Chambers represented the Appellant.

Mr Lachlan McLean, Mr Patrick Considine and Mr Anthony Crocker represented the Racing and Wagering Western Australia Stewards of Greyhound Racing.

1. On 5 June 2024, the Racing and Wagering Western Australia Stewards of Greyhound Racing (the Stewards) found the Appellant guilty of misconduct pursuant to Greyhound Rules of Racing (the Rules) r 156(f)(ii).
2. This offence arose from an incident on 11 April 2024 during which, the Stewards found, the Appellant called another man, who we will refer to as RW, a “gay cunt”.
3. On 15 July 2024, the Stewards imposed a fine of \$4,000 for this breach of the Rules.
4. The Appellant appeals both the finding of guilt and the penalty imposed.
5. For the reasons that follow we would dismiss the appeal against both the finding of guilt and the penalty imposed.

Background

6. On 11 April 2024, the Appellant and his partner were present in the bar at the Mandurah Greyhound racetrack. We have had the benefit of viewing CCTV from within the bar that was tendered as an exhibit before the Stewards. Like most CCTV, it has no audio.
7. The footage shows the couple sitting in a bar in which are present several other people, including children. In the moments before RW walks past, the Appellant does not appear to be talking to his partner, who was looking at her phone, or anyone else.
8. RW can be seen walking past a few metres from the table at which the couple were sitting. His back is to the camera, however he does not appear to turn his head in their direction or in any way engage with the Appellant or the Appellant's partner. After RW has passed, the Appellant appeared to lean slightly back in his chair and straighten his back before his lips can be seen to move, following which RW stops walking and turns and walks back in the direction of the Appellant. What appears to be a brief though heated exchange of words then takes place in which RW walks away then returns, before RW walks away for good.

Inquiry - 11 April 2024

9. The Appellant's partner subsequently made a complaint to the Stewards alleging threatening conduct on behalf of RW. As a result of that complaint, the Stewards spoke with RW, who made his own complaint about the Appellant's conduct. All of this occurred on the same night as the incident.
10. The Appellant's account was that he was speaking with his partner when RW walked past. He did not look at him or say anything to him. RW turned and came back and started having a go at him in an intimidating manner.
11. The Appellant's partner made reference to RW having removed her from a Facebook group earlier that evening. She said that the Appellant had checked his Facebook and he had also been removed.

Further inquiry – 22 May 2024

12. At the inquiry on 22 May 2024, the Appellant and RW were shown the CCTV footage from the bar. RW's evidence as to the words used was unchanged, he said they were used twice, and he was certain that he had not misheard them, particularly the second time they were uttered. He described the words used as leaving him embarrassed, degraded and insulted.
13. The Appellant denied having been aware, at the time of the incident on 11 April 2024, that RW had removed him and his partner from the Facebook group. He said he was speaking to his partner about their son, words to the effect of "where the fuck is [son's name]" or "where is the little cunt" and when challenged by RW as to what he had said he could not remember what he had said and that he "probably said something like 'you – you probably are a fucking gay cunt or something.'"
14. The Appellant's partner gave evidence that she was wrong when she said, on 11 April 2024, that the Appellant was aware that he had been removed from the Facebook group.

Decision

15. In their reasons for finding the Appellant guilty, the Stewards noted the following.
16. First, the Appellant's initial evidence from 11 April 2024 that he did not look in RW's direction was not consistent with the CCTV footage.
17. Second, the Appellant's account that as RW walked past he was speaking with his partner was not consistent with the CCTV footage.
18. Third, the Appellant's account that he was saying "where the fuck is [son's name]" or "where is the little cunt" was not consistent with the CCTV footage which clearly showed him saying two words, not five.
19. Fourth, the Appellant's partner's evidence that she thought he was talking about something on the TV screen was not consistent with the Appellant's account.
20. Fifth, the Appellant's evidence that he held no animosity towards RW was an attempt to show there was no reason for him to have said the words alleged. His partner's initial evidence as to when he learned about their removal from the Facebook group was not consistent with this.
21. Sixth, the Appellant stated a number of times that he could not recall exactly what was said, citing his alcohol consumption as a reason.
22. Seventh, RW did not even look at the Appellant as he walked past, while the Appellant's body language changed as he spoke in RW's direction.
23. Eighth, the Appellant said that for personal reasons he would never use the words "gay cunt" but later said he may have used those words in response to RW.
24. Ninth, the Appellant's evidence and that of his partner changed numerous times, and it was relevant to her credibility that she said that she had made a mistake in her evidence on 11 April 2024 as to whether the Appellant knew they had been removed from the Facebook group prior to the incident.
25. Tenth, there was no reason for RW to create an untrue story of this nature, his account was consistent with the CCTV and the Stewards found him to be a credible witness, in contrast to the Appellant who they found to be inconsistent, implausible, and annoyed at being questioned, in a manner they found to be consistent with someone who was being untruthful.

The appeal

26. The Appellant advanced a number of grounds of appeal against the finding that he was guilty, alleging error of law in the standard of proof applied, bias, and a number of factual errors.

Ground 1

27. As to the first ground, it appears from the Appellant's written submissions that his complaint is that it was not open for the Stewards to be satisfied to the required standard of his guilt, in circumstances where the CCTV does not contain audio and no other witnesses corroborate RW's account, which was given in response to a complaint made by the Appellant and his partner.
28. On the basis of the evidence of RW, which the Stewards accepted, supported by what can be seen on the CCTV, it was open for the Stewards to be satisfied that the Appellant had used the words alleged. This ground is without merit.

Ground 2

29. The Appellant's second ground alleges that the Stewards erred in fact in finding that the Appellant said "gay cunt" to RW. As stated above, on the basis of the evidence of RW, which the Stewards accepted, supported by what can be seen on the CCTV, it was open for the Stewards to be satisfied that the Appellant had used the words alleged. This ground is also without merit.

Ground 3

30. The Appellant's third ground alleges error in the Stewards finding that there was no reason for RW to create an untruthful story of this nature. The Appellant's submissions appear to suggest that there was a motive, namely that RW only made his complaint in response to the complaint first made by the Appellant's partner.
31. The relevant finding of the Stewards was that "there is no *plausible* reason for [RW] to create an untruthful story especially of such a nature. The Stewards have the advantage of observing [RW, the Appellant's partner and the Appellant] during the inquiry and watching reactions, moods and mannerisms of all parties when giving and listening to evidence" (emphasis added).
32. A finding of fact by the Stewards based on the credibility of a witness - as this finding was - must stand unless it can be shown that the Stewards have failed to use or have palpably misused their advantage or have acted on evidence which was 'inconsistent with facts incontrovertibly established by the evidence' or which was 'glaringly improbable': *Fox v Percy* [2003] HCA 22 at [66]. In our view, the CCTV supports RW's version of events. The Stewards finding was open and is not inconsistent with incontrovertibly established evidence. This ground is without merit.

Ground 4

33. This ground appears to allege, in substance, that the Stewards erred in believing RW and not the Appellant. For the reasons given above, this ground is without merit.

Ground 5

34. This ground alleges that the Stewards erred in finding that the CCTV footage clearly shows the Appellant saying two words (as RW alleged, "gay cunt") not five words (as the Appellant alleged, "where is fucking [son's name]" or "where is the little cunt"). For the reasons given above, this ground is without merit. Further, having viewed the CCTV countless times, the

finding was not merely open and not demonstrably incorrect, it appears to us that the Stewards finding in this regard was consistent with what can be observed in the CCTV footage.

Ground 6

35. This ground alleges error in the Stewards finding that the Appellant was guilty. In his submissions, the Appellant repeats a number of allegations of legal and factual error the subject of previous grounds and, further, alleges bias and pre-determination supported by a number of factors, including the penalty imposed. A document entitled "Appellant's Response to Request for Further Particulars Acts of Bias and Pre-Determination By The Stewards" was provided to the Tribunal prior to the hearing of the appeal.
36. This document points to the following as demonstrating bias:
 1. The Stewards' finding that it was clear that the Appellant said two words, not five.
 2. The Stewards' finding that the Appellant and his partner held some anger towards RW.
 3. The Stewards' finding that the Appellant's body language changed as he spoke in RW's direction.
 4. The Stewards' finding that the CCTV footage supported RW's account.
 5. The Stewards' finding that there was no plausible reason for RW to create an untruthful story of this nature.
 6. The manner in which the inquiry on 11 April 2024 was conducted.
37. In relation to the allegation that the making of factual findings contrary to the Appellant's position somehow demonstrates bias, this contention is without merit. A tribunal of fact is called upon to make factual findings based on the evidence before it and its own findings as to credibility. Finding facts in favour of one party over another is not indicative of bias.
38. In relation to the manner in which the inquiry was conducted on 11 April 2024, that inquiry was not chaired by the Stewards who ultimately determined the matter. It is difficult to see how the manner in which that inquiry was carried out is indicative of bias in the ultimate decision makers.
39. A fair reading of the transcript of the inquiries on 11 April 2024 and 22 May 2024 and the Stewards reasons do not support an allegation of bias. The Stewards stated at several points during the inquiry that the matter had not been determined and they had an open mind. As will be discussed shortly, the penalty imposed was appropriate and not indicative of some bias towards the Appellant.
40. This ground is without merit.

Appeal against penalty

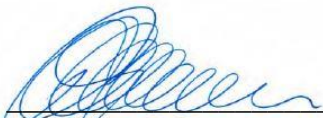
41. A penalty will only be manifestly excessive if it is shown to be plainly unreasonable or unjust. The range of penalties customarily imposed is of significance although each case turns on its own facts and circumstances. Sentencing ranges provide a general guide only and is merely one of the factors to be taken into account. The discretion conferred on the

primary decision maker is of fundamental importance, and this Tribunal will not substitute its own opinion merely because it would have exercised the discretion differently: *Houghton v The State of Western Australia [No 2]* [2022] WASCA 7 at [224] to [228].

42. The Appellant relies on a number of “comparable cases” at [47] of his submissions in support of this ground. Regrettably, other than to note three cases that involved swearing and one case that involved a broken window, no information is given as to the factual circumstances of those decisions or whether the penalty was imposed after a guilty plea.
43. The present case is not merely one of swearing. It involved the Appellant targeting offensive homophobic language at RW. RW was left “embarrassed, degraded and insulted”. There were children present in the bar.
44. The Appellant’s misconduct was serious and warranted a substantial fine both to meet the seriousness of his offending and to deter him, and others, from similar conduct in the future.
45. This ground has not been made out.

Conclusion

46. None of the Appellant’s ground of appeal should be allowed. The appeal must be dismissed.



**PHILLIP GLEESON
PRESIDING MEMBER**



**NATALIE SINTON
MEMBER**



**BENJAMIN WILLESEE
MEMBER**

