

RACING APPEALS TRIBUNAL

RAT 15/16

DATE: TUESDAY 30 AUGUST 2016

TRIBUNAL: PRESIDENT: MR T ANDERSON QC

MR JOHAN PETZER, CHAIR OF STEWARDS,
THOROUGHBRED RACING SA LTD APPEARS FOR
STEWARDS

APPELLANT: MR J GLATZ
APPELLANT COUNSEL: MR MICHAEL BARNETT

IN THE MATTER of an Appeal by Mr JOHN GLATZ against a decision of
Thoroughbred Racing SA Ltd Stewards.

BREACH OF RULE: Australian Rules of Racing 175A.

*Any person bound by these Rules who either within a racecourse
or elsewhere in the opinion of the Committee of any Club or the
Stewards has been guilty of conduct prejudicial to the image, or
interests, or welfare of racing may be penalised.*

PENALTY: FINE OF 5,000.00

DETERMINATION

Mr Glatz is an owner/trainer registered with Thoroughbred Racing
South Australia and as such is bound by the Australian Rules of
Racing.

He is also the Chairman of the Oakbank Racing Club.

This appeal arises from comments made by Mr Glatz on Monday, 28 March 2016 at the Oakbank Racecourse during the Oakbank Easter Carnival whilst being interviewed by Channel 7.

The interview took place on the second day of the Easter Racing Carnival, which is noted for its jumps racing program.

Mr Glatz was interviewed by Channel 7 on a number of occasions.

He said that on the occasion in question, when the interview was finished he made some comments unaware that the camera was still operating and that sound was being recorded.

In the comments he made, which were recorded and published widely on Channel 7, other television outlets, radio, and the print media, Mr Glatz made derogatory comments about the Minister for Racing in South Australia, the Honourable Mr Leon Bignell.

He said, amongst other things, *"Bignell's a dickhead."*

As a result of this comment he was interviewed by the South Australian Thoroughbred Racing Stewards and was fined \$5000 for conduct prejudicial to the image or interests of racing pursuant to a charge made under Rule 175A.

Mr Glatz did not enter a plea to the charge, and the matter proceeded therefore as a not guilty plea.

The Channel 7 footage clearly shows Mr Glatz uttering the words *"Bignell's a dickhead"* and he does not dispute this.

He told the Stewards in their inquiry that these words were not part of the interview and were being said by him in a private conversation with a bystander, whom he did not know by name.

He was shown the footage several times by the Stewards and maintained his version of events and I have now seen the footage several times.

In the inquiry before the Stewards, Ms Williams, who was nearby when the interview took place, gave evidence.

Her evidence at that time was given without the benefit of her being shown the Channel 7 footage by the Stewards.

Her evidence amounted to the fact that she did not hear Mr Glatz say the words which he admits he did say. The conclusion I am asked to draw is, therefore, that the words were not part of the formal interview, as Mr Glatz contends.

Whatever the case, it is obvious that Mr Glatz is talking to whoever it may have been whilst the interviewer and the camera operator were nearby.

Ms Williams gave evidence before the Tribunal.

Repeating the evidence she gave in the hearing before the Stewards, Ms Williams told the Tribunal that she did not hear the words said by Mr Glatz, and further, that she saw the interview coming to what she believed was a conclusion and the Channel 7 people started packing up.

This evidence is important as it does bring in to question as to whether Mr Glatz's version of events is correct.

The Stewards found that Mr. Glatz uttered these words as part of the formal interview with Channel 7.

This finding was challenged by Mr. Barnett who appeared for Mr. Glatz before the Tribunal.

The revised grounds of appeal were as follows:-

- 1 The finding (referred to above) is against the weight of the evidence,
- 2 The Stewards reversed the onus of proof and failed to apply the Briginshaw test,
- 3 The Stewards failed to call anyone from Channel 7 and failed to act on the uncontradicted evidence of Mr. Glatz and his witness,
- 4 The Stewards failed to put the film to Mr. Glatz's witness,
- 5 The Stewards failed to have regard to the evidence called by Mr. Glatz, which corroborated his version of events in a material way,
- 6 The unintentional publication by Mr. Glatz was incapable of supporting the charge, and

7 Alternatively the penalty was manifestly excessive in the circumstances.

Whatever the case, it is my view that Mr Glatz was reckless in saying these words when he knew the camera was close by.

He is an experienced person in the racing industry and on behalf of the Oakbank Racing Club regularly gives television media interviews.

As I have said, these unfortunate comments were widely publicised and obviously were derogatory of the Minister for Racing.

The Stewards found that Mr Glatz's conduct fell far below the standard to be expected from a member of the racing industry, concerning the Minister in charge of racing.

Mr Glatz is an experienced Chairman, having been in that role for 26 years. It is part of his job to be regularly interviewed by the media. This is particularly so during the Oakbank Carnival.

I take the view that the question of whether he was aware that he was being formally interviewed is open for decision either way.

In other words, I think there is some doubt as to whether Mr Glatz knew that he was being filmed at the time he made the comments about Mr Bignell.

He should not have made the comment when there was always the possibility he would be heard by members of the public who were around the area.

It was a comment about a Minister of the Crown in charge of racing, of which Mr Glatz is an ambassador.

Mr Glatz and Mr Bignell obviously have differences of opinion in relation to jumps racing.

Both are entitled to their personal views.

Mr Bignell has made public his personal view, which is not in favour of jumps racing.

Despite their differences of opinion, it is important that the racing industry maintains an image which is untarnished, especially from those in responsible positions.

In my view, the Stewards were correct in finding that it was conduct prejudicial to the image or interests of racing, and therefore the conviction under Rule 175(A) should stand.

In my opinion it makes no difference to the charge whether the statement is intentional or reckless. It can be relevant as to penalty.

I find nothing of significance for the disposition of the appeal in grounds 2,3,4 and 5 which is not covered by ground 1.

I have found the statement to be reckless and therefore ground 6 is not made out.

In relation to penalty, I think that there are some excuses for Mr Glatz's comments.

This interview was towards the end of a difficult carnival in which the attendance numbers were down. He also had to contend with many protesters who were protesting against jumps racing. Once again, those people are entitled to their views.

I think it was all too much for Mr Glatz, who was exasperated and disappointed when he made his comments. I'm sure that they were unguarded comments, and given the opportunity over again he would not make them.

He has had a long and distinguished record in the racing industry and at the Oakbank Club in particular. I believe he momentarily lost his composure and made the statements.

I was given a bundle of testimonials showing Mr. Glatz is held in high regard in the racing industry and the community generally. Mr Glatz also received the Order of Australia Medal for his services to racing.

Before me he tendered an oral apology to the Minister. He agreed to forward a written apology to the Minister, and I take this into account as part of his contrition, although somewhat belated.

He could have been suspended or disqualified as these were options open to the Stewards, but they chose a fine and I believe, rightly so.

Mr Glatz suggests that he should have only been reprimanded at worst.

His comments, coming as the Chairman of a Club, and whether directed to one bystander or more, were in the hearing of the Channel 7 people at least, and there is really no explanation other than a momentary lapse.

That, however, is a mitigating factor. He has suffered for his intemperate description of the Minister, but so has the Minister.

In my view, the fine imposed by the Stewards is in all the circumstances somewhat excessive.

This is particularly so because the situation as I have judged it is not as serious as the situation as judged by the Stewards.

This is because I have allowed for a reasonable doubt as to whether Mr Glatz knew that he was being recorded at the time he made his comments about the Minister.

In all the circumstances, I consider that the appropriate fine should be \$2000, and I therefore reduce the fine from \$5000 to \$2000.

Mr Glatz has asked for time to pay, and I have allowed him six months from the date of today's hearing, which is 30 August 2016.

I also order the refund of the bond.