

Non Raceday Inquiry RIU v C D Steele - Reserved Penalty Decision dated 18 September 2019 - Chair, Mr R G McKenzie

Rules:

Repondent(s)/Other parties:

Name(s):

Decisions:

BEFORE A JUDICIAL COMMITTEE

HELD AT CHRISTCHURCH

IN THE MATTER of the Rules of New Zealand Greyhound Racing Association

IN THE MATTER of Information No. A09836

BETWEEN J M McLAUGHLIN, Stipendiary Steward for the Racing Integrity Unit

Informant

AND COREY DANIEL STEELE of Darfield, Licensed Owner / Trainer

Respondent

Judicial Committee: Mr R G McKenzie (Chair)

Mr S C Ching

Present: Mr J M McLaughlin, the Informant

Mr C D Steele, the Respondent

Mr S W Wallis, Chief Stipendiary Steward

Date of Hearing: 11 September 2019

Date of Decision: 18 September 2019

DECISION OF JUDICIAL COMMITTEE

The Charge

[1] Information No. A09836 alleges that, on the 27th day of August 2019, at the meeting of Southland Greyhound Racing Club held at Ascot Park, Invercargill, the Respondent committed a breach of rule 62.1(p) of the Rules of Racing of the New Zealand Greyhound Racing Association Incorporated in that he "failed to comply with the lawful order of a Steward".

[2] The information was served on the Respondent on the day of the meeting. Mr Steele signed the Statement by the Respondent on the information form indicating that he did not admit the breach.

[3] The hearing of the charge took place at Addington Raceway on 11th September 2019. Mr Steele was present at the hearing. The charge and the rule were read to him and he confirmed that he understood the charge and the rule and that the charge was denied.

The Rule

[4] Rule 62.1 provides:

Any person (including an Official) commits an offence if he/she:

(p) disobeys or fails to comply with the lawful order of a Steward or other Person having official duties in relation to Greyhound racing.

Facts

[5] Mr McLaughlin presented the following statement:

Mr Corey Steele, Licensed Owner/Trainer, came to the Stewards' Room after Race 14. Race 14 started 4.03pm.

Mr Steele wanted to know why I had swabbed certain runners on the day. I told him I would not talk about or entertain any conversation about my swabbing.

I informed him that I answer to Mr Godber (General Manager of the RIU) and Mr Wallis (Chief Stipendiary Steward) in that matter and if he persisted with that line of enquiry that this would be a very short conversation, adding he would be asked to leave.

Mr Steele obviously had an issue with this and continued to press his assumption that I had to justify my swabbing to him.

Mr Steele was asked to leave on more than one occasion.

Mr Steele refused to leave the room and indignantly said that he had no intention to leave the Stewards' Room, and that he had concerns with my swabbing regime and he was staying put.

Mr Steele was again asked to vacate the Stewards' Room and again refused.

At this stage, I phoned Mr Scott Wallis and informed him that Mr Steele was refusing to leave the Stewards' Room.

(Mr McLaughlin told the hearing that, at that stage, he had the previous race to report on with another race coming up. There was a 19-minute gap between races 14 and 15. He was by himself as Mr Munro, Stipendiary Steward, had been called away on an urgent matter).

Mr Wallis was put on speakerphone and reiterated to Mr Steele that he was asked to leave and, if he did not, he would be charged with failing to comply with a Steward's direct order.

Mr Steele refused to vacate the Stewards' Room.

Mr Steele was directed to leave the Stewards' Room by myself and his reply was "You direct me? Who do you think you are?".

Mr Steele was informed, on more than one occasion, that he would be charged if he did not leave the Stewards' Room and to wait outside the door until after the last race.

This has gone on for a period of some time as Mr Steele came to the Stewards' Room after Race 14. Mr Munro, who was my colleague on the day, had been called away on urgent business and had arrived back on course. I then phoned Mr Wallis a second time, approximately 5 minutes prior to Race 15, which was to start at 4.22pm.

On advice from the Chief Stipendiary Steward, Mr Wallis, Mr Munro was instructed by myself to write up the information. I took back control of the raceday and resumed my seat 1 minute 20 seconds prior to Race 15.

(At this stage, Mr McLaughlin added, he had not reported on Race 14 and, if he had missed anything from reviewing that race, he ran the risk that if he had missed, for example, a failing to pursue, the dog and trainer may have left the course. He should not have expected to have a licensed person sitting in his room and taking no notice of him while he was trying to do his job).

Mr Steele stated he was not moving, as he was going to be charged and would sit there until the charge was written up.

Race 15 was run. The Stewards were further subjected to a snide comment about the winner not being swabbed prior to the information being delivered. Mr Steele signed the information and then vacated the room.

At the previous meeting on the 13 August 2019, Mr Steele had a similar conversation where he obviously had a problem with my swabbing, accusing me of favouring a kennel which had not been swabbed on the day. He was informed that I had no intention of discussing my swabbing regime with him and to take his concerns to Mr Mike Godber.

Mr McLaughlin concluded by stating that he has a job to do on raceday. He was, unfortunately, without his colleague, Mr Munro. He was under pressure and he had a licenceholder who would not leave the room, no matter how many times he told him to. Mr Wallis also asked Mr Steele to leave the room but to no avail.

Evidence of Scott Wallis, Chief Stipendiary Steward

[6] Mr Wallis said that he was officiating at a greyhound race meeting in Christchurch on this day. He received a telephone call at 4.14pm from Mr McLaughlin concerning Mr Steele's refusal to leave the Stewards' Room. Mr Steele did not wish to speak to Mr Wallis, but Mr Wallis was aware that Mr Steele could hear him. However, Mr Wallis said that he was aware that Mr McLaughlin was listening on speakerphone so he said, for Mr Steele's benefit, that a charge would be laid if Mr Steele continued to disobey the direction of Mr McLaughlin to leave. That duration of that call was just over one minute, he said

[7] Mr McLaughlin telephoned again shortly thereafter (at 4.17pm) to advise that Mr Steele was still refusing to leave. He told Mr McLaughlin to go ahead and charge Mr Steele.

Evidence of the Respondent

[8] Mr Steele referred to the allegation that he had said to Mr McLaughlin "You direct me? Who do you think you are?" and denied having said it. He stated that he was merely asking Mr McLaughlin to confirm that he was being directed to leave the room. After the

first telephone call between Mr McLaughlin and Mr Wallis, he had been told by Mr McLaughlin that he would have to await Mr Munro's return. Mr Munro was present for the second telephone conversation.

[9] Mr Steele confirmed, when questioned by the Committee, that he accepted the rest of Mr McLaughlin's evidence, except for denying that he had been asked to leave as many times as was alleged. He recalled being asked twice but he "refused", because he still had matters of concern that he wished to raise with Mr McLaughlin. On a third occasion, he had asked Mr McLaughlin to confirm that he was being formally directed. Mr McLaughlin had confirmed to him that he was being formally directed to leave the room. Mr Steele confirmed that, having had that confirmed, he still did not leave the room.

[10] Mr Steele said that he had real concerns for the welfare of greyhounds on the day, principally but not solely the greyhounds in his care, and his reason for refusing to leave was that he had not had the opportunity to discuss these concerns with Mr McLaughlin. There were a number of dogs, he said that had "extreme diarrhoea" in the kennel block.

[11] Since moving to Christchurch 18 months ago, he had found the Stipendiary Stewards to be very helpful and approachable and they had told him that they were always available to discuss any matter. It was in reliance on this that he had approached Mr McLaughlin, he said.

[12] Mr Steele said he had initially raised with Mr McLaughlin his concerns over selective swabbing. At a meeting at the same track a fortnight earlier, he said, a particular trainer had trained six winners without having any of them post-race swabbed and neither of that trainer's two winners on this day had been swabbed. He added that the sport was under a lot of public scrutiny at present and it was not a good look that a trainer could have eight winners without one being swabbed.

[13] The Committee asked Mr Steele in what capacity he was present at the meeting. His reply was that was the trainer's representative for licensed trainer, Mrs Janine McCook (the Committee noted that Mrs McCook had six dogs at the meeting). He had no specific authority from Mrs McCook to raise any of these matters with Stewards, he said. The last of these runners raced in Race 10 and, Mr Steele said that after Race 14 was the first opportunity he had to speak to Stewards. He felt responsible for the dogs in his care as though they were dogs of his own, he said. Mr McLaughlin had told him that the problem with the diarrhoea was in hand, he said.

[14] Mr McLaughlin told the Committee that he had sent Mr Munro to talk to the vet earlier in the day concerning that matter.

Reasons for Decision

[15] The Committee considered the evidence and submissions that it had heard.

[16] There are two elements of the rule under which Mr Steele has been charged – two elements that the Informant must prove.

[17] Firstly, he must prove that there has been a "lawful order" by a Stipendiary Steward. We take "lawful order" to mean, simply, an order given by a Stipendiary Steward in the proper course of carrying out his duties which he can issue and enforce.

[18] Secondly, the Informant must prove that Mr Steele disobeyed or failed to comply with that lawful order.

[19] To deal with each of those elements in turn. Mr McLaughlin gave evidence that he had asked Mr Steele to leave on a number of occasions. We heard conflicting evidence as to the exact number of times that Mr McLaughlin asked but, we are satisfied, that it was on more than one occasion. Eventually, Mr Steele asked him to confirm that he was being formally "directed" to leave the room. He acknowledged that he had been directed to leave and we are satisfied that that amounted to a "lawful order" by Mr McLaughlin.

[20] We further find that, prior to being formally directed, Mr Steele had refused to leave despite being asked to do so several times. Following being formally directed, Mr Steele still refused to leave and there is no dispute concerning this. In refusing or failing to leave the room, Mr Steele has disobeyed or failed to comply with that lawful order of a Steward.

[21] Accordingly, both requirements of the rule have been satisfied on a balance of probabilities to the Committee's satisfaction.

[22] The Committee accepts that Mr Steele's reasons for refusing to leave the Stewards' room were genuinely held. There were matters that had arisen during the race meeting that he wished to discuss with Mr McLaughlin. However, the genuineness of those reasons does not provide a defence to the charge. He has gone about raising his concerns the wrong way. The correct approach would have been for him to approach Mr McLaughlin and ask him what would be a convenient time for Mr McLaughlin to make himself available.

[23] We note that the incident out of which the charge arose took place after Race 14 of 15 races on a busy raceday. Mr McLaughlin was going about his duties and was operating within a very tight time frame, and he was quite entitled to ask Mr Steele to leave the Stewards' Room. Mr Steele's refusal to obey Mr McLaughlin's lawful order had hindered Mr McLaughlin in the performance of his essential and important raceday duties. It would have not have been unreasonable for Mr Steele to ask Mr McLaughlin if he could make himself available following the running of the last race, Race 15.

Decision

[24] The charge is found proved.

Penalty Submissions of the Informant

[25] Mr Wallis presented penalty submissions on behalf of Mr McLaughlin.

[26] The general principles of sentencing are well known:

- To hold Mr Steele accountable for his actions;
- To promote in him a sense of responsibility;
- To deter others from similar offending.

[27] Mr Wallis referred to the case of *RIU v McInerney* (2014) – a charge under the same rule in which a trainer had refused to attend the Stewards' Room. Mr McInerney had a clear record and was fined \$300 with an order for costs of \$180 in favour of the JCA.

[28] On 20 February 2018, Mr Steele admitted a charge under rule 62.1.g, a similar rule, arising out of an altercation with a Stipendiary Steward in which he used threatening language, and was fined \$300. The charge was under a similar rule to the present charge and, Mr Wallis submitted, the present breach should be treated as a second offence.

[29] The Informant was submitting that a fine of no less than \$500 be imposed.

[30] The Informant did not seek an order for costs.

Penalty Submissions of the Respondent

[31] Mr Steele said that his sole income was the stake money earned by dogs that he trained. He advised the Committee of the amount for the 2018/2019 season.

[32] Mr Steele submitted that the previous breach referred to by Mr Wallis was under a different Rule and, he admitted, the offending was more serious. However, he is working hard to try to better himself. He intends to apply for a Public Trainer's licence, he said, and is standing for the Board of the Christchurch Greyhound Racing Club. He wants to make greyhound racing his career. He has a mutually acceptable training arrangement with Public Trainer, Mrs Janine McCook. He asked the Committee to take into account his limited financial means.

Reserved Penalty Decision and Reasons

[33] The penalty rule is rule 63.1 which provides as follows:

Any person found guilty of an Offence under these Rules shall be liable to:

(a) a fine not exceeding \$10,000.00 for any one (1) Offence except a luring/baiting Offence under Rule 86; and/or

(b) Suspension; and/or

(c) Disqualification: and/or

(d) Warning Off.

[34] Rule 11.3 of the Rules of Racing of the New Zealand Greyhound Racing Association sets out the "Powers of Stewards". Those powers are wide-ranging and the Stewards must be left to carry out those functions at the race meeting without interference or hindrance from licenceholders.

[35] Rule 62.1 (p) provides that it is an offence to disobey or fail to comply with the lawful order of a Steward and Mr Steele has been charged with a breach of that rule in failing to comply with the lawful order of Mr McLaughlin, Steward in charge of the meeting at Invercargill on 27 August last, to leave the Stewards' Room after Race 14. On the evidence, the Committee is satisfied that it was a wilful refusal on Mr Steele's part, having been asked repeatedly to leave the room. We were clearly satisfied that Mr Steele has committed a breach of the rule by his behaviour on this occasion.

[36] The only previous case under the present Rule 62.1 (p) that has been referred to us is the case of *McInerney* (2014). In that case, the licensed handler was issued a lawful order at 2.20pm to attend the Stewards' Room in relation to a possible breach of the Rules, was directed again at 3.20pm, with Mr McInerney eventually arriving in the Stewards' Room at 4.15pm, some 55 minutes after the running of the last race. Mr McInerney was fined the sum of \$300.

[37] Although it could be said that the facts of the *McInerney* case and the present case are quite different, each one involved a licenceholder wilfully disobeying or failing to comply with a lawful order of a Steward.

[38] Mr Steele has, we note, a previous breach involving an "altercation" with a Stipendiary Steward in which case he threatened violence to that Steward. It is reported in the Judicial Committee's decision that Mr Steele "realised the situation should not have happened at all" and "showed remorse for his actions". Mr Steele received a fine of \$300.

[39] It is apparent that Mr Steele has a problem with officialdom and, although the charge in that case was under a different rule from the charge in the present case and was arguably more serious, the Committee is treating the present breach as a "second offence" for the purposes of penalty, as submitted by the Informant. Mr Steele has not learned from his previous breach.

[40] The Committee has taken the penalty in the *McInerney* case, a \$300 fine, as a starting point for penalty in this case. That this is a second offence for Mr Steele is an aggravating factor. Mr Steele receives no discount for admitting the breach but, of course, that is not an aggravating factor. His apparent lack of remorse is, likewise, not an aggravating factor but, rather, is the lack of a mitigating factor. There are no mitigating factors.

[41] As we have said, this breach is, arguably, less serious than Mr Steele's previous breach as it did not involve any threat of violence on this occasion. This factor justifies a lesser fine than on the first occasion. However, there is the aggravating factor of it being a second offence.

[42] The Committee believes that the fine shown below will serve to:-

- (1) hold Mr Steele accountable;
- (2) promote in him a sense of responsibility;
- (3) denounce his conduct; and
- (4) deter him or other persons from committing the same or a similar offence.

Penalty

[43] Mr Steele is fined the sum of \$400.

Costs

[44] The Informant did not seek an order for costs.

[45] The Respondent is ordered to pay the sum of \$200 by way of costs to the Judicial Control Authority.

R G McKenzie S C Ching

CHAIR **PANELLIST**

Penalty: