

GREYHOUND AND HARNESS RACING APPEALS TRIBUNAL

TRIBUNAL: B. R. THORLEY, JUDGE

**Assessors: Mr L D. Clough
Mr J. Schreck**

APPEALS OF Ms KIMBERLEY MORDUE AND Mr JOHN MORDUE

DECISION

On 10 May 2007 the stewards at Newcastle laid two charges. Against Ms Kimberley Mordue the stewards laid a charge under Rule 231 (1), which provides that:

"A person shall not assault, abuse or otherwise interfere improperly with anyone employed, engaged or participating in the harness racing industry or otherwise having a connection with it."

Although it was not specifically spelt out, the whole context of the charge was that Ms Mordue had abused a Ms Sue Anderson on the Newcastle Paceway premises shortly after the completion of race three. To that charge the respondent pleaded not guilty, but was found guilty and then subjected to a period of six months disqualification.

The second charge was laid against Ms Kimberley Mordue's father, namely Mr John Mordue, who was charged that he did on the same day commit a breach of Rule 231 (2) in that he was guilty of misconduct. The context of that charge was an allegation that, by a mobile phone call to a Ms Croker, he did threaten to do harm to a particular horse. To that charge of misconduct he pleaded not guilty. He too was found guilty, and equally was subjected to a period of six months disqualification. Both Ms Mordue and Mr Mordue have appealed to this Tribunal, and Mr Macken, solicitor, has appeared for each Appellant, and Mr Adams has appeared on behalf of the stewards.

It is relevant to note that Ms Kimberley Mordue had come to the race track at Newcastle on 21 April 2007—the date when these events are alleged to have occurred—having just exhausted the period of disqualification that had been imposed on her by this Tribunal following an appeal which we heard here at Newcastle on 24 June 2006. In our decision of that date we had imposed a period of disqualification upon her of 15 months. That charge derived from an allegation of an assault which occurred at the Newcastle Harness Racing Club on the evening that it was holding an annual awards function.

The first that the stewards were aware of the events which allegedly took place on 21 April was when Ms Anderson, who is a licensed strapper, came to the stewards at a late stage in the evening to make a complaint. The stewards did not know this lady; indeed, at the outset, they assumed that she was but a patron to the course. However, she informed them that she was a licensed strapper. They then asked her to tell them what it was that was her concern, to which she responded:

"I'm so upset, sorry."

The chairman of stewards said:

"Well, take your time."

She then went on to relate events which indicated abuse levelled at her and also at Ms Croker which emanated from Ms Kimberley Mordue. A number of questions were asked by the stewards of Ms Anderson. There is one particular reply to which we would draw attention, particularly since it was much relied upon by Mr Macken during the course of his arguments. The chairman of stewards asked Ms Anderson to wait outside. She responded to that in these words:

"I know it's trivial this, but if I get belted up I want you to know why."

There was a temporary halt in that exercise, and then Ms Yvonne Cloke and a Mr Michael Edwards (licensed trainer and driver, respectively) also came before the stewards and reported the events of which they had made observation and, in the case of Mr Edwards, his hearing of the phone conversation which allegedly forms the basis of the charge laid against Mr Mordue.

The stewards received this material and indicated that they thought it was serious, and that they would look into the matter in a proper way. Hence, they determined to open a formal inquiry, which took place at Newcastle, as we have related, on 10 May 2007. Present at that inquiry were Ms Anderson and Ms Cloke and the two Appellants, Ms Kimberley Mordue and her father John Mordue.

To both of the Appellants the stewards had had a copy of that which transpired on 21 April prepared and had forwarded it to each of the Appellants in advance of the hearing on 10 May. That mode of informing the Appellants of what it was that had transpired on 21 April appears, from a reading of the transcript, to have been accepted by each of the Appellants.

It is not necessary for us to review the evidence in great detail. It is sufficient for the purposes of these reasons to point out that the versions of fact given by those who were alleging the abuse and/or the misconduct came from one camp, and that they were hotly denied by the other camp. There were versions given by one camp and the other camp which are totally inconsistent. Each camp has, in a manner of speaking, some additional evidence said to corroborate the particular version for which that camp contends. The issue, then, which was before the stewards devolved down to a question of which version did they accept.

The appeals before this Tribunal are rehearings. We have, however, pointed out in more than one previous appeal that, although it be an appeal by way of rehearing, seldom is it that we are afforded the opportunity of actually hearing the witnesses ourselves and thus providing for ourselves some capacity to appreciate the credibility of any one of them. It is the stewards who have had the benefit of seeing the witnesses give their evidence viva voce and forming opinions about credibility, aided, no doubt, by that capacity to have actually heard the evidence and seen the witnesses give it. To that extent, then, we must give considerable weight to the views accepted by the stewards in the light of an inability on our part to contradict it.

However, there are some features of this appeal which enable us to say that we have no hesitation in accepting the same version of fact which appealed ultimately to the stewards. First, we are impressed by the fact that Ms Anderson is a person who had no prior personal knowledge of the Mordue family, and, apart from anything she may have heard around the harness racing industry, had no axe to grind, as it were, with any member of that family. It was she who made the original complaint. It is she who was observed to have been markedly upset at the time. That, we think, adds not inconsiderable credibility to the version which she advanced.

There is another difficulty to which we should refer. Not any one of the witnesses who have given evidence as recorded in the transcript appear to have the capacity to express themselves in the clarity of English that might be seen in one of the more well-known formal writers of our era. This is, I think, self-evident when one comes to that very answer which Mr Macken was at considerable pain to emphasise and re-emphasise in front of us. I refer to the answer:

"I know it's trivial this, but if I get ..."

The possibility of getting "belted up" could not, in anybody's language, be described as trivial. We think it is quite clear that when she made reference to something being 'trivial' she was advancing the view that it was possible that the stewards might merely regard some abuse being levelled around the environs of the race track as but a trivial matter, but she wished to disabuse the stewards of any possibility of that view being taken by emphasising that she felt that she was at personal bodily risk.

Mr Macken was disposed to put to us on repeated occasions during the course of his submissions that the whole affair was but a trivial one, as indeed was recognised, he argues, by Ms Anderson herself. We do not think that was the way in which she was using that word at all, and we think Mr Macken's arguments are to be rejected. We share the view that the stewards ultimately expressed, namely, that people who come to race tracks come for enjoyment and for companionship and because of an affection for the industry and the sport involved, and they are entitled to come here in peace and enjoy themselves. Conduct such as this does not afford that privilege to be enjoyed.

A further argument was put to us that there was a denial of procedural fairness such as vitiates the whole of the proceedings. This argument depends upon the postulation that there was something inherently wrong in the stewards receiving any evidence from Ms Anderson, Mr Edwards or Ms Croker on 21 April without affording, at that point of time, the opportunity to any one of the Mordue family to come and listen to it.

We do not think that there is any substance in this submission. This is, in our view, no different from the circumstance when, for example, a person who has been the victim of some crime repairs to a police station and reports it to a police constable. All of that is done in the absence of the perpetrator of the crime. The observations that are then to be made, such as the distress on the part of the complainant, are matters properly to be noted by the police officer, properly to be recorded, and properly to be regurgitated to a court in due course, assuming that the perpetrator can be identified. Nothing more than that happened here.

That the Mordues may have been available around the track is noted. Equally to be noted is the fact that the stewards did not receive these complaints until something after 9.30 p.m. (being later than the time recorded on the mobile telephone) at which stage their obligations in respect of the running of the meeting did not really permit of them opening a full-scale inquiry on the night of 21 April. We think the stewards handled that part of it in a manner such that there could not be any bone fide complaint of a denial of procedural fairness.

It has to be said, however, that when the formal inquiry did commence on 10 May the Mordue camp did not seize on that opportunity really to cross-examine anybody. They might have been better advised had they seized upon that opportunity, which was certainly available to them since the people making the complaints and making the allegations were there to be questioned. Instead, they appear to have been satisfied with simply making counter versions and giving the details of those, as well as making counter allegations about the background of people and their motivations.

In each case, then, we think the appeals fall to be dismissed.

In the case of Ms Kimberley Mordue, we recognise that she is but a young woman and that she has recently endured a lengthy disqualification. We are also aware that she is a person who has a bona fide enthusiasm for harness racing, and we are aware

that she is a person for whom some promise was held in driving. Nonetheless, it appears to us that until she learns to control herself she will ever be in trouble. Coming back so freshly from such a long period of disqualification resulting from the first appeal does not really entitle her to come here and to seek any particular leniency. We think the penalty of six months disqualification was merited. It is not disputed by Mr Macken that she is a person to whom the rules of racing apply.

In the case of Mr John Mordue, however, we do take a different view. His sole involvement in the matter was by way of making the mobile telephone call. Why did he do it? Because his daughter came to him seeking comfort. One is not surprised that in that circumstance he would rise to her defence, that he would try to ascertain what was the problem, and that he would express his indignation in protection of his family. His mistake, however, was that he used phrases which were excessive. Just how the particular phrase of threatening to do harm to a horse popped into his mind one wonders at, but we do not regard it as more than an over-reaction to a situation which all family members can recognise.

However, he has been engaged in the harness industry for nearly all of his life and has been a licensed person for over thirty years and has never received a penalty for any conduct which approaches the quality of that which his daughter has achieved. We think, for him, disqualification was too great a penalty. He is an active trainer with horses in work, and he drives. Nonetheless, he also must recognise the rights of people other than his family, and we think it appropriate that there be imposed upon him a fine to demonstrate that we disprove of his conduct but that we do not think it worthy of a period of disqualification.

Ms Kimberley Mordue's disqualification will date from the date of the stewards' order, a stay of proceedings having been refused.

In the case of Mr John Mordue, we set aside the period of disqualification and in lieu thereof impose a fine of \$1,000, which we direct be paid forthwith to the Authority.

In each case, the appeal deposit is forfeit.

B. R. Thorley, Judge
20 June 2007