

APPEAL GUY CLARKE – STAY OF PROCEEDINGS REASON FOR DECISION

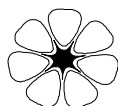
Mr Guy Clarke is a licensed person the subject of an enquiry before stewards following a serious assault on jockey Mr Raymond Vigar in the Silks car park at the Darwin Turf Club. The incident occurred at approximately 10.29 PM on 11 July 2020.

The assault is now the subject of a police prosecution for aggravated assault listed for mention on 31 August 2020 a matter to which I will return.

The stewards charged Mr Clarke under the provisions of AR228(b) and he entered a plea of guilty. He was disqualified for eighteen months. Mr Clarke was subject to a suspended fine of \$2,000.00 imposed on 18 August 2018 and he was directed that \$1,000.00 (only) be ordered to be paid.

Mr Clarke has appealed to this Tribunal against the severity of sentence and the finding of guilty and he has applied for a stay of proceedings. He has lodged grounds of appeal, as follows:

1. Guy Clarke has been charged with a single count of aggravated assault; the matter is currently listed for mention in the Darwin Local Court at 9.30am on 31 August 2020;
2. A preliminary examination of the material confirms that Mr Clarke has a defence which should see the charge against him withdrawn or dismissed;
3. There is an independent witness by the name of Ms Jessica Long, who can verify Mr Clarke's instructions and confirm he was acting defensively when threatened by the alleged victim, Raymond Vigar;
4. Mr Clarke did not seek advice before appearing at the hearing before the Stewards on 14 July 2020. He should not have pleaded guilty to improper conduct at that time. He was told by Mr Hensler that it was just going to be a "friendly chat", not an inquiry;
5. The penalty imposed on Mr Clarke is manifestly excessive, given the facts and circumstances surrounding the alleged incident;
6. Mr Clarke's sole source of income is derived from track work and farriers' services he provides primarily at the Fannie Bay Racecourse;
7. Mr Clarke has a mortgage and the 18 months disqualification period will see him experience significant financial difficulties;

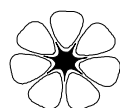


- 8 The Thoroughbred Racing Northern Territory Stewards should have considered other sentencing options such as a suspended sentence or imposing conditions on Mr Clarke's licence; and
- 9 For the above reasons, the appeal should be granted and a stay of proceedings put in place until such time the appeal can be heard.

The stewards oppose the grant of a stay and made a written submission as follows:

1. The seriousness of the improper conduct is further reflected by the decision of the NT Police to charge Guy Clarke with a single count of aggravated assault. This has occurred since the completion of the Stewards inquiry;
2. The Stewards request that the Tribunal members view the CCTV footage of the assault as in our view it does not support that the charge should be withdrawn or dismissed. We feel it will support the violent nature and seriousness of the unprovoked assault on jockey Raymond Vigar;
3. The independent witness Jessica Long gave evidence during the inquiry and the Stewards determined in their findings that her testimony did not provide a lot of assistance to the proceedings. It should be noted that Guy Clarke is currently in a relationship with the independent witness and further he claims that she was formerly in a relationship with Raymond Vigar;
4. Guy Clarke appeared before the Stewards on 13 July, 2020. He was informed of the reason he was required to appear before the Stewards and brought the witness with him. The inquiry was conducted as any other matter before the Stewards and at no stage was Guy Clarke told by the Chairman of Stewards that "it was just going to be a friendly chat, not an inquiry". This can be verified by the transcript of proceedings. The Stewards accepted Guy Clarke's plea of guilty to the charge and he was subsequently given a significant discount on the base penalty considered appropriate. Whilst it is more of a consideration at the appeal hearing itself, if Guy Clarke intends to change his plea, the Stewards position will be for the Tribunal to reconsider the dispensation given for the guilty plea;
5. The Stewards are of the opinion that the penalty of a term of disqualification was not manifestly excessive in the circumstances of the incident and is justified given the compelling CCTV footage of the assault;
6. The Stewards are acutely aware of the disastrous consequences a disqualification has on a person who derives an income from the racing industry and this was considered in this case;
7. The Stewards were not made aware of Guy Clarke's financial commitments at the inquiry. We were aware that he was relicensed as a track rider here with TRNT in April 2020 after an extended period when he did not hold any form of licence in the racing industry. Under the terms of the disqualification he is still entitled to earn a living as a farrier as long as he does not provide a service to any thoroughbred racing stable; and
8. The Stewards considered all sentencing options available under the provisions of AR283. In addition Stewards imposed the suspended \$1000 portion of a \$2000 fine imposed for improper conduct in August 2018.

I have viewed videos showing Mr Clarke and Ms Long leaving Silks and proceeding to a car four bays from the door after turning left down the third roadway. Mr Vigar then appears, and after a short distance, turns left into the second roadway to proceed to his car. Mr Clarke is seen to



circle back into the pathway and walk quickly down the second roadway after Mr Vigar who seems unaware he is being followed.

Viewed from another camera angle, Mr Clarke has caught up with Mr Vigar and Ms Long is not far behind. Within seconds of catching up, Mr Clarke is seen to punch Mr Vigar with his right hand in the head sending him to the ground. Mr Clarke bends down towards Mr Vigar on the ground and seems to try to pick him up. Ms Long assists probably moving the unconscious Mr Vigar from the roadway to between vehicles, then she and Mr Clarke walk back towards Silks.

The first video feed shows Mr Clarke and Ms Long appearing to argue near the entrance to Silks. Ms Long appears to hail a cab and then walks towards the entrance to Silks. Mr Clarke follows soon after on his own.

Mr Clarke entering alone at 22.29. The car park videos do not show Mr Vigar getting up. He did post a Facebook video of his severely injured face. The police charges came after the Stewards inquiry and as set out above the Stewards invoke AR23 and assert (correctly) that aggravated assault is an indictable criminal offence which would entitle them to suspend Mr Clarke under AR 23(a). I agree with that interpretation.

I am not persuaded that a stay of proceedings is warranted in the circumstances of this matter. Were I to grant a stay it would, as I have noted, be opened to the Stewards to disqualify Mr Clarke under AR23 (a). I therefore refuse a stay of proceedings.

TOM PAULING AO QC
CHAIRMAN

29 July 2020

