REASONS FOR DECISION

MOTORCYCLING QUEENSLAND TRIBUNAL

GARY ARMSTRONG

[Heard on 11 October 2015]

This decision is in respect of an appeal instituted by Gary Armstrong against a decision of the Officials Review Board made 1 September 2015 in relation to a complaint made by Mr Armstrong dated 10 August 2015. That complaint arose out of events that took place at the Conondale Classic conducted over the weekend of 8 and 9 August 2015. Mr Armstrong was to be a competitor at the event but withdrew his entry (and had his entry fee refunded) in the face of a determination from the clerk of course (Peter Bell) that if he did not move his pit camp to an area approved by the assistant clerk of course by a nominated time, he would be excluded from the event.

DECISION

1. The appeal is dismissed.

REASONS FOR DECISION

2. By letter dated 4 September 2015, Mr Armstrong, effectively, lodged an appeal against the decision of the Officials Review Board on 1 September 2015 in relation to his earlier complaint dated 10 August 2015 which had led to the decision of the Officials Review Board.

3. I refer to the appeal effectively being lodged because it seemed at one point at least that Motorcycling Queensland took the point that because no penalty was actually imposed on Mr Armstrong, the appeal was not competent because Mr Armstrong did not have a material interest in the decision in such circumstances. That position was

not pressed, however, I would reject it in any case in circumstances where although no penalty was imposed on Mr Armstrong that was simply because he withdrew from the event before it could be imposed.

4. Mr Armstrong underlying complaint to the Officials Review Board concerned Mr Armstrong's contentions that he had been subject to bullying and discriminatory actions by the steward, Allan Halley, the clerk of course, Peter Bell and the assistant clerk of course, John Tate.

5. Those contentions arose in the following factual circumstances which were largely uncontroversial.

6. Mr Armstrong arrived at the event on Friday 7 August and commenced to set up in the camping/pit area. At about the time he commenced to set up, and certainly before he had concluded doing so, he was approached by John Tate, who he knew to be the President of the QVMX, which was the promoting club. He says that Mr Tate did not identify himself at that time as being the assistant clerk of course. Mr Tate advised him that the area in which he was setting up was reserved. In his letter dated 10 August 2015, Mr Armstrong noted, as was uncontroversial, that there was no signage or bunting separating that area. He says that as a result he had "no reason to believe" that he could not set up in the non-defined camping area/pit area that he had selected. Whether or that was his state of mind before he was approached by Mr Tate, it could have been his reasonable belief thereafter. Mr Tate's statement told him at least as much as bunting might have – that is, the area had been allocated to someone else.

7. Mr Armstrong suggested that Mr Tate's nature was aggressive but did not set out any details of that.

8. Mr Tate gave evidence before the Tribunal and disputed that he was in any way aggressive. I accept Mr Tate's evidence in this respect.

9. Mr Armstrong continues in his letter of 10 August to contend that no other option was offered to him and says that after searching out other options himself, he "remained in the area/spot that I had legitimately identified as available". Mr Tate disputed that other options were not identified which could have been taken up by Mr Armstrong and suggested both in his oral evidence before the Tribunal and in an email to one of the members of the Officials Review Board dated 31 August 2015 that one of Mr Armstrong's mates wanted him to park next to them and that he communicated that to Mr Armstrong. I accept Mr Tate's evidence in this respect.

10. Mr Armstrong goes on to say that he was told that the area in which he had set up was reserved for sponsors. He, Mr Armstrong, suggested to Mr Tate that when that sponsor arrived he would discuss the matter with them and come up with a solution that would have no effect on either of them because he was a customer of the particular company and knew them reasonably well.

11. He says that on the morning of Saturday 8 August 2015, he was "greeted" by John Tate again "in a bullying and intimidating manner and still not identifying himself as an assistant clerk of course". He says that Mr Tate advised him he had to remove his vehicle and set up to the pit road described by Mr Tate as a compromise, but which Mr Armstrong made clear he did not see as being a viable compromise. Mr Tate went on to tell him that if he did not move he would be excluded from the event. Mr Armstrong says that he "believed [that] was not possible as there had been no breach of the rules". He seems to suggest he consciously considered this at the time. He goes on to say that upon arrival of the sponsor, the sponsor adopted a fair and reasonable approach and appeared to understand the situation and that they set up their display without restriction. Following that, and while Mr Armstrong was preparing himself for the races, Mr Tate returned, by now describing himself as the assistant clerk of course, and handed to Mr Armstrong a clerk of course determination, which

advised Mr Armstrong that he was directed to move his pit camp area away from where it was presently located to an area approved by the assistant clerk of course by 8.15am, and that if he failed to do so he would be excluded from the event.

12. Mr Armstrong goes on to make reference to further conversations with the principal of the sponsor in question about conversations that person had apparently had with Mr Tate, to the effect that the sponsor was not concerned with the situation. The Tribunal regards evidence of those conversations as irrelevant. It was not up to any sponsor to maintain control over the conduct of the event in question and a sponsor who has paid for display space, whether directly or otherwise, should not be put in a position of having to mediate between the officials at the event in question and a competitor, who happens to be a customer.

13. Mr Armstrong also refers to a further irrelevant conversation he had with the past president of the QVMX as to this issue.

14. Following his receipt of the determination, Mr Armstrong approached Allan Halley asking on what grounds the exclusion could be carried out. Mr Halley replied that it was under GCR 7.1.1.1(h).

15. Sub-rule 7.1.1.1(h) appears under the heading 7.1 Offences and the subheading 7.1.1 List of Offences, and provides that:

> "7.1.1.1 Any promoter, club, licensee, rider, member or support person, who:
>
> …
>
> (h). disobeys the lawful direction, order or requirement of any Controlling Body, appellate body, inspector or official under these Rules."

16. Mr Armstrong's position taken at the time, on referral to the Officials Review Board and on this appeal was that that meant that there had to be, relevantly, a lawful direction which was disobeyed. There was nothing controversial in that statement as

that is what the rule plainly provides for, however, as will be seen below, it was the next step as to what might comprise a lawful direction which was the subject of controversy.

17. The reason for noting that in this recitation of the facts is because the circumstances in which a lawful direction might be given and whether or not there was one in this matter became the central issue in the appeal. Mr Armstrong took the view that there had to be a rule that was breached by his parking in an area that was not reserved. That is, unless there was a rule which prohibited him parking there or perhaps a rule which in terms permitted an official to ask him to move, there could be no lawful direction.

18. He says that no rule was broken by him by not moving and advising Mr Tate that he did not feel the need to move. He cites rule 1.2.0.1 setting out the purpose of the rules and its reference to regulating and controlling motorcycle competition. He says that the definition of competition is competing, and "NOT" parking in a non-defined camping area/pit. More will be said below about the proposition that the GCRs do not allow officials any authority beyond that related to competition narrowly defined as, presumably, constituting the races themselves.

19. In his discussion with Mr Halley, Mr Armstrong says that he explained that he did not consider that the GCRs applied in the situation. Mr Halley replied that he thought that they did. Mr Armstrong says that when he advised Mr Halley that he would like to protest the matter, Mr Halley said "I can tell you now it will be rejected". Mr Halley gave evidence orally and also in an email dated 10 August 2015. In his written evidence he makes clear that he was minded to refuse the protest had it been made. He sets out his reasons for that inclination. In substance they are that Mr Armstrong had refused the direction of the assistance clerk of course, the clerk of course and the steward. He had also involved an event sponsor in the dispute which led to Mr Halley

also considering charging him with prejudicial conduct. He says that Mr Armstrong seemed to believe that if he protested he could stay in the commercial area of the pits. Mr Halley said during his oral evidence that he did not say that he would not accept the protest, but reiterated that Mr Armstrong appeared to assume that if he protested he would be able to stay in the area he was in and ride in the event. Mr Halley told him that that was unlikely to occur and that he was quite likely to lose his protest fee. He explained that the reason for that was that in Mr Halley's view he had been given a lawful direction which he had disobeyed.

20. Upon hearing Mr Halley's evidence in this respect, Mr Armstrong did not maintain that he was told that he would not be permitted to protest.

21. I find that it was likely that he was told that his prospects in the protest were marginal at best because Mr Halley thought that Mr Armstrong had been given a lawful direction. Given the reasons identified below for finding that Mr Armstrong was given a lawful direction, Mr Halley was correct in his view. It does not seem to me that advising a would-be protestor of the steward's view in this respect is in any way wrong. In fact, if such a view were strongly held as it might reasonably have been in a matter such as this, I would regard it as helpful for a steward to point that out, so that the protestor might take that view into account. Mr Halley was not saying that if a protest was made he would not hold a hearing or that he had pre-judged the matter, but simply that that was his view on what he knew at the time. That does not constitute a denial of natural justice but is simply a practical means of advising a would-be protestor as to the likely outcome on what is known of the matter at the time.

22. Mr Armstrong sets out the nature of his complaint in his letter dated 10 August 2015 by which he suggests that the assistant clerk of course somehow manipulated the steward and the clerk of court because of his own personal interests. Mr Armstrong claimed to have been forced to withdraw under duress in circumstances which, so he

contends, can only be described as a bullying and intimidating. He also suggests in the third last paragraph of his letter dated 10 August 2015 that the three officials concerned acted dishonestly by suggesting that there were some "mistruths" which needed to be addressed. He also suggested that the officials concerned had a "'cowboy - I can do anything I want approach" to officiating. He lastly says that "to simply be told my actions fall under the category of 7.1.1.1(h) 'disobeys the lawful direction, order or requirement of any Controlling Body, appellate body, inspector or official under these rules' is morally and ethically wrong when it cannot be supported by the rules".

23. The decision of the Officials Review Board was to reject Mr Armstrong's complaint and to find that the officials had acted within their capacity. The letter, under the hand of Michael Brown, also expressed strong disagreement with Mr Armstrong's contention that the officials in charge had adopted a cowboy approach. The need to maintain the interest of sponsors who supported clubs and their events was also referred to. The Officials Review Board found no evidence of bullying and/or intimidation during the process.

24. I should add at this point that the Tribunal rejects the proposition that there was any bullying or intimidation. I should also note that Mr Armstrong suggested in correspondence to the Tribunal dated 30 September 2015 (email sent at 5.08pm) that he had been discriminated against and unlawfully harassed. Like the allegations of bullying and/or intimidation, there is no substance at all in these allegations and it does Mr Armstrong a disservice to have made baseless allegations of this kind. It reflects the attitude he has adopted to the direction he was given in the first place and to every step of the review/appeal process. That was an attitude of entitlement and a rejection of common sense at any time that it did not correspond neatly with his interests.

25. The Officials Review Board found that what was apparent on the evidence before it was that a request had been made to Mr Armstrong which was met with unnecessary and avoidable resistance. A further finding was made that subsequent communication between Mr Armstrong, Mr Tate and Mr Bell revealed that on three occasions a compromise had been offered to Mr Armstrong which would have avoided the situation escalating, had Mr Armstrong acted reasonably. The Officials Review Board considered that far from bullying and intimidation, the Officials Review Board took the view that the circumstances as they fell out were a reflection of Mr Armstrong's conduct during the process and not that of officials.

26. Mr Armstrong provided a vast amount of written material for the Tribunal's consideration. This was unfortunately, largely repetitive and unhelpful. It consisted of quoting large slabs of the GCRs, the Member Protection Policy and various dictionary definitions without addressing what alleged facts made those matters applicable to the appeal. Attempts by me to have Mr Armstrong focus the issues for the appeal led to suggestions by him that I had pre-judged the outcome of it. In the end result, numerous allegations of serious misconduct were made against the officials concerned which never went beyond being mere assertion.

27. Ultimately the central issue remained that which it had always been – whether a lawful direction had been given.

28. It was unfortunate that my attempts to have Mr Armstrong focus on the issues relevant to the outcome in the appeal did not appear to advance that cause. As ought to have been apparent from the correspondence requesting that Mr Armstrong set out detail of his allegations of discrimination and harassment which would allow for there to be a fair determination of that issue, were directed only at that. Otherwise an observation that on the material with which the Tribunal had then been provided, it was likely that Mr Armstrong's contention that there had not been a lawful direction would fail, and

requesting that he provide further information as to why the direction was not lawful, consisted of nothing more than an orthodox articulation of a decision maker's then present thinking aimed at eliciting any further material touching upon the issue.

29. Whilst it was readily apparent during the hearing that Mr Armstrong found that particularly offensive, leading him to suggest that the Tribunal was part of a conspiracy with anyone else who disagreed with him, that was merely another unnecessary distraction in what was a very simple issue as to whether or not a lawful direction had been given.

30. By his notice of appeal dated 4 September 2015, Mr Armstrong identified that his essential complaint in relation to the decision of the Officials Review Board was that they had not had any regard for the GCRs and what was actually contained in them. He identified, correctly, that there had to be a lawful direction to disobey before rule 7.1.1.1(h) had a role to play. As I have already stated, that is uncontroversial. He also seemed to raise again the suggestion that the sponsor concerned had advised the assistant clerk of course that they had no problem with the arrangements for parking and displaying their goods. I have rejected that point already and it is unnecessary to say anything further about it.

31. As I have said, Mr Armstrong has provided a great deal of written material to the Tribunal which, apart from baseless suggestions of discrimination, bullying and harassment, contends that no lawful direction was given because there was no rule that provided for regulation of parking in the pits. It was said elsewhere that the focus of the appeal should be on the written rule in question being the misuse of rule 7.1.

32. Reliance was placed upon an email exchange between Mr Armstrong and a representative of Motorcycling Australia in relation to the interpretation of "lawful" in rule 7.1.1.1(h). The essence of that communication, unsurprisingly, was that the

authority of officials lies within the limitations of their appointed role. Of course, that includes the general power in rule 2.5.6.1(k).

33. When I raised with Mr Armstrong whether the direction might lawfully have been given under rule 2.5.6.1(k) of the GCRs, the response was that the officials at the time had only offered rule 7.1 as an explanation and that "to present 2.5.6.1(k) after the fact would be inadmissible".[1] I made clear in raising that issue that I did not at the time consider it necessary for any other party interested in the appeal to address it because in the absence of something further from Mr Armstrong, it seemed to me that it was obvious that rule 2.5.6.1(k) provided the requisite power. I reject immediately the proposition that an official who had the relevant power somehow loses that power or may not exercise unless they cite the relevant source of the power at the time.

34. On Friday 9 October 2015 prior to the proposed hearing on 11 October 2015, Mr Armstrong provided a further submission by which he contended that the event in question was an international event and for that reason, level 4 accreditation was required under rule 2.5.3. The effect, so it was contended was that even if the direction might otherwise have been authorised under 2.5.6.1 that was not so because the official in question was not of the required level.

35. Shortly after sending that email, Mr Armstrong was advised by the general manager of Motorcycling Queensland, Rob Ferguson, that the event in question was an open event and did not have national or intentional event status. It simply had an international meeting number issued by FIM so that international riders may enter the event.

36. That communication obviously did not meet with Mr Armstrong's approval as might be observed from his email sent at 9.02pm on 9 October 2015 raising the rhetorical

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[1] See Mr Armstrong's email sent at 10.13pm on 30 September 2015.

question as to whether he should believe Mr Armstrong or others who had made comments about the meeting on an internet forum.

37. As was explained at the hearing, Motorcycling Queensland was simply not empowered to put on an international event which was instead within the jurisdiction of Motorcycling Australia. I am satisfied that the event was not an international event.

38. In those circumstances no question as to the relevant accreditation of the officials in question arises. In any case, it was clear that the directions given by the assistant clerk of course were given at the behest of Mr Bell and no question was raised as to the level of his accreditation.

39. At the hearing, I sought to have Mr Armstrong address the proper scope of rule 2.5.6.1(k) so that I might understand his contention that the direction given was not within it. Ultimately his contention came down to the proposition that the requirement in the relevant rule that any act, publication of any document and any declaration being made be "not inconsistent with these Rules" required that another rule be identified providing the power in question to the official, or that breach of another express rule be identified. In short, if the first of those contentions was right, the broad words of 2.5.6.1(k) would be otiose. There would be no scope for rule 2.5.6.1(k) to operate unless another rule providing the necessary power was able to be identified. In other words, the seemingly broad power provided by 2.5.6.1(k) would provide no power at all.

40. That, in my view, would amount to a perverse construction of the rule in question and I reject it. To the extent to which it is necessary to have regard to the wider context of the rules, and I do not consider that it is necessary to do so because the rule in question is clear on its face, the introduction to the rules providing for "the philosophy and

structure of the general competition rules" provides significant support to the construction of the rule which I favour. That introduction provides in part:

> "No set of Rules can anticipate every issue which may arise in the conduct of a sport, especially one with as wide a variety of disciplines and competing interests as exist in motorcycling. The philosophy of these Rules is that good sense, cooperation and a fair and reasonable interpretation of reasonable Rules should be more important than 'Rule Book Racing'.
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> In Rule Book Racing, if a situation arises, the answer is to be found by looking up the book, not by the exercise of independent judgment. If there is no answer in the book, a new rule has to be devised to 'plug the hole'. Rule Book Racing assumes that Controlling Bodies have little or no interest in working effectively with competitors, with each other, or with Promoters to the benefit of the sport and those who participate in it. It also assumes that officials have no common sense or understanding of the sport. None of these ideas is true or fair."

41. Nor, in my view, is it necessary for an official proposing to give a direction or do an act under rule 2.5.6.1(k) to identify elsewhere in the GCRs some prohibition upon the conduct in question. That would require a situation where the GCR provide for every circumstance that might arise at an event of this kind. The GCRs on their face do not purport to do that, and the introduction makes clear that they are not intended to do so.

42. Mr Armstrong also contended in earlier correspondence which I have referred to that the direction here was not concerning "competition". That places an unduly narrow focus on what is involved in officials officiating at events of this kind. Experience of many of these hearings over the years would indicate to me that the rules plainly provide for circumstances relating, for example, to inappropriate behaviour of competitors while not competing but while present at an event as well as parents and spectators.

43. I am satisfied that a lawful direction was given to Mr Armstrong on at least three occasions, followed by a lawful determination of the clerk of the course and an appropriate response from both the steward and the Officials Review Board.

44. Putting it neutrally, it is fair to say that Mr Armstrong's attitude as experienced by the officials in question is not something that they should have to put up with. In terms of his demeanour during the hearing, it is also fair to say that if there were otherwise doubt as to the belligerent and combative nature of his interactions with the officials concerned, I would be prepared to infer from his attitude whenever it was suggested to him that objectively speaking the rules did not operate in the way he suggested, that he had acted towards those officials in an unnecessarily confrontational way. His reaction to the proposition that he could be wrong about the proper construction of the rules was to suggest that there was a conspiracy against him.

45. Two further matters ought to be noted. First, Mr Armstrong suggested that a fellow competitor was asked to move, refused to do so and was not excluded from the event. That was said to support the proposition that he was discriminated against. The first point to make as to that is that Mr Armstrong was not excluded from the event, he chose to leave rather than move. The second point to note is that Mr Tate gave evidence that the other person who was asked to move did so.

46. Secondly, Mr Armstrong was asked in terms of the proper construction to place on rule 2.5.6.1(k) how that rule might have operation had a competitor, for example, parked in the area used for ambulance access to the track. He was specifically asked whether or not in circumstances where the rules do not otherwise provide for a prohibition on parking in that area, 2.5.6.1(k) could have any application if his construction of the rules were correct. He was evasive in his response and obviously considered the exercise a pointless one. He seemed to say that ultimately the question came down to what was fair and reasonable and not whether there was a specific rule that dealt with the occasion in question in the hypothetical scenario. Of course, that was contrary to the construction for which he contended.

47. The reason I mention this matter is because John Tate gave evidence that in fact the effect of Mr Armstrong having set up camp where he did was that the sponsor widened the area of its camp so that it infringed ambulance access to the track. Obviously that was a completely unacceptable situation. But I should say that whether or not a lawful direction was given does not, in my view, depend upon that matter. For obvious reasons, ensuring that sponsors are provided with their allocated areas falls within the proper regulation of events of this kind and is to adopt the words of rule 2.5.6.1(k), necessary for the fair and proper conduct of the meeting.

48. It should also be noted that the prospect was raised with Mr Armstrong as to whether if I found that a lawful direction had been given which he had disobeyed, I should impose a penalty upon him. That was done for the purpose of giving him an opportunity to address the Tribunal as to whether or not a penalty ought to be imposed.

49. The appeal was unusual in this respect because no penalty under the rules had been imposed upon Mr Armstrong at all. He had chosen to withdraw from the event rather than protest.

50. As part of raising the prospect of imposing a penalty upon Mr Armstrong, consideration was obviously relevantly given to whether or not it was thought likely that he might engage in similar behaviour in the future. The Tribunal considers his behaviour in this respect completely unacceptable. Mr Armstrong was at first wholly dismissive of the question and in his rejection of the idea that his future intentions as to behaviour of this kind might be relevant to the decision as to whether or not to impose a penalty. Ultimately, he appeared to say that he accepted that if he acted in contravention of the GCRs in the future, he should be penalised. That did not really answer the question but, in the end, the Tribunal determined not to impose any penalty upon him.

51. The reason for that was that it was hoped that after Mr Armstrong had had the opportunity to consider the reasons for the Tribunal's decision, he might be a little more circumspect in terms of his rejection of anybody else's point of view in the future. The Tribunal would certainly hope that to be the case. Mr Armstrong should certainly bear in mind though that any future Tribunal considering repeated behaviour of this kind is likely to have regard to the reasons on this occasion and in particular the Tribunal's admonition of behaviour of this kind.

52. In all the circumstances, the appeal fee should be forfeited.