

AT MELBOURNE

GARY ARMSTRONG

Appellant

= and =

MOTORCYCLING QUEENSLAND

Respondent

Committee:	Richard Lawson
Appearances:	The Appellant in person James Feehely for the Respondent
Convenor/Registrar:	Bronwyn Sorensen
Hearing and decision:	16 March 2016 and 18 March 2016

Reasons for Decision

On 11 February 2016, Motorcycling Queensland's decision to suspend Mr Gary Armstrong's licence for six months was affirmed by the Motorcycling Queensland Tribunal. That Tribunal, constituted by Mr Chris Newton, heard the opposing views of Mr Armstrong and MQ and Mr Newton's written reasons for confirming the licence suspension ran to 24 pages.

Mr Armstrong has now brought this appeal to the Judicial Committee of Motorcycling Australia.

The history of the case, to the extent that it is common ground, can be briefly stated as follows:

1. A motorcycling meeting called the 'Conondale Classic' was scheduled to be conducted on the weekend of 8th/9th August 2015 at Green Park Queensland. It was expected to attract over 100 competitors in a variety of events and perhaps 2,000 spectators. Racing was scheduled for Saturday the 8th and Sunday the 9th of August. But some competitors arrived

on the Friday afternoon or evening - including Mr Armstrong. There was some provision for competitors to camp overnight within the event grounds as an alternative to taking a motel room at one of the nearby townships.

2. There were ten or eleven event sponsors. They were allotted the prime positions near the track to set up their bits and pieces for the weekend. Upon his arrival in the late afternoon on the Friday, however, Mr Armstrong set himself up in one of these prime positions which was then unoccupied.
4. A disagreement then emerged when Mr Armstrong was asked (or directed or told) to move his equipment to another part of the grounds. But he evidently preferred to stay put and did so overnight.
5. Early on the Saturday morning, the relevant sponsor arrived and the officials repeated their direction to Mr Armstrong that he move. When he didn't or wouldn't, the situation soon became an impasse or stand-off.
6. The impasse ended when Mr Armstrong left the event altogether without having competed.
7. The rights and wrongs of what happened on the 7th/8th of August 2015 - and the propriety of what did or should have happened in the weeks that followed - have been exhaustively canvassed before the matter came to this Committee. In particular, the dispute:
 - (a) was considered by the Officials Review Board on 1st September 2015;
 - (b) came before the Queensland Tribunal on 11th October 2015;
 - (c) came before the MQ Board in November 2015 where a six-month suspension of Mr Armstrong's licence was under consideration and ultimately imposed; and

(d) as noted above, came before Mr Newton in February 2016.

8. In presenting his arguments to the Judicial Committee - which were supported by a sizeable quantity of written material that he filed beforehand - Mr Armstrong sought to challenge the detailed findings that had been made by these other bodies. But Mr Feehely, who appeared for Motorcycling Queensland, urged the Committee to confine itself to the narrower question of whether or not the six month suspension was appropriate and defensible. In the result, the Committee was prepared to give Mr Armstrong some latitude.
9. His central point was that the officials' direction that he move to another site was an unlawful direction. And that most of what a variety of officials did thereafter was thereby tainted. Hence, Mr Armstrong did not squarely contend that the six-month suspension was excessive or harsh. Rather, he said that the suspension was invalid.
10. In support of his view that the 'move-on' direction was unlawful, Mr Armstrong explained:
 - (a) the site was vacant when he arrived on the Friday afternoon;
 - (b) there was no relevant sign saying 'reserved for an event sponsor' or the like;
 - (c) the so-called officials who directed him to move elsewhere did not identify themselves as officials (or did not do so adequately);
 - (d) the officials were not authorised to direct him to move because neither the General Competition Rules nor any other regulations specifically bestowed such authority on them to do so; and
 - (e) he was personally acquainted with some of the individuals in the sponsor's party and they were unconcerned if he didn't move.

In saying how Mr Armstrong explained the unlawfulness of the direction, the foregoing propositions

were not his words but, rather, what the Committee understood him to be saying.

The Committee has considered Mr Armstrong's views about the alleged unlawfulness of the direction very carefully and responds as follows:

- (a) It is not to the point that the site was vacant when he arrived on the Friday afternoon. It would mean that a sponsor - wishing to ensure that it secured its site - would have to arrive at the venue before all the spectators and competitors. The sponsors' sites are to be likened to reserve seats at a theatre: the seats are reserved and it is a nonsense to say that such an arrangement can be subverted by other people arriving there beforehand.
- (b) The absence of a sign saying 'reserved for an event sponsor' does not assist Mr Armstrong's case. No doubt the preparations for staging a weekend event such as the Conodale Classic call for much work by many people. In the nature of things, not every last preparatory detail can be attended to by the Friday afternoon. If one gets there early and parks in the way of where temporary toilets are to be installed, it is not to the point to say that "when I arrived the toilets weren't there and a 'no parking' sign had not been erected".
- (c) the assertion that the officials who asked or directed him to move on were, effectively, masquerading as officials has no merit. It is to be doubted whether Mr Armstrong was suggesting this seriously.
- (d) the absence - if this be the case - of a specific rule in the GCRs or elsewhere authorising officials to give the 'move on' direction does not assist Mr Armstrong either. He had insisted that, without being able to point to a specific empowering written rule, the direction had to be unlawful. In the course of the hearing he claimed that he did not accept (or even understand) the concept of event officials being vested with implied authority as opposed to specific rule-based authority. Yet, in an exchange during the course of the hearing, he was asked whether an official could direct a spectator to move their car if it had been parked in the middle of the track. His answer was 'yes, of course'. And

his answer remained 'yes, of course' even if one couldn't find a specific written rule authorising the official to make this direction. In the end the Committee regards Mr Armstrong's views about the unlawfulness of the direction as without merit and disingenuous.

- (e) Nor does the Committee set any store on Mr Armstrong's assertion that the sponsor didn't mind if he stayed. Even if true on the face of it, the sponsor may have only been exhibiting unusual politeness. And if Mr Armstrong were permitted to continue as the only competitor occupying a track-side site it would be unfortunate. No doubt the competitors generally are entitled to expect that the officials will be even-handed in their collective dealings with them. But Mr Armstrong camping on a sponsor's site could well create the impression of favouritism.

In the result, the Committee is more than satisfied that the 'move on' direction was lawful.

This leaves the question of the appropriateness or otherwise of the six month suspension. Here the Committee respectfully adopts the analysis of Mr Newton in his 'Reasons for Decision' to which reference has already been made. In particular, the Committee refers to and adopts paragraphs 3 and 4 of those Reasons under the sub-heading 'Background Facts', paragraphs 1, 2, 9, 10, 11, 13 and 44 under the sub-heading 'The Appellant's Appeal' and the 'Summary Finding and Conclusions' at pages 23 and 24.

Accordingly, the Committee finds:

- (a) There was no want of procedural fairness in the imposition of the six-month suspension.
- (b) It was imposed in compliance with the MQ Constitution.
- (c) Mr Armstrong chose to confine his appeal to the question of the validity of the suspension. But the suspension was and is valid.

- (d) Mr Armstrong chose not to advance any alternative submission that the suspension was excessive or harsh.
- (e) Accordingly, this Appeal must be dismissed.

Decision

1. The Appeal is dismissed.
2. The Appellant's licence remains suspended until 23 June 2016.
3. The re-instatement of Mr Armstrong's licence thereafter is subject to the payment by him of Motorcycling Queensland's appeal costs in the tribunal below.

For and on behalf of the Judicial Committee:


.....

RICHARD LAWSON, President