

REASONS FOR DECISION

MOTORCYCLING QUEENSLAND TRIBUNAL

**FRANK GORDON
BRENT GORDON
CARL HENDRICKSON
BRAD HENDRICKSON
SIMON PAYNE
LIAM PAYNE
SKYE LEIGH
JORDAN SMITH**

This decision is in respect of penalties sought to be issued in respect of the above named people. Those penalties were as follows:

1. Frank Gordon \$500 fine payable by 31 July 2013 for bringing the NBJMCC into disrepute.
2. Brent Gordon fine “to be announced at hearing tribunal” for breaching GCR5.1.1.1(t).
3. Carl Hendrickson \$500 fine payable by 31 July 2013 for bringing the NBJMCC into disrepute.
4. Brad Hendrickson fine “to be announced at hearing tribunal” for breach of GCR5.1.1(t).
5. Simon Payne \$500 fine payable by 31 July 2013 for bringing the NBJMCC into disrepute.
6. Liam Payne 12 month licence cancellation as from 23 June 2013 for bringing the NBJMCC into disrepute.
7. Fines were also indicated as against two unnamed teenagers who were with Carl Hendrickson on the day being lifetime bans from the NBJMCC. Those unnamed teenagers were later identified as Skye Leigh and Jordan Smith.

8. The references above to the penalties imposed in respect of the first six people named above appeared from copies of determinations of the clerk of course provided at the hearing. By email from Motorcycling Queensland dated 2 July 2013 the penalties were indicated as follows:
- (a) Frank Gordon \$500 fine plus 12 months NBJMCC suspension;
 - (b) Brent Gordon 6 months suspension from NBJMCC;
 - (c) Carl Hendrickson \$500 fine plus 12 months suspension (suspension from what not clear);
 - (d) Brad Hendrickson 6 month suspension from NBJMCC;
 - (e) Simon Payne \$500 fine plus 12 months suspension from NBJMCC;
 - (f) Liam Payne 12 months suspension (suspension from what not clear);
 - (g) unnamed teenagers with Carl Hendrickson lifetime ban from NBJMCC.
9. The event in question was the fifth club day at the North Brisbane Junior Motorcycle Club held on 23 June 2013.
10. The procedure by which the Tribunal came to hear of these events was somewhat unusual. Because the General Manager of Motorcycling Queensland determined that a number of issues had arisen from the purported imposition of the penalties, Motorcycling Queensland elected to conduct an appellate tribunal to review the entire incident, the roles that those involved and all of the penalties imposed. That was a sensible course to adopt rather than requiring individual appeals.

DECISION

11. The Tribunal determined to set aside all of the penalties imposed and impose alternative penalties only as follows:

- (a) Frank Gordon \$500 fine payable within 14 days;
- (b) Brent Gordon 1 year suspension of licence which suspension is suspended for a period of 2 years.

REASONS FOR DECISION

12. It is fair to say that other participants, officials, members of the NBJMCC and members of the public should not have to put up with the conduct the subject of this appeal.
13. It was uncontroversial that at the start of a 250cc junior race, Mr Hendrickson was present at the start gates with his son Brad (who was a competitor in that race), his daughter (who was assisting her brother) and Skye Leigh and Jordan Smith (who were assisting with sweeping the gates not only for Brad but for other competitors).
14. Brad Hendrickson was in a starting gate adjacent Brent Gordon. Frank Gordon (Brent's father) thought that there were too many people hanging around the Hendrickson start gate and, he says, communicated to one of those people, who was standing in Brent Gordon's start gate, that he should move away by using words to the effect of: "come on mate, out". Carl Hendrickson, Brad Hendrickson, Skye Leigh and Jordan Smith all say that Mr Gordon said words to the effect that that person should "fuck off" rather than calmly asking him to move away.
15. In any case, Mr Hendrickson then reacted to that, on his version of events, by saying that there was no need to speak to the kids who had been helping out in that way. On Mr Gordon's version of events, Mr Hendrickson said something like there was "no fucking reason to speak to him like that".
16. It is also uncontroversial that after that incident Mr Gordon walked away. Further, it was not in contest that soon thereafter Mr Hendrickson spoke to both his son, Brad, and Mr Gordon's son, Brent. Mr Hendrickson says that he informed both the riders

that they should not take this argument (being the disagreement between Mr Hendrickson and Mr Gordon) onto the track.

17. Mr Hendrickson alleged that at the earlier time that Mr Gordon had been speaking to him he (Mr Gordon) spat on him (Mr Hendrickson) although his counsel conceded on Mr Hendrickson's behalf that that may have been a result of a heated discussion rather than intentionally spitting on him.
18. Things further degenerated soon thereafter.
19. As we have said, Mr Gordon walked away but upon hearing his son's bike on the rev limiter or perhaps because he saw Mr Hendrickson talking to his son (it was unclear which) he returned to the scene.
20. Upon returning to the scene, he punched Mr Hendrickson in the face. There was a difference of opinion between Mr Hendrickson and Mr Gordon as to whether prior to that he had also placed his hands around Mr Hendrickson's throat from behind and choked him. In the result it was not necessary for the Tribunal to determine whether or not that happened. On any view of it, Mr Gordon's conduct was grossly inappropriate.
21. It appeared that the most likely reason for Mr Gordon's return to the scene was because he perceived that Mr Hendrickson was shouting at Brent Gordon or saying something inappropriate to him. Mr Hendrickson, as we have observed above, says that he was telling both Mr Gordon's son and his own son not to take the altercation that their fathers were having onto the track. No other witness, whether independent or one who may be loosely described as in the Gordon's camp, heard what was said. The witnesses relied on by Mr Hendrickson had a strikingly similar recollection of what was said and that was to the effect of what we have outlined Mr Hendrickson says that he had sought to communicate to the competitors.

22. It was also alleged by Mr Gordon that he had been punched by Skye Leigh, although that allegation was not pressed. Nor was any allegation pressed that Skye Leigh had in turn been assaulted by Mr Gordon.
23. There was no suggestion in any reliable evidence that Jordan Smith had been involved at all.
24. In terms of Skye Leigh, he appears on the video footage that the Tribunal had the benefit of viewing. Contrary to the suggestion that someone had pulled his hoodie over his head, he appears to have taken it off himself, although it may have been pulled earlier than the start of the footage. He appears to have been in an agitated state when he pulled it off and whether that is as a result of being involved in the fracas prior to that or because he was wishing to soon become involved was unclear. He should bear in mind the general comments we make below as to the sort of behaviour that should not be tolerated at this Club, or in the sport generally.
25. The involvement of the Paynes came later. Whilst at least in some of the evidence it was suggested that Simon Payne had run in and sought to assault Mr Hendrickson further, there was no reliable evidence to suggest that was the case. In particular, that could not be an accurate description of what was seen on the video footage. That footage was consistent with Simon Payne's version of events, that is, that he came in later when Mr Gordon was being restrained adjacent the fence in order to talk to him and make sure that he was ok. With one exception, which we shortly deal with, that was the extent of his involvement.
26. Liam Payne was suggested to have been discussing with his father later in the day the fact that he had managed to punch some unknown person. He and his father were said at the time to have been mocking Mr Hendrickson. That evidence was provided by

John Castles. Mr Hendrickson, however, did not have the view that he was being mocked by Simon Payne and Liam Payne.

27. There had been an earlier incident, perhaps at the time the fight with which this appeal is concerned was occurring, when Liam Payne was having a dispute with his mother which was happened upon by Mr Castles. Mr Castles took it upon himself, thinking, probably quite reasonably, that Liam Payne was in an agitated state and that he was seeking to be involved in the fight, to seek to caution him against that course of action. Mr Castles' approach was not well received by Simon Payne and they had what appears to be a somewhat heated discussion about that. In any case, as luck would have it, that appears to have been the end of this peripheral dispute.
28. There was no evidence upon which the Tribunal could properly be satisfied that Liam Payne had any involvement at all in the dispute.
29. Sometime was spent during the hearing discussing the way in which the meeting had been conducted and the circumstances in which the penalties were imposed.
30. One of the things that became obvious was that an inappropriately large number of people were milling around the start gates at the start of the race. Those people appear to have been there at the behest of Carl Hendrickson and it seemed that he understood in retrospect that that number of people should not be present. That is something which the clerk of the course should in future restrict. Perhaps it is an issue that should be flagged at riders' briefings.
31. Secondly, the Tribunal considered the very short report provided by the steward, Alan Bressan. It states that he witnessed several breaches of the GCRs and a physical fight. That is as far as it goes. We think that the steward should have been more involved in the events that occurred and in the investigation of them. He should have sought to assist the clerk of course.

32. David Montgomery was the clerk of the course on the day. It was his second time in that role. He displayed an obvious enthusiasm for the sport and a dedication to the task he had undertaken. Sadly, he lacked a level of awareness of the contents of the GCRs that he ought to have. He is of course a volunteer and somebody sorely needed at events of this kind. Nothing that is said here is said by way of criticism of him and it was readily apparent at the hearing that he recognised that and also recognised that there were areas in which some further knowledge of the GCRs would assist him.
33. Without going into detail, he imposed penalties which he did not have power to do under the GCRs and, in any case, as he recognised, he did so without providing a hearing to those to be penalised. For that reason all of the penalties imposed were set aside although, as will be seen, penalties were re-imposed in some cases.
34. It was also worryingly apparent that episodes of this kind at NBJMCC were far from isolated. There appeared to be some history of issues of physical violence arising previously. It cannot be stressed enough that that kind of conduct, particularly at events involving juniors, is completely unacceptable.
35. The Tribunal had the benefit of a number of observers who were committee members of the NBJMCC being present for the hearing. As we expressed at the hearing, and as we reiterate now, the Club should take whatever steps it deems necessary to deal with this sort of conduct. It certainly has the encouragement of this Tribunal to do so.
36. That is not to suggest that there should be further penalties in respect of the conduct with which the Tribunal was concerned on this occasion. Those who it was appropriate to penalise have been penalised. However, this sort of conduct cannot continue and people who behave in an inappropriate way at the Club ought to be dealt with by the committee with a view to the long term safe and enjoyable participation of

competitors, their family and the public in general. No doubt Motorcycling Queensland will be keeping a sharp eye out for any further conduct of this kind.

37. We intimated above that there was a further issue to discuss in terms of Simon Payne. There was no contest that when he was spoken to by David Montgomery his response was to inform Mr Montgomery that he was going over to talk to his friend Frank Gordon and that if the clerk of course swore at him again, he was going to “slap him”. Thus, he does not dispute that he threatened an official with physical violence. There is a dispute between Mr Payne and Mr Montgomery as to whether or not Mr Montgomery swore at Simon Payne. While it is unnecessary for us to find as to whether or not Mr Montgomery swore, we were impressed with him as a witness and with his dedication to the task at hand and consider it unlikely that he did so. Mr Payne on the other hand was, by his own admission, in an agitated state. Whether or not he was sworn at, his response to an official asking him to stay out of something that was nothing to do with him was grossly inappropriate.
38. Mr Montgomery imposed a penalty in respect of Liam Payne which saw him excluded from participation in an upcoming race interstate. Mr Montgomery, as we have noted above, did not have the power to impose that penalty. Mr Payne said that he spent about \$3,000 in preparation for his son’s participation in that event. Had Mr Payne not expended that money and had Liam Payne not been prevented from participation in that event, the Tribunal would have imposed a penalty on Mr Payne. Likely that penalty would have been a suspended licence suspension on Liam Payne which would not become operational during Mr Payne’s good behaviour for a period. As accident would have it though, the Tribunal considered that the Paynes had been punished already and it was unnecessary to impose the penalty that it otherwise would have been minded to impose.

39. Frank Gordon expressed his remorse for what had happened on the day and the Tribunal does not doubt that that remorse was genuine. He provided a number of character references and there was no suggestion that he was other than a helpful enthusiastic participant over many years. It is hoped that that will continue. Having said that, his conduct cannot go unpunished. Whilst he has plainly been of good character and a very worthwhile participant over many years, his conduct was unacceptable. At best, he reacted to the situation as he perceived it, being that Mr Hendrickson had spoken inappropriately to or perhaps even abused his son. However, he did not hear what was said. Nor did his son.
40. While, at a certain level, one can understand that he might react in some way to what he perceived to have occurred, his reaction was out of all proportion and constituted the striking of another human being which is never acceptable.
41. Taking into account his long association with and assistance to the club in question and the sport in general, a fine of \$500 payable in 14 day is imposed. Because of the seriousness of his conduct, it is also appropriate that steps be taken to ensure as far as possible that there will not be a repeat of it. It was fairly apparent that Mr Gordon recognised the error of his ways. However, the Tribunal also considers it appropriate that there be some insurance in terms of that and that others become aware that if they behave in this way there will likely be serious consequences. In that vein it should be noted that the penalty would have been more serious were it not for Mr Gordon's remorse, good character and long and helpful involvement in the sport. For those reasons, Brent Gordon's licence will be suspended for 12 months which suspension will be suspended for a period of 2 years. What this means in context is that if Frank Gordon does not breach the GCRs for a period of 2 years, the suspension of his son's licence will not occur. If he does, he should be referred to this Tribunal again.

42. The Tribunal was provided with copies of letters dated 8 November 2012 from NBJMCC (Wayne Kennedy, President) to Simon and Liam Payne dealing with an apparent instance of Liam Payne unacceptably becoming aggressively involved in an altercation about an incident on track in which he was not involved. No particular submissions were pressed as to the use that the Tribunal could make of those previous instances of inappropriate conduct. It was said on behalf of the Paynes, at least at first, that the Tribunal could not have any regard to those other instances of inappropriate conduct. However, that submission ultimately became one that suggested that because it was a separate incident it was inappropriate to have regard to it. However, upon questioning by the Chairman, Noel Payne (who was representing Simon and Liam Payne) agreed that if the Tribunal were otherwise minded to impose a penalty on either of the Paynes, this previous alleged conduct could be taken into account on the question of penalty. In the end, because of the penalty imposed by the clerk of course without power, it has been unnecessary to consider those matters any further.
43. However, the Paynes should not think that if there has been some further failing in relation to their conduct in respect of which the Tribunal has made no finding, or indeed if they have failed to act appropriately on this previous occasion, that such things will long go unnoticed. As we have said above, there have been too many instances of difficulties in this Club and those who contravene the GCRs in these ways should consider themselves on notice that any established conduct will not be left unpunished.
44. Something also should be said about Mr Carl Hendrickson. Whilst it is obviously unacceptable that he was punched, Mr Gordon and his son have clearly perceived that Mr Hendrickson was behaving in an unnecessarily aggressive way. One thing we failed to mention above was that Mr Gordon says that as he was walking away prior to the punch, Mr Hendrickson was poking his tongue out at Mr Gordon. If that

occurred, it was an unnecessary and puerile gesture. It was apparent during the hearing that Mr Hendrickson is far from shy about standing up for what he believes in. There are often two sides to a distasteful story of the kind with which we have been involved. It goes without saying that if Mr Hendrickson behaved in any of the ways that Mr Gordon suggested, and we certainly make no finding that he did, he should think carefully about the way he interacts with other participants in the future.

45. As we have said now many times, the future conduct of participants in events at the NBJMCC will be carefully observed.
46. In the result, all of the penalties are set aside and penalties as follows are imposed in their place:
 - (a) Frank Gordon - a fine of \$500 payable in 14 day; and
 - (b) Brent Gordon – suspension of licence for 12 months which suspension will be suspended for a period of 2 years.
47. As we said above, what this means is that if Frank Gordon does not breach the GCRs for a period of 2 years, the suspension of his son’s licence will not take effect.