

REASONS FOR DECISION

MOTORCYCLING QUEENSLAND TRIBUNAL

KEYNAN REW

[Heard on 12 November 2016]

1. This decision is in respect of an appeal instituted by Keynan Rew against a decision of the Referee made on or about 28 April 2016. Michael Anderton was the Referee at a closed to club speedway event held on 24 April 2016 at the Mick Doohan Raceway which was promoted by the North Brisbane Junior Motorcycle Club. Mr Anderton's decision arose because of a failure by Keynan to obey a direction of the Referee.

DECISION

2. The appeal is allowed. A penalty of 12 months suspension (suspended) is imposed and the reasons for that appear below.

REASONS FOR DECISION

3. By letter dated 9 June 2016, Keynan, by his solicitors, Butler McDermott Lawyers, lodged an appeal. It will be immediately apparent that the appeal was out of time but it was allowed, pursuant to an extension of time granted by Motorcycling Queensland. I deal further below with why that extension was necessary.
4. The grounds of appeal were as follows:
 - (a) the Steward failed to follow the rules of natural justice and procedural fairness, specifically that:
 - (i) the rider was not given proper particulars of the allegations against him;

- (ii) the rider, despite being provided with an outcome letter, remains unsure of the specific conduct giving rise to the charges against him;
 - (iii) the rider was not given a reasonable notice period to consider the case against him and participate in a full and fair hearing;
 - (iv) the Steward was unable to act with impartiality and objectivity due to an incident involving the rider's parents separate to any conduct concerning the rider;
 - (v) the hearing against the rider was contaminated by bias;
- (b) as a result of the failure to receive natural justice, the rider did not receive a full and fair hearing;
 - (c) the penalty issued was manifestly excessive.
5. The penalty imposed was a fine of \$2,000 and a licence suspension of 6 months (itself suspended).

PROCEDURAL ANOMALY

6. One of the potential reasons that it was necessary to seek an extension of time in which to appeal was, it seems, because of a view expressed by Motorcycling Queensland that GCR 7.1.2.3 applied. That is, no person may protest or appeal a penalty imposed during an event. The event took place on 24 April 2016. The imposition of the penalty appears to have taken place on 26 or 28 April 2016. In my view, GCR 7.1.2.3 is plainly not applicable.
7. Some confusion may have been caused in this respect because the fine notification is dated 24 April 2016, despite not having been imposed on that date. The Steward's determination is said to have been made on 24 April 2016, while being dated 4 April 2016. These matters were obviously simply by way of oversight, but caused some

confusion leading to the impression that the penalty may have been imposed during the event when that was not the case.

8. Accordingly, given that GCR 7.1.2.3 was inapplicable, a right of appeal plainly existed. Further, given the penalty was not imposed during an event, the obligation to provide a hearing and to allow representations to be made on behalf of the person to be penalised was different from that which it might otherwise have been. That opportunity was not given. This is a matter to which more careful attention needs to be paid in the future. The situation is quite different where penalties are imposed after the event rather than during it. In the former case, there is a much better opportunity to conduct a hearing, or at least to allow representations to be made on behalf of the rider as to the allegations against him or her.
9. In the result, it was appropriate that the appeal be conducted by way of a rehearing to allow Keynan an opportunity to be heard. Accordingly, the penalties were set aside.
10. Having reached that conclusion it is unnecessary to consider any other ground of appeal.

RELEVANCE OF THE BEHAVIOUR OF MR REW'S PARENTS

11. The Referee in penalising Keynan expressly took into account the conduct of his parents on the day in question. That conduct has been the subject of proceedings before the Officials Review Board because each of his parents are Officials. Findings have been made as to the nature of their conduct. It was identified by their solicitor that there is a tentative intention to seek review of those matters in the Courts because, although each of Mr and Mrs Rew wished to appeal the determination of the Officials Review Board, they purported to do so 4 or 5 days out of time and were not permitted to do so. At present then, there are findings as to Mr and Mrs Rew's conduct. It was on any view completely unacceptable. The relevance of that conduct though to this

appeal is that the Referee held the view that under Rule 7.1.1.2, Keynan was to be held responsible for all of his support persons. It is not in dispute that the rule allows for that.

12. However, in my view, the intention of the rule is to allow the conduct of support persons to be subject to proper sanction, where that would otherwise not be possible. It would be a very unusual circumstance in my view, where a junior rider would be penalised for the conduct of his or her support persons in circumstances where they were otherwise penalised arising out of the same events. The purpose of the rule in my view is to allow those who cannot otherwise be penalised to receive a penalty, whether or not that be through their child or a rider with which they were otherwise associated being penalised.
13. Mr Anderton, in determining the appropriate penalty for Keynan, had regard to the fact that he was soon to travel to Denmark for the purposes of a competition there. He wished to proceed on a basis which would allow that to occur. At the time of the offence, Dwayne Rew had said that he did not care what the fine was in respect of Keynan restarting the race. That was an unfortunate thing for him to have said as an Official himself in circumstances where his son, probably with Dwayne Rew's encouragement, was about to disobey an Official's direction. It set a very poor example.
14. Disobeying an Official's direction in such circumstances is, in my view, completely unacceptable. That Keynan was encouraged to disobey that direction by another Official is even worse. I am hopeful that this at least is recognised by Dwayne Rew.
15. I have previously mentioned the conduct of Mr and Mrs Rew following the incident concerning their son. While having regard to the view I take as to the proper construction of GCR 7.1.1.2, it is in some respects unnecessary to address that

conduct. It is appropriate, given the tension that seems to have resulted, to say a little more about it.

16. Dwayne Rew told Mr Anderton that he did not care what the fine was and all he cared about was that Keynan did not lose his licence as they were going over to Denmark to race in June and that was more important than any fine. The whole issue could, of course, have been avoided by following the direction of the Referee. That is what should have occurred. Dwayne Rew sought to justify his position and that which he appears to have suggested that Keenan take on the basis that there was some inconsistency as to the extent to which referees ran events strictly in accordance with the rules. Things of that kind happen for all sorts of reasons, but it is inappropriate, for obvious reasons, that competitors or their support staff (particularly if they are themselves Officials) do not comply with whatever direction is being given at the time. It provides no excuse at all for the attitude taken by Dwayne Rew. The real question in this appeal in terms of Dwayne Rew's conduct is whether or not his son should be penalised for that in circumstances where his father has been independently penalised for it.
17. Mrs Rew's conduct, as found, is inexcusable on any basis. It was conduct that most adults would find grossly offensive but it was even worse given that it took place at a Junior's event. It is not known whether any of that conduct is sought to have been justified on the basis of apparent inconsistencies in rulings in events of this kind in the past. To the extent that is seen by Mrs Rew as some basis of justification for her behaviour, it is not.

CONTINUING ILL-FEELING

18. It was readily apparent during the hearing that there is continuing ill-will between the family of the other rider concerned with the exclusion of Keynan (Cordell Rogerson),

Keynan's family and perhaps others. That is unfortunate but in some respects, an obvious consequence of the behaviour of Keynan's parents. It would be regrettable if it were to continue. Mr and Mrs Rew have of course been penalised. It is hoped that they will recognise that conduct was inappropriate. Hopefully that will go no further. From the point of view of the Rogersons, they should feel confident that the type of behaviour which was engaged in by Mr and Mrs Rew, in particular, is recognised by this Tribunal as being unacceptable and any repeat of it is likely to have very serious consequences for them.

PENALTY

19. I have expressed that in my view GCR 7.1.1.2 is not a rule that should be resorted to in circumstances where the conduct of Officials is more appropriately considered by the Officials Review Board. Whether or not that view is accepted by others, it is not appropriate, in my view, for additional penalties to be imposed under GCR 7.1.1.2 in circumstances where, in the particular case in question, recommendations are made to the Officials Review Board. In the present circumstances, those recommendations were followed in their entirety. It is also not immediately apparent to me in circumstances where a fine was said to be of no issue to Dwayne Rew, that that was an appropriate punishment. The fine was imposed, as I have already said, because Mr Anderton thought that it was appropriate to give Keynan a chance to compete in a particular event. Given the appeal has been allowed and I am to impose a penalty that I consider appropriate, I have come to the view that the appropriate penalty is a 12 month suspension of Keynan's MQ licence (itself suspended).
20. I am hopeful that Keynan will recognise that whether or not encouraged by others, it is unacceptable for him to fail to follow directions he is given by Officials. If he does not come to that realisation, there are likely in the future to be significant

consequences in terms of his ability to compete. It is to be hoped that warnings expressed herein do not need to be considered in the context of a penalty imposed by any future Tribunal. That is, hopefully Keynan will put this matter behind him and learn something from it.

CONCLUSION

21. A submission was made on behalf of Keynan that given the appeal was necessary because of a failure of procedure in respect of the penalty imposed, the appeal fee should be returned. Whilst that is not a submission devoid of merit, it seems to me, on balance, that the appeal fee should be retained. Apart from anything else, that reflects the seriousness of the underlying conduct, the fact that in some respects the outcome has been that a more severe penalty has been imposed and that there was, as it transpired, no dispute as to the core facts upon which the previous penalty was imposed. Rather, I simply took a different view as to what penalty was appropriate in the circumstances.