

## HEARING RESULT

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**FROM:** Registrar – Racing Appeals and Disciplinary Board

**DATE:** 21 September 2012

**SUBJECT:** **HEARING RESULT – JOCKEY: DANNY NIKOLIC**

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**Panel** Mr Brian Forrest (Chair), Mr Stephen Curtain, Mr Jeremy Rosenthal.

**Appearances** Mr Phillip Priest QC, instructed by Mr Sandip Mukerjea of Minter Ellison  
Lawyers appeared as Counsel for the Stewards.

Mr Sandy Robertson, instructed by Mr David Wood of Wood Fussell Lawyers,  
appeared as Counsel for Mr Nikolic.

**Charge 1** Breach of AR 175(a)

*Any person, who, in their opinion, has been guilty of any dishonest, corrupt, fraudulent, improper or dishonourable action or practice in connection with racing.*

**Charge 2** Breach of AR 175A

*Any person bound by these Rules who either within a racecourse or elsewhere in the opinion of the Committee of any Club or the Stewards has been guilty of conduct prejudicial to the image, or interests, or welfare of racing may be penalised.*

The charges relate to the abusive language and threats made by Mr Nikolic towards Racing Victoria's Chairman of Stewards, Terry Bailey, at Seymour racecourse shortly before the running of Race 6 on Tuesday, 4 September 2012.

**Plea** Charge 1 – not guilty.  
Charge 2 – not guilty.

**Decision** Charge 1 – the Board finds the charge proved.  
Charge 2 – the Board finds the charge proved.

**TRANSCRIPT OF  
PROCEEDINGS**

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**RACING APPEALS AND DISCIPLINARY BOARD**

**MR B. FORREST, Chairman  
MR S. CURTAIN  
MR J. ROSENTHAL**

**EXTRACT OF PROCEEDINGS**

**DECISION**

**JOCKEY: DANNY NIKOLIC**

**MELBOURNE**

**FRIDAY, 21 SEPTEMBER 2012**

MR P.G. PRIEST QC, with MR G. MUKHERJI appeared on behalf of  
the RVL stewards

MR S. ROBERTSON appeared on behalf of Mr D. Nikolic

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CHAIRMAN: Jockey, Mr Danny Nikolic, has pleaded not guilty to two charges laid against him by Mr Robert Cram, deputy chairman of Racing Victoria stewards, first, with breaching AR 175 (a) which reads, relevantly:

*The Stewards may penalise any person who in their opinion has been guilty of any improper or dishonourable action or practice in connection with racing.*

Second, with a breach of Rule 175A which relevantly reads:

*Any person bound by these Rules who either within a racecourse or elsewhere in the opinion of the Stewards has been guilty of conduct prejudicial to the image, or interests, or welfare of racing may be penalised.*

The particulars said to constitute both charges were these:

On 4 September 2012, at a race meeting held at Seymour racecourse, shortly before the running of race 6, you approached the chairman of RVL stewards, Mr Terry Bailey, and directed abusive language towards him which included describing him on multiple occasions as a "cunt" and words to the following effect, "We've all got families, cunt, and we know where yours live, cunt."

Mr Terry Bailey, chairman of stewards, was officiating as a member of the

stewards' panel at Seymour on 4 September 2012. Ms Joelene McSwain, deputy steward, chaired the panel.

As Nikolic was riding his mount to the barriers prior to race 5, passing the stewards' tower gate near where Bailey was standing, he called to Bailey, "Keep your eyes on the road, Terry." After the race, Bailey called Nikolic into the stewards' room to explain his comment, putting it to Nikolic that it suggested some kind of threat. Nikolic replied he was referring to a TV commercial, "Keep your eyes on the road, Rhonda." The meeting became confrontational, Bailey repeatedly asking Nikolic what he meant by the saying, and Nikolic replying by asking Bailey whether he felt threatened. The atmosphere was tense. Eventually Bailey adjourned the inquiry.

According to Bailey, shortly before race 6 as he was walking towards the stewards' tower, he saw Nikolic, who was not riding in the race, also walking towards the tower. As Bailey reached the foot of the tower ladder, Nikolic directed at him the language described above in the particulars of charges. Bailey said the expletives continued as he climbed the ladder. He did not respond or say anything to Nikolic.

When he entered the tower, Bailey made a note in his racebook of what Nikolic said. Ms McSwain arrived at the tower a few minutes after Bailey. She observed that Bailey was visibly upset and appeared agitated. Bailey informed her of what had happened. After race 6 and while Bailey was in the mounting yard and answering a call on his mobile, Nikolic came and stood close to him.

Bailey abruptly ended the call and queried Nikolic as to what he was doing. Bailey said he understood Nikolic was saying he was going to look at some signage. Nikolic for his part says he told Bailey he was going to walk the track. Bailey twice requested Nikolic return to the jockeys' room. Nikolic refused. Bailey then told him to pack his bags and go home.

Bailey then directed the starter, Mr Didham, to inform Mr Cox, the trainer of the horse Nikolic was to ride in race 7, that a substitute rider was required.

A flurry of activity followed. Nikolic spoke to the jockeys as a group in the jockeys' room, asking for their support because he had been stood down and telling them Bailey was going to break his career. He also offered to pay their expenses for the day if they went on strike.

A deputation of three senior jockeys wanted to hear Bailey's version of events as to why Nikolic was stood down. Mr O'Keeffe, CEO of the Jockeys Association, was contacted by phone. He spoke to the jockeys and also with Bailey. The jockey deputation met with Bailey. A substitute rider for Nikolic was arranged and the race meeting continued with the starting time of the next race put back 10 minutes. As race 7 was being run, Nikolic left the racecourse.

At the conclusion of the race meeting, the stewards' panel decided that Nikolic be stood down indefinitely.

In his defence to the charges, Nikolic denies saying to Bailey what is alleged

against him, asserting that Bailey's evidence is a fabrication designed to get at him. Nikolic further asserts that when he was standing near the gate to the stewards' tower prior to race 6, Bailey said to him, "I told you I was going to fuck your career," to which Nikolic says he replied to the effect, "Don't you think you've already done a pretty good job." Bailey refutes these assertions and the Nikolic version of what was said.

A breach of the rules must be proved to the reasonable satisfaction of the Board on the balance of probabilities. As Dixon J stated in *Briginshaw*, that requires the Board to have regard to the seriousness of the allegations, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding.

In the present case, as the allegations are serious with particularly grave consequences, these are matters which must affect the answer to the question as to whether the allegations relied upon by the stewards have been proved.

The ultimate determination in this matter depends predominantly upon an assessment of the veracity of witnesses; in essence, a dispute as to what was said by Bailey and Nikolic.

In the judgment of the Board, Bailey is a reliable and truthful witness. The Board accepts as the truth his evidence of what was said to him by Nikolic at the stewards' tower shortly before race 6. The Board also accepts McSwain as a truthful witness. She observed the demeanour of Bailey in the tower shortly

afterwards as agitated and visibly upset. Any lack of precise language by Bailey or want of precise recollection by McSwain when discussing what Nikolic said does not in our view detract from the substance of their evidence or the strength of the contemporaneous record.

The Board also accepts that the probable explanation for Bailey's demeanour is consistent with a reaction that might reasonably be expected of a person having had threats made to his family shortly beforehand.

It was put on behalf of Nikolic that Bailey's demeanour is explained by a sudden realisation by him of the significance of what Nikolic alleges he said. The Board does not accept this hypothesis.

Referring to the Nikolic submission of the fabrication, Bailey's reaction as identified by McSwain could invite an inference that Bailey's demeanour was a pretence, part of a plan designed to falsely implicate Nikolic in breach of the rules, in other words, a calculated act of malevolence on the part of Bailey.

In the Board's opinion, there is no basis for such an inference to be drawn.

Further, the Board finds that it is inherently unlikely that Bailey manufactured the threat. The note that Bailey entered in his facebook is, the Board accepts, an accurate and contemporaneous note of what was said to him by Nikolic.

In making these findings, the Board places no reliance on the testimony of Mr Conway.

Nikolic is unshrinking, and that is not said as any criticism of him. Nikolic and Bailey have form, as it were, in that they have clashed previously. Nikolic has a jaundiced view of Bailey. He believes he has been victimised in the past and at the time of the Seymour races was also upset about inquiries being made by stewards of other jockeys about his conduct. He was resentful over these inquiries and still defiant over the, "Keep your eyes on the road, Terry," interview when the outburst directed at Bailey took place.

The Board does not accept Nikolic as a reliable witness and considers his evidence of the conversation with Bailey motivated by self-preservation and not to be the truth. In relation to the Mr X phone call to O'Keeffe, the Board attaches no weight to it.

In reaching our conclusions, the Board has considered all of the evidence and the submissions of Mr Priest QC for the stewards and Mr Robertson for Nikolic.

The Board is satisfied to the requisite standard that both charges have been proven. The abusive language was threatening to Bailey and his family and was both an improper action in connection with racing, as well as conduct prejudicial to the image, interests and/or welfare of racing.

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