

RACING VICTORIA LIMITED
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RACING APPEALS AND
DISCIPLINARY BOARD



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HEARING RESULT

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FROM: Registrar – Racing Appeals and Disciplinary Board

DATE: 22 September 2009

SUBJECT: **HEARING RESULT – TRAINER: BRIAN JENKINS**

Panel Judge Russell Lewis (Chair), Josh Bornstein, Jeremy Rosenthal

Appearances Mr Dayle Brown, RVL General Manager – Integrity Services, appeared on behalf of the Stewards.

Mr Michael Fisher appeared on behalf of Brian Jenkins.
Mr Jason Gullaci appeared on behalf of Ray Matthews.

Charge Breach of AR 175(q) – improper conduct.

The charge relating to an incident that took place involving licensed trainer Ray Matthews at Cranbourne Training Facility on Thursday 30 April 2009.

Plea Not Guilty

Decision The Board finds the charge proved.

Mr Jenkins licence to train suspended for a period of 3 months, to commence midnight 2 October 2009 and to expire midnight 1 January 2010.

Mr Jenkins fined the sum of \$5000, fine to be paid on or before 31 December 2009.

Appeal to RAT against severity of penalty imposed: dismissed.

Georgie Curtis
Registrar - Racing Appeals and Disciplinary Board

TRANSCRIPT OF PROCEEDINGS

RACING APPEALS AND DISCIPLINARY BOARD

**HIS HONOUR JUDGE R.P.L. LEWIS, Chairman
MR J. BORNSTEIN
MR J. ROSENTHAL**

EXTRACT OF PROCEEDINGS

TRAINERS: BRIAN JENKINS and RAY MATHEWS

DECISION

MELBOURNE

TUESDAY, 22 SEPTEMBER 2009

MR D. BROWN appeared on behalf of the Stewards

MR M. FISHER appeared on behalf of Mr B. Jenkins

MR J. GULLACI appeared on behalf of Mr R. Mathews

CHAIRMAN: Brian Jenkins and Raymond Mathews, you have each been charged under Australian Rule of Racing 175(q) with improper conduct, the improper conduct being that on 30 April 2009 at Cranbourne racing facility, you assaulted each other. You have each pleaded not guilty to the charge and by way of defence, each of you has pleaded self-defence.

In particular, you, Brian Jenkins, have denied that you ever assaulted Raymond Mathews by punching him. You have admitted that you kicked Raymond Mathews but that you did so in self-defence. You, Raymond Mathews, have admitted that you punched Brian Jenkins, but that you did so in self-defence.

Mr Brown appeared in this matter for the stewards, Mr Fisher of counsel for Brian Jenkins and Mr Gullaci of counsel for Raymond Mathews.

The burden of proof remains with the stewards in relation to all issues. The stewards must prove that Brian Jenkins assaulted Raymond Mathews and that Brian Jenkins did not kick Mathews in self-defence. The stewards must prove that Raymond Mathews punched Brian Jenkins and that Raymond Mathews did not punch him in self-defence.

The standard of proof is that enunciated in the well-known case of *Briginshaw v Briginshaw* (1938) 60 CLR 336; that is, the Board must be comfortably satisfied on the balance of probabilities that the particular charge has been made out.

I now turn to the facts. On 30 April 2009, Mathews was washing down a horse trained by him in a wash bay habitually used by Jenkins. Unknown to Mathews, he utilised a sponge and bucket which belonged to Jenkins. Jenkins, not wishing to run the risk of infection being carried to any of his horses, requested Mathews not to use his sponge. There is a dispute as to what he said thereafter but the Board is satisfied that Mathews ignored Jenkins' request and continued to use the sponge. Jenkins, who the Board is satisfied is quick tempered, in no uncertain terms asked Mathews to stop using the sponge. Again, Mathews appeared to ignore Jenkins' request, thus provoking Jenkins. An assault occurred in the wash bay immediately thereafter.

Jenkins alleges that Mathews, in response to Jenkins' request to, "Put the fuckin' thing" - meaning the sponge - "back," spun around and, to use his expression, king-hit him in the face. Mathews alleges that Jenkins, by now enraged, hit him from behind without warning, making contact with the area of his left ear. He alleges that he was again punched in the mouth, suffering a laceration on the inside of his mouth in the area of his lower lip.

On this issue of who assaulted whom in the wash bay, the Board accepts the evidence of Mathews and rejects the evidence of Jenkins. First, the Board is satisfied that Mathews was essentially a witness of truth, whereas the Board was not impressed with Jenkins' evidence. Secondly, the Board accepts that Bravo was also essentially a witness of truth and he corroborated Mathews' version of what transpired. Third, the Board finds that it is inherently improbable that trainer Mathews would behave as alleged, having regard to the

fact that his horse was in the wash bay, thereby posing a considerable risk of injury to horse and trainer. Fourthly, the Board finds it improbable that Mathews would king-hit Jenkins in front of one of the horse's owners, Bravo, an eyewitness.

On the question of credibility, the Board makes the observation that it is not unusual in cases of this kind to find variations of the evidence of witnesses and parties involved in an incident. In particular, both Jenkins and Mathews have made three pre-hearing statements, namely, to Mr Monaghan, an RVL investigator, to the police and to the stewards at an inquiry. The Board has taken into account these statements as well as the evidence given at this hearing and the demeanour of the witnesses, including Jenkins and Mathews, in arriving at its conclusion that Mathews' evidence is to be preferred to that of Jenkins.

After Jenkins punched Mathews, which involved Mathews at one stage being on the ground in the wash bay behind his horse's hind legs and then in front of its front legs, there ensued a considerable amount of pushing and pulling and grappling, so that the two men now finished up in the walkway between the horse stalls. A witness, Mr Cannon, intervened, and restrained Jenkins who had lost control. As Cannon restrained Jenkins by one arm, Mathews punched Jenkins in the face. However, the Board is of the opinion that this punch was not delivered in isolation but was part of a continuum of physical violence. The Board is not satisfied that this assault was unlawful, but rather was an action inextricably bound up with Mathews' attempt to defend himself from an

enraged and out-of-control Jenkins. That is, the Board is not satisfied that the stewards have proved that Mathews was not acting in self-defence.

As to Jenkins' defence that his kicking of Mathews was reasonable, proportionate and necessary, the Board rejects this defence. That is, the Board is satisfied that in doing what he did, Jenkins was not acting in self-defence. In arriving at this conclusion, the Board rejects Jenkins' evidence, that while standing up and holding on to the upper clothing of Mathews, he kicked Mathews with his feet in the stomach area, as highly improbable, indeed fanciful. Rather, the Board is satisfied that as Mathews was rising from the ground in a kneeling position and whilst Jenkins was standing, he, Jenkins, kicked Mathews twice in the groin area, as Mathews described, "in the nuts and above the nuts". The Board is further satisfied that Mathews' evidence that he applied ice to the affected area when he got home has the ring of truth about it.

In summary, the Board is unanimously satisfied that the charge against Jenkins has been proved and that the stewards have failed to prove the charge against Mathews. That is, the charge against Mathews is dismissed.

DISCUSSION

The Board having made its findings, it is obvious that this was a serious offence for a licensed trainer to be engaged in this type of violent behaviour at premises where horses and people in the racing industry frequent. An aggravating feature of the matter is that it occurred in a wash bay close to a

tethered horse.

Mr Jenkins has a prior conviction for misconduct, that type of conduct being not only verbally violent but also there was physical violence involved, albeit a poke in another trainer's chest. The Board is of the view that Mr Jenkins has an anger problem which he should address, lest anything in the future occur.

The principles of special deterrence and general deterrence are applicable in this case and the Board must impose a punishment which reflects the Board's denunciation of this type of conduct. In the Board's view, the only appropriate punishment is a period of suspension, coupled with a monetary penalty.

Mr Jenkins is suspended for a period of three months, commencing at midnight on 2 October 2009 to enable him to make arrangements for clearing his horses, and expiring at midnight on 1 January 2010. He is further fined the sum of \$5000 to be paid on or before 31 December 2009. The Board should indicate that should that fine not be paid by that time, Mr Jenkins' name may go on the forfeit list which is tantamount to disqualification, so the Board suggests that the fine be paid by the due date.

END OF EXTRACT