

Appeal C A Gately v RIU - Costs Decision of Appeals Tribunal dated 7 February 2019 - Chair, Mr G Jones

Rules:

Repondent(s)/Other parties:

Name(s):

Decisions:

BEFORE AN APPEALS TRIBUNAL OF THE JUDICIAL CONTROL AUTHORITY

UNDER THE RACING ACT 2003

AND IN THE MATTER of the New Zealand Rules of Thoroughbred Racing

BETWEEN

Mr C A GATELY

Licensed Track Work Rider

Appellant

AND THE RACING INTEGRITY UNIT

Respondent

Submissions: Dollimore (Counsel for the Appellant), Mr O Westerlund (RIU), for the respondent

APPEALS TRIBUNAL: Mr G Jones (Chairman), Mr N McCutcheon (Member)

DECISION OF COSTS ISSUED BY THE APPEALS TRIBUNAL

DATED 7 FEBRUARY 2019

Introduction

[1] Mr Gately was unsuccessful in his appeal against the disqualification imposed on him by the Judicial Committee in their reserved written decision on 17 December 2018.

[2] Following the Appeals Tribunal hearing we confirmed the 4 month disqualification, commencing on Monday 24 December 2018, and concluding on 24 April 2019.

[3] In our written decision we invited submissions as to costs from Counsel for the Appellant and the Racing Integrity Unit (RIU). We are now in receipt of those submissions.

The rules and principles in determining costs

[4] In determining an appropriate approach to the award of costs we are guided by a number of rules, principles and practices. These are briefly set out below.

[5] Rule 1007(3) (NZTR Rules of Racing) provides that:

The Appeals Tribunal may order that all or any of the costs and expenses of any party to the appeal, any other person granted permission to be heard at the hearing by direction of the Chairman of the Appeals Tribunal, NZTR and/or any employee or officer thereof, the Judicial Control Authority and the Appeals Tribunal be paid by such person or body as it thinks fit. Such amount if unpaid within 14 days after and exclusive of the date on which that amount was ordered to be paid, shall be deemed Arrears and may be placed on the Arrears List.....

[6] Costs in Criminal Cases Act 1967, provides at s. 4(1), the court may order an unsuccessful defendant to pay a sum towards the costs of the prosecution that it considers "just and reasonable" and any order pursuant to this section is discretionary. Further s.8 Costs on appeals (Costs in Criminal Cases Act 1967) provides that:

(1) Where any appeal is made pursuant to any provision of Part 6 of the Criminal Procedure Act 2011 the court which determines the appeal may, subject to any regulations made under this Act, make such order as to costs as it thinks fit

[7] In civil jurisdictions the Judge may make an order in relation to costs (<https://www.justice.govt.nz/courts/-civil-district-court/costs-and-disbursements/#awarding-costs-disbursements>), including:

- i. Order the unsuccessful party to pay the costs and/or disbursements of the successful party
- ii. Order that costs lie where they fall, so no party is ordered to pay for the costs of the other (that is, the parties pay their own costs)
- iii. Reserve an order for costs until the final determination is made. This can happen when a judgment on an interlocutory application has been delivered, but there has not yet been a judgment on the final application.

[8] We are also guided by the general principles set out in the Guide for Judicial Committees. These provide that the amount of costs awarded will usually be a proportion of actual costs incurred by the party claiming; as a guide:

- a) 60% of actual costs reasonably incurred by the party; and
- b) Actual costs reasonably incurred by the JCA.

Submissions

[9] Counsel for the Appellant submitted that:

- a) Given the disqualification order, there should be no order for costs; and
- b) The Appellant is of limited means and is not in a good financial position.

[10] This is consistent with submissions made by Counsel during the appeal hearing where he submitted that as a result of this incident the Appellant has limited his ability to earn as he was immediately stood down. And since the disqualification was imposed he has not been able to enter on to a race course, thus unable to drive the horse float.

[11] Mr Westerlund submitted the RIU seek no costs.

Decision

[12] For consistency purposes this Appeals Tribunal has had regard to the approach taken in precedent cases. We note that because costs decisions are discretionary and dependent upon the facts of each case; the range in terms of quantum is wide.

[13] We have carefully considered the submissions and taken into account the relevant rules and general principles.

[14] Although we have not been presented with a detailed statement of Mr Gately's financial situation we accept his submission that he has limited means and his period of disqualification will restrict his earning capacity. However, we must emphasise that the penalty he received and the costs are entirely separate matters.

[15] This Tribunal hearing occurred on a non-raceday and significant costs have been incurred by the JCA. Having taken all factors into account we believe that it is fair and reasonable, under the circumstances to award a proportion of (JCA) costs in favour of the JCA.

[16] Accordingly, the Appellant is directed to pay a contribution to JCA costs in the sum of \$600.

Gavin Jones (chairman)

For the Appeals Tribunal

Penalty: