

**BEFORE THE SPORTS TRIBUNAL
OF NEW ZEALAND**

ST 19/07

BETWEEN

MOTORCYCLING NEW ZEALAND ("MNZ")

Respondent

AND

NOEL CURR

Appellant

**DECISION OF TRIBUNAL
REGARDING STEWARDSHIP
(COSTS RESERVED)**

Dated 28 July 2008

Tribunal: Nicholas Davidson QC (Deputy Chairperson)
Tim Castle
Ron Cheatley

Registrar: Brent Ellis

Introduction

By a Decision of the Tribunal dated 11 April 2008 (Final except as to the issue of stewardship) the Tribunal confirmed its Interim Decision of 5 March 2008. It allowed Mr Curr's appeal to the extent that a suspension imposed on him was reduced to terminate on 5 March 2008.

The Tribunal recorded that the question of his stewardship would be reviewed if required by the parties. Mr Curr's position as MNZ Steward had been "*terminated*" as of 18 September 2007 by the provisional decision of the MNZ Board.

The issue which has arisen since then is the product of Mr Curr's contention that his "*stewardship*" was the only basis for his "*membership*" of MNZ, and if his suspension concluded, that meant he was automatically reinstated as a Steward.

A complicating factor is the further decision of the MNZ Board dated 16 May 2008 by which Mr Curr was suspended from holding or applying for membership of MNZ for 18 months from 16 May 2008, on an unrelated matter. Mr Curr has appealed that decision to this Tribunal, which will be heard by a Panel of different composition.

MNZ Submission

The issue crystallised when Mr Curr sought to be Clerk of the Course at a Marlborough Motor Cycle Club meeting on 10-11 May 2008. The MNZ stance was that the Tribunal's decision had **not** reinstated Mr Curr as a Steward, and as of 8 May 2008 it could or should not do so as he was the subject of new disciplinary proceedings, which might have an impact on stewardship. In short MNZ said while his suspension as a member may have run its course, that did not mean Mr Curr became a Steward once more. His stewardship had been terminated by the Decision which Mr Curr appealed.

MNZ took the position that the Clerk of the Course, thus the Chief Executive Official at a competition, is in a position equally important as a Steward. MNZ would not approve a permit which named Mr Curr as Clerk of the Course or Steward.

Mr Curr's submission

Mr Curr says that the refusal to approve his position as Clerk of the Course, or as a Steward, is a "*withholding*" of membership privileges contrary to the decision of the Tribunal, he says reinstated him as a member. He also relied on Rule 2-43 as set out in the MNZ Manual of Motorsport, as discussed below.

Mr Curr says that by this Rule Stewards are **appointed** by Clubs, and MNZ has no jurisdiction.

He also says that the Tribunal has no jurisdiction about this issue and any ruling would be "*ultra vires*" as no submissions were put forward by MNZ in the appellate process "*requesting expulsion from the position*". He said Stewardship in his case is a matter for the Marlborough Motor Cycle Club, and nothing to do with MNZ.

By email of 15 May 2008 Mr Curr said that once his suspension was "*lifted*" his only dealings with MNZ were as a Steward.

Discussion

MNZ says that **status** as a steward is **independent of membership**. In other words, membership is derived from stewardship. It is a position of responsibility, and it points to Rule 3-2. This reads:

*"The **Board** (emphasis added) shall appoint representatives (hereinafter called stewards) who shall have supreme control over the conduct of any competition motorcycling meeting and shall have the duty of enforcing the rules, bylaws and regulations of MNZ that apply at the meeting. The Stewards also enforce any international rules that apply. They may, postpone a competition, impose fines, suspend or exclude an entrant or official, and do or direct all those things considered necessary for the conduct of the meeting in accordance with the Manual of Motorcycle Sport.*

"Stewards progress through the MNZ structure from level 1 through to level 5. No steward can progress more than 2 levels in any one calendar year. The Stewards Commission shall train and examine Stewards to level 4. Level 5 Stewards are the equivalent of the FIM sporting Steward and as such are required to take the FIM training and examination course. The level 5 requires the express approval of the Board prior to application for an FIM course."

The definition of "Stewards" in Rule 2-43 reads:

*"**Stewards:** Appointed by **clubs** (emphasis added) through the area coordinator for training in stewarding motorcycle sporting events under the rules of MNZ. Stewards are graded according to their qualifications."*

MNZ's position is that the Board appoints **representatives**, who are in effect "nominated" not "appointed" by clubs. It points to the Clerk of the Course under Rule 3-4 being the "Chief Executive Official ("CEO") at a competition, under whose control come the following officials: ...". The officials do not include the stewards as such. There is however reference in Rule 3-4-1 to "the Clerk of the Course", being the "Chief Executive Official" who is responsible to the "Steward of the Meeting". There is no definition of the "Steward of the Meeting". However, Rule 3-2-1 states "The Steward of the Meeting shall have no responsibility for the organising of the meeting nor have any executive duty in connection therewith but shall be in supreme supervisory control over the meeting in accordance with the regulations, and exercise all powers set out in the MNZ Constitution".

The MNZ "Rules" are described as "Regulations" in the MNZ Manual of Motor Cycle Sport. Rule 1.6 reads "These regulations shall be considered by-laws of MNZ and should be interpreted according to the MNZ Constitution".

Rule 1.4 provides:

"Acquaintance with and Submission to Rules: Every person or body, group of persons, etc, organising a competition or taking part therein shall by doing so, or by and upon applying for an organising permit, or by and upon applying for a licence from MNZ, or by and upon entering for a competition, be deemed to have and recognise that they have:

- a. Made themselves acquainted with these Rules and*
- b. Submitted themselves without reserve to the consequences resulting from these Rules and any subsequent alterations thereof, and*

- c. *Renounced under pain of disqualification the right to have recourse except with the written consent of MNZ to any arbitrator or tribunal not provided for in these Rules and Regulations.*
- d. *Agreed to exonerate and indemnify the Promoters, MNZ and their respective officials, servants, representatives and agents."*

The Constitution refers to five classes of membership under Clause 6. **By Clause 6-1(d) "each holder of a current steward's warrant" is by definition a member.** By Clause 6-1(a) "*individual members are current competition licence holders*". Clearly there may be overlap between the five classes described. Only one vote applies to each class of membership held.

Termination of membership under Clause 18 may extend to "*the membership of any member*", which may be founded on the kind of breach which led to suspension in this case. By Clause 18.6(c) a person who "*ceases to be a member for any reason*" is not able to hold him or herself out as a member while the membership is suspended, or not current.

Mr Curr is correct that **if** he is a Steward he is by definition a member. The Tribunal concludes that to be a steward requires more than "*simple appointment*" by a Club, and involves a process of training and grading. The overall responsibility for stewardship must lie with the MNZ Board and to the extent there is conflict between Rule 2-43 and 3-2, the former should prevail given the significance of stewards in the sport.

When Mr Curr was suspended from **membership**, this by its terms applied to **any** class of membership which he held.

There appears to have been little analysis given to the circumstances in which the termination of his membership, adjusted by his successful appeal, would affect his stewardship. Mr Curr's case is that once the suspension was spent, his "*membership*" as a steward revived. MNZ says it quite specifically suspended him as a member (in any class) and **also** terminated his warrant for stewardship.

This Tribunal rejects Mr Curr's submission that it does not have jurisdiction to deal with the issue of stewardship. The effect of suspension was to terminate his position as a **Member** of MNZ. The Tribunal was not apprised of the relationship between membership and stewardship, and thus reserved that issue which had been expressly addressed in the Board's disciplinary decision. It considers it has jurisdiction to deal with this issue, arising directly out of the penalties first imposed in the appeal, and the express reservation in relation to this issue.

Status as "*member*" was suspended until his reinstatement.

Mr Curr's status **as a steward** was not automatically reinstated. The Tribunal **could** in principle reinstate him as a steward, if it heard full evidence and argument about this. While **entitlement** to membership through any of the classes described is not barred, he must first gain the approval of MNZ to be a Steward, or in this Tribunal on appeal. If he is to regain his status **as a steward**, it will require another act. It requires assessment of his suitability as a steward by the MNZ Board, and a decision taken.

This Tribunal's view is that but for his latest suspension there is no impediment to his becoming a member under a different category of membership. Mr Curr may prefer to be a member of MNZ under the stewards category rather than another category such as membership through being a current competition licence holder but nothing prevents his becoming a member under that latter category. However, it is clear MNZ does not consider him a fit and proper person to hold the office of steward, and he will not be


reinstated as a steward unless MNZ approves such, or on appeal from a decision (which rejects his appointment) Mr Curr brings a successful challenge.

Formal Decision

The Decision to terminate Mr Curr's Stewardship stands. He is entitled to seek membership under any relevant category he considers appropriate. The Board must consider such application fairly and dispassionately in light of all circumstances held relevant.

Costs are reserved. The Tribunal is not minded to make any Costs Order.

Dated this 28th day of July 2008



Nicholas Davidson QC - Deputy Chair

For Tribunal: Tim Castle

Ron Cheatley