



Case number: NST-E21-33523

Case Title: Parker v Motorcycling NSW (with Motorcycling Australia)

Determination

National Sports Tribunal General Division

sitting in the following composition:

Panel Member

Ms Rebecca Ogge (the Tribunal)

in the arbitration between

Mr Michael Parker

(Applicant)

And

Motorcycling New South Wales

(Respondent)

Represented by Mr Mark Gardiner

And

Motorcycling Australia

(Applicant Sporting Body)

Represented by Mr Tony Hynes



PARTIES

1. Mr Michael Parker is the Applicant Athlete (Mr Parker). He is an amateur motorcycle rider. On 15 November 2020 he was a participant in a motorcycling club event at the Cessnock Motorcycle Club, New South Wales.
2. Motorcycling New South Wales Limited (MNSW), the Respondent, is a New South Wales Office of Sport recognised State Sporting Organisation. It is affiliated to and recognised by Motorcycling Australia as its sole delegate in New South Wales.
3. Motorcycling Australia Limited is a national sporting organisation (MA) as defined in Section 5 of the *National Sports Tribunal Act 2019* (Cth) (the Act). It is the governing body for motorcycle sport in Australia and is the Australian affiliate of the Fédération Internationale de Motocyclisme, the global sanctioning body for motorcycle sport.

INTRODUCTION

4. On 31 March 2021, Mr Parker was sanctioned by the Board of MNSW for two separate incidents, namely:
 - i. an incident involving two other riders; and
 - ii. an incident involving an event official (Clerk of the Course);
at the Cessnock Motorcycle Club, New South Wales on 15 November 2020.
5. For the first incident, Mr Parker was suspended from participating in a motorcycling event from 20 November 2020 for 3 months.
6. For the second incident, Mr Parker was suspended for 24 months and was fined \$8,000.
7. On 14 April 2021, Mr Parker made a complaint to MA under the MA Complaints Resolution Policy¹.
8. MA determined that Mr Parker's Complaint had satisfied the threshold requirements of the MA Complaints Resolution Policy and on 22 April 2021 an application was filed by MA to the National Sports Tribunal (NST) against MNSW.
9. The grounds for the application were that MNSW had:
 - i. failed to follow established process;
 - ii. failed to provide natural justice or act fairly towards Mr Parker;

¹ Policy 4.9.2 (a) and (c).



- iii. issued a disproportionate penalty for the alleged conduct; and
- iv. demonstrated bias and a conflict of interest.²

10. The Tribunal was asked by Mr Parker to consider whether MNSW had failed to follow due process when investigating the incidents and in imposing the sanctions, resulting in a denial of natural justice, biased decision-making and a disproportionate penalty.
11. MA made submissions to the Tribunal in respect to the disciplinary procedure followed by MNSW.
12. MNSW rejected the assertions made by both Mr Parker and MA and sought for the application to be dismissed, but submitted that in the event that the Tribunal found in favour of Mr Parker, that Mr Parker be re-sanctioned by the Tribunal.

NST JURISDICTION

13. The NST's jurisdiction is engaged under clause 4.6 of the MA Complaints Resolution Policy.
14. The Parties entered into a NST Preliminary Conference Agreement dated 20 May 2021.
15. The matter proceeded as an arbitration on 16 June 2021 under Section 24 (1)(c)(i) of the *National Sports Tribunal Act 2019* (the Act) and Section 7(1)(b) of the *National Sports Tribunal Rule 2020*.
16. The MA 2020 Manual of Motorcycling General Competition Rules (Chapter 6) provides the procedure for managing offences, protests and appeals in motorcycling.

FACTUAL BACKGROUND

17. On 15 November 2020, Mr Parker participated in a motorcycling event at Cessnock Motorcycle Club Incorporated.
18. Individual 1 was the Steward at the event (the Steward).
19. Individual 2 was the Clerk of the Course at the event (the Clerk of the Course).
20. In Race 18, there was an alleged altercation between Mr Parker and two other riders, Brother 1 and Brother 2 (collectively, the Brothers).

² Part E, grounds for application, of the Application by Parker to the NST dated 22 April 2021.



21. The Clerk of the Course attended at the incident between Mr Parker and the Brothers and alleges that he was punched in the back of the head by Mr Parker. He also alleges that Mr Parker drove over his foot with both wheels.
22. Mr Parker admits to pushing the Clerk of the Course in the back of the head but denies punching him and driving over his foot.
23. The New South Wales Police, called by the Steward, attended at the event and the racing was suspended for the day.
24. The Steward submitted her Steward/Referee Report to MNSW dated 15 November 2020 which stated that charges had been laid, “6.1.1.1 (B). page 32 (c) (h) (J) as per 2020 MOMs to Michael Parker. This is as per clerk’s report”.³
25. The Steward’s Report contained an annexure which recommended MNSW to impose penalties on Mr Parker and other riders. She listed the offences for the riders.
26. The Clerk of the Course submitted two Incident Reports to MNSW dated 15 November 2020 in his capacity as Clerk of the Course.
27. On 20 November 2020, Mr Parker received a letter from MNSW advising him of the Steward’s “determination with the following offences” set out in the MA 2020 Manual of Motorcycling sport- General Competition Rules (GCR) as follows:

“6.1.1.1

Any promotor, club, licensee, rider, member or support person, who:

- a) *Breaches any of the GCRs Rules, Policies or any SR Supplementary Regulations, Final or Riders briefing instructions,*
- b) *Acts in a manner which is prejudicial to the sport or breaches the Code of Conduct,*
- c) *Behaves in an offensive or abusive manner toward any competitor or any official exercising authority under the GCRs Rules,*
.....
- g) *Acts in a reckless or dangerous manner while participating,*
- h) *Disobeys the lawful direction, order or requirement of any Controlling Body, appellate body, inspector or official under the GCRs these Rules,*
.....
- j) *Assaults any participant or spectator or any official exercising authority under the GCRs Rules”*

³ Steward/Referee Report, dated 15 November 2020, Section D.



28. The letter advised Mr Parker that “*at the event the Steward had a range of penalties available to her but however took the view that they were not sufficiently severe and she has referred the matter to MNSW for determination*”.⁴ The letter invited Mr Parker to “*make an additional submission so that it may be considered as part of the determination*” within 14 days.
29. On 24 November 2020, Mr Parker responded to MNSW and in summary, he:
- i. apologised for the part he played in the events at Cessnock Motorcycling Club on Sunday 15 November 2020.
 - ii. expressed his disappointment that “no one on the day got (his) side of the events... to date (he) has not been asked for (his) side of the events by any officials on the day or since”.⁵
 - iii. offered five (5) days of labour to support the Cessnock Club.
 - iv. apologised to the Clerk of the Course for pushing him.
 - v. questioned why this matter had not been determined at the event on the day and why it had been referred to MNSW without having his “story being heard”.⁶
30. MNSW appointed the Investigator to investigate the incidents alleged to have occurred on 15 November 2020 by interviewing a number of people including:
- i. Mr Michael Parker
 - ii. The Steward
 - iii. The Clerk of the Course
 - iv. Brother 1
 - v. Brother 2
 - vi. Individual 4
 - vii. Individual 5
 - viii. Individual 6
 - ix. Individual 7
 - x. Individual 8
 - xi. Individual 9
 - xii. Individual 10
 - xiii. Individual 11
 - xiv. Individual 12
 - xv. Individual 13
 - xvi. Individual 14 and

⁴ NST Bundle, File 2, page 14.

⁵ Ibid, page 42.

⁶ Ibid, page 43.



xvii. Individual 15

31. On 17 March 2021, the MNSW Board met and determined sanctions for Mr Parker.

32. On 31 March 2021, MNSW emailed Mr Parker as follows:

“Date: 31 March 2021

Michael Mr Parker Licence 166617

You were involved in an incident at the Cessnock Club race Meeting on the 15/10/2020 (sic).

The Incident / Complaint:

- Assaulting an official*
- Incident/Altercation involving Brother 1 and Brother 2*
- Contravention of Member Welfare Policy*
- Unacceptable behaviour*

Findings:

- Evidence supports imposing penalties at the maximum allowable by the MNSW Board*
- Unacceptable behaviour in breach of the Member Welfare Policy and not in keeping with MNSW expectations*
- Incident report to be kept on file*

Sanctions Imposed:

- \$8000 fine*
- 24 month suspension + 3 month suspension for the incident with the Brothers to be served sequentially*
- Suspension Date effective 20 November 2020*
- Fine Must be paid for in full prior to the end of the suspension period*

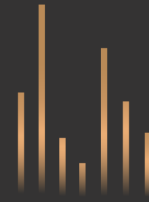
*On behalf of MNSW Board of Directors
(name removed)
Technical Consultant to
MNSW0408 278846”.*⁷

33. On 14 April 2021, Mr Parker filed a complaint to MA about the sanctions imposed on him by MNSW.

34. On 20 April 2021, MA filed an Application to the NST against MNSW on the grounds alleged by Mr Parker, that MNSW, had:

- failed to follow established process;
- failed to provide natural justice or act fairly towards Mr Parker;
- issued a disproportionate penalty for the alleged conduct; and
- demonstrated bias and a conflict of interest.

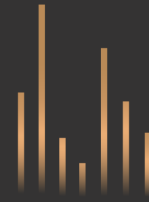
⁷ NST Bundle, File 1, page 49.



35. While the Tribunal has considered all the facts, allegations, legal arguments and evidence submitted by the Parties, references in the Determination are only to the submissions and evidence considered necessary to explain the reasoning.

PROCEEDINGS BEFORE THE NST

36. On 20 April 2021, MA filed an Application to the NST seeking an arbitration against MNSW to dispute the disciplinary procedure undertaken by MNSW and the sanctions imposed on Mr Parker on 31 March 2021. MA was named as the Applicant Sporting Body.
37. A Preliminary Conference was held by the NST on Tuesday 11 May 2021 by videoconference (Cisco Webex). Mr Parker appeared on his own behalf, Mr Gardiner, Solicitor appeared for MNSW and Mr Hynes, Manager Legal and Insurance, appeared for MA.
38. Ms Rebecca Ogge was appointed as NST Member (the Tribunal) to conduct the arbitration.
39. The following directions were made at the Preliminary Conference:
- i. Mr Parker to file with the NST Registry and serve on the other Parties any witness statement(s), evidence and all other documents on which he wishes to rely by 5pm AEST Friday 21 May 2021.
 - ii. MNSW to file with the NST Registry and serve on the other Parties any witness statement(s), evidence and all other documents on which it wishes to rely by 5pm AEST Monday 31 May 2021.
 - iii. MA to file with the NST Registry and serve on the other Parties any witness statement(s), evidence and all other documents on which it wishes to rely by 5pm AEST Monday 7 June 2021.
 - iv. Mr Parker to reply to submissions of MNSW and MA, and MNSW to reply to submissions of MA by 5pm AEST Friday 11 June 2021.
40. The arbitration took place at AEST 3.30pm on Wednesday 16 June 2021 by video conference.
41. Mr Parker appeared on his own behalf.
42. Mr Gardiner appeared for MNSW.



43. Mr Hynes appeared for MA.
44. The Clerk of the Course and Mr Parker were cross-examined at the hearing.
45. It should be noted that no evidence whether written or oral in these proceedings was sworn and that some of the interviews conducted by the Investigator, were on the basis that they were “off the record” or not to become public knowledge.

APPLICABLE RULES

46. MA 2020 Manual of Motorcycling General Competition Rules (GRC)
 - 6.1.1 List of Offences
 - “6.1.1.1 Any promotor, club, licensee, rider, member or support person, who:
 - a) Breaches any of the GCRs Rules, Policies or any SR Supplementary Regulations, Final or Riders briefing instructions,
 - b) Acts in a manner which is prejudicial to the sport or breaches the Code of Conduct,
 - c) Behaves in an offensive or abusive manner toward any competitor or any official exercising authority under the GCRs Rules,
 -
 - g) Acts in a reckless or dangerous manner while participating,
 - h) Disobeys the lawful direction, order or requirement of any Controlling Body, appellate body, inspector or official under the GCRs these Rules,
 -
 - j) Assaults any participant or spectator or any official exercising authority under the GCRs Rules”
 - 6.1.1.3: A prosecution for any alleged offence under GCR 6.1.1.1 committed during the course of an event must:
 - a) If instituted by the Clerk of Course, be:
 - i) Heard and determined by the Clerk of Course, or
 - ii) Referred to the Steward, or
 - b) If instituted by the Race Director; be referred to the Steward, or
 - c) If instituted by the Steward, be
 - i) Heard and determined by the Steward, or
 - ii) Referred to the RCB Relevant Controlling Body, or
 - d) If instituted by a duly appointed Inspector, be heard and determined by the RCB Relevant Controlling Body.”
47. GCR 6.1.3 Investigation and Determination of Charges during an Event
 - “6.1.3.1 In any proceeding relating to the imposition of penalties for offences committed during the course of an event:
 - a) The Steward or Clerk of Course:
 - i) May act on their own initiative,
 - ii) May act on such information and in such manner as they think fit having regard to the conduct for which a penalty is to be imposed,
 - iii) Must, in respect of all prosecutions conduct an investigation,



- iv) Must, as soon as practicable after determining the penalty, inform the person, rider or competitor and the competitor's team of the penalty imposed, and*
 - v) May not impose any fine greater than the maximum prescribed in by-laws.*
- b) No person may be represented by a legal practitioner.”*

48. GCR 6.1.4 Inspectors

“6.1.4.1 A Controlling Body may, by written authority, appoint Inspectors

6.1.4.2 The powers and duties of Inspectors are:

- a) To institute prosecutions for offences under the GCRs Rules other than offences alleged to have been committed by competitors during the course of an event, and*
- b) To collect and collate evidence reasonably required for the preparation of any prosecutions under the GCRs Rules, and to present such evidence to the RCB Relevant Controlling Body,*
- c) To investigate the conduct of an event and make recommendations to the RCB Relevant Controlling Body.”*

49. GCR 6.1.5 Charges

“6.1.5.1 Charges for offences under the GCRs Rules, other than by Stewards, Race Director or Clerks of Course may only be instituted by Inspectors.

6.1.5.2 In relation to any charge instituted by an Inspector:

- a) The offence will not be taken to have been committed unless proved to the satisfaction of the RCB Relevant Controlling Body,*
- b) The person charged may be represented by a legal practitioner or other advocate or may be unrepresented,*
- c) The person charged may:
 - i) Give evidence,*
 - ii) Call any witness,*
 - iii) Produce any exhibit, or*
 - iv) Remain silent, and no adverse inference may be drawn from the exercise of the right of silence.**
- d) The RCB Relevant Controlling Body must:
 - i) Deliver written reasons for the finding to the person charged, whether of guilty or innocent, and any penalty imposed.**
- e) The RCB Relevant Controlling Body may refer charges to its appellate body.”*

50. GCR 6.1.6 Penalties

“6.1.6.1 In imposing any penalty, the Steward, Clerk of Course, RCB Relevant Controlling Body or the appellate body must have regard to the following principles:

- a) No penalty should be imposed (excepting GCR 6.1.2) unless and until the offender has been given the opportunity to make representations as to the nature and extent of the penalty,*
- b) In ordinary circumstances a single penalty should be imposed for a single offence,*
- c) The punishment for an offence should be commensurate with the gravity and effects of the offence,*
- d) The interests of the sport are paramount,*
- e) The severity of penalties imposed on an individual should increase if that individual continues to commit offences against the GCRs Rules,*
- f) Mitigating factors put by, or on behalf of an offender, must be taken into account, as must the effects on others of the actions of the offender.*



6.1.6.2 *The Clerk of Course may impose the following penalties for any offence committed under the GCRs Rules:*

- a) *A reprimand,*
- b) *A fine no greater than \$2,000,*
- c) *Relegation,*
- d) *Exclusion.*
- e) *Removal or ejection from the venue.*

6.1.6.3 *The Steward may impose the following penalties for any offence committed under the GCRs Rules:*

- a) *A reprimand,*
- b) *A fine no greater than \$4,000,*
- c) *Relegation,*
- d) *Exclusion,*
- e) *Suspension of no more than six (6) months.*
- f) *Removal or ejection from the venue.*

6.1.6.4 *The RCB Relevant Controlling Body may impose the following penalties for any offence committed under the GCRs Rules:*

- a) *A reprimand,*
- b) *A fine no greater than \$8,000,*
- c) *Relegation,*
- d) *Exclusion,*
- e) *Suspension of no more than 24 months.*

6.1.6.5 *An appellate body may impose the following penalties for any offence committed under the GCRs Rules:*

- a) *A reprimand,*
- b) *A fine no greater than \$10,000,*
- c) *Relegation,*
- d) *Exclusion,*
- e) *Suspension,*
- f) *Disqualification.*

6.1.6.6 *In imposing a penalty under the GCRs Rules, an appellate body may:*

- a) *Fix a time for payment of any fine,*
- b) *Suspend the operation of any penalty unconditionally or subject to terms and conditions,*
- c) *Fix a time for the commencement of any penalty, but in the absence of such fixing, the penalty will commence from the moment of its pronouncement,*
- d) *Impose such conditions as are in the circumstances just and expedient,*
- e) *Require the offender to deliver any document, record, material, object, piece of equipment, machine or thing as is reasonably necessary to ensure:*
 - i) *That the penalty is carried into full force and effect,*
 - ii) *That all persons or bodies affected are made aware of the penalty, and*
 - iii) *That any consequential orders or directions are complied with.*
- f) *Make such consequential orders or directions as the appellate body considers necessary and reasonable for the full and effectual operation of the penalty.*

6.1.6.7 *Unless otherwise ordered:*

- a) *Every decision of an appellate body will take effect from the moment of pronouncement of the penalty,*
- b) *The operation of a decision of an appellate body will be suspended upon the lodging of a notice of appeal against the decision."*



51. 6.1.8 Default Penalties

“6.1.8.1 Any person or body having power to impose any fine under the GCRs Rules must fix a time no more than 30 days from notification within which the fine is to be paid.

6.1.8.2 A RCB Relevant Controlling Body may impose, as a penalty in default of payment of the fine within that time, a penalty of suspension.”

52. The Constitution of Motorcycling NSW Limited sets out a disciplinary process for its Board when complaints are received by it in respect to individual members and member clubs as follows:

“21 Discipline

Complaints

21.1 Any MNSW member may make a complaint, on the grounds stated in clause 21.3, in writing to the President or the CEO.

21.1.1 The MNSW board may also initiate a complaint on its own motion.

21.2 The recipient of the complaint must refer the complaint to the MNSW board within seven (7) days of receiving such complaint.

Grounds for disciplinary action on complaint

21.3 The grounds upon which a MNSW member or the MNSW board may make a complaint under clause 21.1 are limited to the following:

21.3.1 A MNSW member has breached its, his or her obligations under this MNSW constitution.

21.3.2 A MNSW member has breached the code of conduct or Member Protection Policy under the Manual of Motorcycle Sport.

21.3.3 A MNSW member has brought MNSW or motorcycle sport or recreation into disrepute.

21.3.4 A MNSW member has acted in a way that brings about MNSW staff welfare concerns.

21.3.5 In respect of a director, the matters mentioned in clause 9.10.

21.3.6 A MNSW member has breached the General Competition Rules of the Manual of Motorcycle Sport.

MNSW board to consider the complaints from MNSW members

21.4 The MNSW board must consider all complaints made under clause 21.1 against any individual MNSW member and determine the following:

21.4.1 Whether the complaint is frivolous or vexatious.

21.4.2 Whether the subject of the complaint is subject to disciplinary action taken by the MNSW affiliated club of which that person is a member.

21.4.3 Whether the MNSW member has been sufficiently disciplined by the MNSW affiliated club, of which the subject of the complaint is a member.

MNSW board response to a complaint about individual MNSW members

21.5 If the MNSW board resolves under clause 21.4.1 that the complaint is frivolous or vexatious, the MNSW board must dismiss the complaint and notify the complainant that no further action will be taken and the reasons the MNSW board has resolved to take no further action.

21.5.1 If the MNSW board determines under clause 21.4.2 that a complaint made by a MNSW member under 21.1 or a complaint made by the MNSW board under 21.1.1



is the subject to disciplinary action being taken by the MNSW affiliated club of which the person, the subject of the complaint, is a member, the MNSW board must either:

- 1. suspend any action until the disciplinary proceedings being conducted by the relevant MNSW affiliated club have concluded and the person who is the subject of the complaint has exhausted all avenues of appeal available to him or her under the constitution of the relevant MNSW affiliated club. When that has happened, the MNSW board must make a determination under clause 21.4.3.*
- 2. Conduct disciplinary proceedings concurrently with those being undertaken by the MNSW affiliated club.*
- 3. direct the relevant MNSW Affiliated club to suspend any disciplinary proceedings being conducted by the club pending disciplinary proceedings being conducted by MNSW and the person has exhausted all avenues of appeal available to him or her under the constitution of MNSW.*
- 4. If the MNSW board determines under clause 21.4.3 that any penalty imposed by the relevant MNSW affiliated club is sufficient, having regard to the conduct about which the complaint was made, the MNSW board must notify the complainant that the MNSW board will take no further action.*

21.5.2 If the MNSW board adopts option 1 of Clause 21.5.1 and determines under clause 21.4.3 that any penalty imposed by the relevant MNSW affiliated club is sufficient, having regard to the conduct about which the complaint was made, the MNSW board must notify the complainant that the MNSW board will take no further action.

21.5.3 Alternatively to clause 21.5.2, if the MNSW board adopts option 1 of Clause 21.5.1 and the MNSW board determines under clause 21.4.3 that any penalty imposed by the relevant MNSW affiliated club is not sufficient, having regard to the conduct about which the complaint was made, the MNSW board must notify the person who is subject to the complaint the process the MNSW board will establish to determine if any further penalty is justified.

MNSW board response to complaint about a MNSW affiliated club

21.6 If the subject of the complaint is a MNSW affiliated club, the MNSW board must notify the club the process the MNSW board will establish to determine if any penalty is justified.

Process for imposition of penalties

21.7 Subject to clause 9.11 and clause 15.13, the MNSW board will determine which of the following processes is most suitable for determining whether any penalty is justified in relation to any complaint made under clause 21.1 or a complaint initiated by the MNSW board under clause 21.1.1:

- The appointment of an inspector under the Manual of Motorcycle Sport to investigate the complaint and make recommendations to the MNSW board about any penalty to be imposed.*
- A hearing of the complaint and determination of any penalty by the MNSW board.*
- A temporary sub-committee under clause 9.6 the composition of which shall be determined by the MNSW board chaired by a MNSW Director to investigate the complaint and may:
 - o apply penalties in accordance with clause 21.8 if so, delegated in accordance with clause 9.6*
 - o make recommendations to the MNSW board about any penalty to be imposed.**
- The MNSW Board may direct that the complaint be heard by the Disciplinary Tribunal.*



- 21.7.1 *The MNSW board may impose a penalty in accordance with clause 21.8 on any MNSW member who is the subject of a complaint made under clause 21.1 or initiated by the MNSW board under clause 21.1.1 in the following circumstances:*
- *After receiving a report from an inspector appointed under clause 21.7 and after giving the MNSW member a chance to respond to the inspector's report.*
 - *After receiving a report from a temporary sub-committee that has been determined by the MNSW board to investigate a complaint.*
 - *After hearing the complaint and related evidence itself.*

Disciplinary penalties

21.8 *The penalties that may be imposed under this MNSW constitution include the following:*

- *In the case of a MNSW affiliated club, termination of MNSW membership.*
- *Monetary penalties.*
- *Restrictions or prohibitions on a person holding any elected position within MNSW, whether for all time or for a specified time.*
- *Suspension or revocation of any MA licence.*
- *Restrictions or prohibitions on a person participating in or attending events permitted by MNSW or MA.*

21.8.1 *Any penalty must be proportionate to the conduct on which the complaint is based having regard to all of the following:*

- *The degree of seriousness of the conduct having regard to the MNSW objectives and MNSW principles.*
- *Any admissions, apologies and undertakings, or refusal to admit, apologise or give undertakings by the MNSW affiliated club or person subject to the penalty.*
- *The degree of cooperation or refusal to cooperate by the MNSW affiliated club or person subject to the penalty.*
- *The past conduct of the MNSW affiliated club or person.*
- *The likelihood that the relevant conduct will recur.*
- *Any statements made by the MNSW affiliated club, its representatives or the person subject to the penalty outside the disciplinary proceedings that prejudice or compromise the disciplinary proceedings.”*

MAIN SUBMISSIONS OF THE PARTIES

Mr Parker, the Applicant Athlete

53. Mr Parker filed two documents in the NST Registry in support of his case including a letter to MNSW dated 24 November 2020 responding to the MNSW letter to him dated 20 November 2020⁸ and ‘Submission to Rebecca Ogge’.⁹
54. Mr Parker also had the opportunity at the hearing to make oral submissions however he relied upon his written submissions.

⁸ NST Bundle, File 2, page 3.

⁹ Ibid, page 5.



55. Mr Parker's written submissions are summarised as follows:
- i. That no one on the day of the event or since the incidents had obtained his "*side of events*".¹⁰
 - ii. That the other Parties involved in the incidents had already been penalised but he had not had the opportunity to tell his version.
 - iii. That it is the steward's job on the day to deal with incidents during the event and that at no time did the Steward speak to him on the day or following the event.
 - iv. The Steward did not see the incidents first hand and her report was based on other people's recollections.
 - v. That in respect to the allegation of him riding recklessly or dangerously¹¹, the proper procedure would have been to lodge a protest after the race. This was not done.
 - vi. He was injured during the incident by both Brother 1 and Brother 2 with his chin split from being repeatedly hit with a rock underneath his helmet and being kicked in the ribs.
 - vii. The Brothers punched and kicked him while he was on the ground.
 - viii. The Clerk of the Course, approached him and in frustration, Mr Parker says he pushed the Clerk of the Course away.
 - ix. Mr Parker denies running over the Clerk of the Course's foot.
 - x. In respect to the part he played in the events, he is apologetic and disappointed.
 - xi. He "*formally apologies to the clerk on the day whom I pushed in a moment of frustration. I understand this was unnecessary and am truly sorry*".¹²
 - xii. He offered Cessnock Motorcycle Club five (5) days of labour as an apology.
 - xiii. That the Welfare Complaints Policy, GCR's or MNSW Constitution were not adhered to by MNSW.
 - xiv. That with the Clerk of the Course being both the Clerk of the Course (the alleged victim to one incident) and a MNSW Board Member, there was a conflict of interest and bias with the MNSW Board determining the matter and imposing the sanctions on Mr Parker.

MNSW, the Respondent

56. MNSW filed written submissions on 31 May 2021¹³ and a further Submission in Reply dated 10 June 2021.¹⁴

57. MNSW relied on the following documents:

¹⁰ Letter dated 20 November 2020 from Michael Parker to MNSW, NST Bundle, File Two, page 3.

¹¹ GCR 6.1.1.1 g)

¹² NST Bundle, File 2, page 4.

¹³ NST Bundle, File 2, page 10.

¹⁴ Ibid, page 62.



- i. Two Incident Reports submitted by the Clerk of the Course dated 15 November 2020.
- ii. Steward Report dated 15 November 2020.
- iii. The notes of the investigator.
- iv. MNSW Board Minutes dated 17 March 2021

MA as a Party to the proceedings

58. MNSW submitted that it understood that MA is a named Party to the proceedings but it did not believe MA should be heard in relation to the substantive matters before the NST. MNSW submitted that MA's views were not relevant and should not be taken into account by the NST.

MNSW Procedure

59. It was submitted by MNSW:
- i. After the alleged incidents on 15 November 2020, the Steward/Referees Report was submitted to MNSW. It recommended that penalties be imposed on Mr Parker and it identified breaches of the GCRs.
 - ii. The GCRs provide that MNSW, as the relevant controlling body, may impose penalties under GCR 6.1.6.4.
 - iii. The MNSW Board communicated sanctions to Mr Parker on 31 March 2021 by email.
60. In reply to MA's submissions, MNSW submitted:
- i. The Clerk of the Course may lay charges and, after investigation, determine and advise those involved of penalties against them or may refer the matter to the Steward.
 - ii. The Steward may investigate the matter or refer to the Relevant Controlling Body.
 - iii. As the Clerk of the Course, he did not institute the prosecution.
 - iv. The Steward instituted the prosecution and due to the severity of the incident, the matter was referred to the Relevant Controlling Body, MNSW.
 - v. This was appropriate in the circumstances.
 - vi. The MNSW Board appointed an independent investigator to investigate the matter to allay the perception of a conflict of interest or bias with the Clerk of the Course being the victim and a Board Member.
 - vii. Mr Parker was notified by MNSW on 20 November 2020 of the alleged breach of the GCRs by him and was notified that MNSW was determining the matter.
 - viii. It is not correct to say that Mr Parker was not afforded the opportunity to make representation as to the nature and extent of the penalty. The letter to Mr Parker on 20 November 2020 states that the Steward took the view that the penalties available to her



were not sufficiently severe and provided Mr Parker an opportunity to respond which he did.

- ix. The GCRs do not require MNSW to hold a hearing. There is no basis for an assertion that MNSW has failed in its duty to hear and determine this matter.

Sanctions

61. The position of MNSW is summarised as follows:
 - i. That Mr Parker was the aggressor in the incident with the Brothers.
 - ii. That Mr Parker assaulted an individual whom he knew was the Clerk of the Course by punching him in the back of the head.
 - iii. That there can be no more significant incident in sport in Australia than an unprovoked assault of a volunteer engaged in the oversight of a community sporting event.
 - iv. That the Clerk of the Course did not suffer physical injury is “*utterly immaterial.*”¹⁵
 - v. That pursuant to rule 6.1.6.4 of the GCRs the Relevant Controlling Body (MNSW) may impose the following penalties for any offence committed under the GCRs:
 - a. A reprimand
 - b. A fine no greater than \$8,000
 - c. Relegation,
 - d. Exclusion,
 - e. Suspension of no more than 24 months.
 - vi. That when determining the matter, the MNSW Board showed no bias towards Mr Parker and that the Clerk of the Course as the complainant (and also a Board Member) took no part in the decision making process which imposed sanctions against Mr Parker.
 - vii. That the findings of the MNSW Board in respect to Mr Parker are appropriate.
 - viii. That the sanctions imposed on Mr Parker are reasonable, appropriate and justified.
 - ix. It is not relevant to compare actions taken against the Brothers with the actions taken against Mr Parker. Mr Parker assaulted a race official.
 - x. The NST, as the appellant body, has the ability under the GCRs to impose the following penalties for any offence committed under the GCRs Rules:
 - a. A reprimand,
 - b. A fine no greater than \$10,000
 - c. Relegation,
 - d. Exclusion,
 - e. Suspension,

¹⁵ NST Bundle, File 2, page 63.



- f. Disqualification
- xi. That the NST should dismiss the application by Mr Parker and it should increase the penalty to a fine of \$10,000 and suspend Mr Parker for a longer period than two years.

MA, Applicant Sporting Body

MNSW Process

It was submitted by MA:

- 62. That the GCRs direct that in the case of an altercation such as this, the Clerk of the Course should lay charges and after conducting an investigation, they should determine penalties and advise those involved of the penalties during the course of or prior to the conclusion of the Event.
- 63. Any person aggrieved by the Clerk of the Course's determination may lodge a protest to the Steward within 30 minutes. The Steward is then obliged to hear and determine the protest and in doing so adhere to the principals of natural justice.
- 64. The Clerk of the Course and the Steward did not lay charges on Mr Parker during the event. Charges were laid by the Steward after the event and without conducting an investigation or a hearing.
- 65. That the Clerk of the Course demonstrated a conflict of interest between (or an inability to differentiate) his role as the Clerk of the Course and MNSW Board Member.
- 66. The documents do not reveal that MNSW:
 - i. Afforded Mr Parker the opportunity to make representations as to the nature and extent of the penalty.
 - ii. Took into account mitigating factors put by, or on behalf of an offender.
 - iii. Gave notice to Mr Parker of the date and place of a hearing or advise him of any right to make representations or to be represented. As a result, MNSW failed in its duty to hear and determine this matter.

Sanctions

- 67. That the penalties imposed on Mr Parker by MNSW were not proportionate to the offence(s).
- 68. The punishment for an offence should be commensurate with the gravity and effects of the



offence.

69. MA takes very seriously, and views very seriously, assaults of any kind but, in particular where its officials are those assaulted.
70. MA contends that it is common ground that the Clerk of the Course was acting as an official at the Event and that Mr Parker made physical contact with him.
71. There is dispute as to the nature of that physical contact and as to its severity. MA notes that the documents suggest that:
- i. The Clerk of the Course suffered no personal injury. He was not knocked to the ground or knocked off balance.
 - ii. The police who attended the incident and were apparently requested by the Clerk of the Course to lay (criminal) charges against Mr Parker, did not do so.
72. The matter was capable of being dealt with on the day by the key officials (the Clerk of the Course and Steward).
73. Charges were laid by the Steward against Mr Parker five days post-Event, ample time for her to take into account anything Mr Parker had to say in his own defence. The Steward failed to do so.
74. The charges against Mr Parker were determined by MNSW without giving Mr Parker an opportunity to be heard.

MERITS

MA as a Party to the proceedings

75. The Tribunal addressed the Parties in response to MNSW arguing that MA's submissions should not be considered by it. As it had been accepted by MNSW that, MA, as the Applicant Sporting Body, is a Party to these proceedings, the Tribunal made it clear at the commencement of the hearing that it would consider submissions made by all three (3) Parties, but only submissions made in relation to issues relevant to this matter and not matters concerning other governance matters outside this matter.
76. This course was not opposed by the Parties.



Natural Justice

77. It is not disputed by the Parties that there were two incidents involving Mr Parker at the Cessnock Motorcycling event on 15 November 2020.
78. One incident involved Mr Parker and the Brothers, the other incident involved Mr Parker and the Clerk of the Course.
79. It is not disputed by the Parties that the alleged offences were committed during the course of an event.
80. The issues in this case are whether Mr Parker was afforded natural justice by MNSW when it determined the matter and imposed the sanctions, whether there was bias or a conflict of interest and whether the penalties are proportionate.
81. The GCR provides the procedure for prosecution for an alleged offence under GCR 6.1.1.1 (during the course of an event) namely: that if instituted by the Clerk of the Course, the matter be heard and determined by the Clerk of the Course, or be referred to the Steward; or if instituted by the Race Director, be referred to the Steward; or if instituted by the Steward, be heard and determined by the Steward or referred to the MNSW; or if instituted by a duly appointed Inspector and be heard and determined by the MNSW.¹⁶
82. The Steward in her Report dated 15 November 2020 has ticked the “charges laid” box and lists the charges against Mr Parker. It appears that the charges are based on the Report by the Clerk of the Course. It also provides that the Steward is “*recommending to MNSW to place in (sic) penalties on the riders*”.¹⁷
83. The letter to Mr Parker dated 20 November 2020 from MNSW, outlined a number of charges and stated:
- “The Steward has advised her determination with the following offences...”*
-At the Event the Steward had a range of penalties available to her however took the view that they were not sufficiently severe and she has referred the matter to Motorcycling NSW for determination”.*

¹⁶ GCR 6.1.1.3.

¹⁷ NST Bundle, File 2, page 19.



84. Upon reading the MNSW letter dated 20 November 2020, it is not clear from MNSW whether the Steward had “instituted a prosecution”. The meaning of the statement, “*The Steward has advised her determination with the following offences*” is not clear.
85. MNSW submitted that the Steward had instituted the prosecution and referred the matter to MNSW to be heard and determined.
86. It is MA’s view that the Steward’s report was not an institution of a prosecution.
87. When questioned at the hearing by the Tribunal, Mr Gardiner on behalf of MNSW accepted that the meaning of “instituted” in the GCRs was uncertain.
88. It is Mr Parker’s evidence that the Steward had not spoken to him on the day or since the event.
89. The Investigator, provided the following diary notes from the interview with the Steward on 12 December 2020¹⁸:

*“the Clerk of the Course and the Steward had a chat, the Clerk of the Course stated that this would all be handled by the SCB and that the Steward did not need to apply any penalties. The Steward made notes on her phone which she sent these to MNSW, she was later contacted and told that she had to lay the penalties, which she did. The Steward stated that she did nothing else as the Police over-rule (sic) her and she was not going to interfere. The Steward imposed penalties on the Brothers and Individual 13. The Steward wanted to impose a 2-year suspension and \$2,000 fine for Michael Mr Parker, she has had problems with him before and it is unacceptable to assault an official. The process of discussing penalties with the parties was not done because the paperwork had already gone into the office and the Clerk of the Course had stated that the Steward did not have to do anything further, that it would all be sorted out by the SCB. Email and phone call later instructing the Steward to issue penalties. The Steward could have told the people what was happening, but she did not want to get involved with what the Police were doing. The Steward stated that the Office (SCB) would organize a hearing in this case because the Police had been involved. If there is an incident on the track, the Clerk of the Course would radio to stop the rider as they are leaving the track to let them know of what has happened. Nothing was picked up in this race to be dealt with by officials prior to the fight.”*¹⁹

¹⁸ the Clerk of the Course.

¹⁹ NST Bundle, File 2, page 34.



90. The Steward admitted to the Investigator that she had imposed penalties on the other riders on the day including the Brothers but she had failed to inform the other riders of the penalty.
91. In addition, it appears that the Steward penalised Brother 1 and Brother 2 without hearing from Mr Parker who, on Mr Parker's evidence and other witness accounts²⁰, was the victim in the incident.
92. MNSW employee Individual 11 had a telephone discussion with the Investigator on 4 January 2021 as part of the investigation and Individual 11 told the Investigator:
- "when the Clerk of the Course complained about being assaulted, there was no obvious reason to do anything about this, it is up to the Clerk of the Course. The Report was collated and filed. Individual 6 then called the Steward to say that she should have imposed penalties, it is not up to MNSW".²¹*
93. It is the Tribunal's view that 'institution of a prosecution' is the laying of charges. At the very least, Mr Parker should have been notified by the Steward immediately of any charges on the day and that the matter had been referred to the MNSW for determination.
94. If it is the case that the Steward recommended for MNSW to charge Mr Parker and determine the matter, the GCRs do not provide MNSW the ability to institute a prosecution noting that MNSW can only hear and determine a matter if it is referred by a Steward or if instituted by a duly appointed inspector.²²
95. While it is also noted that the MNSW Board may initiate a complaint on its own motion²³, in this instance, it was not the position of MNSW that MNSW had initiated the complaint in accordance with its Constitution.
96. The Tribunal does not agree with the submission made by MA, that the Clerk of the Course should have instituted the prosecution and should have determined the case as Clerk of the Course.
97. It was appropriate for the Clerk of the Course not to institute a prosecution against Mr Parker as the Clerk of the Course on the day. However, it appears from the discussions the Investigator

²⁰ NST Bundle, File 2, page 32.

²¹ NST Bundle, File 1 page 40.

²² GCR 6.1.1.3 c) ii) and d).

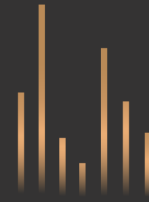
²³ MNSW Constitution, paragraph 21.



had with the Steward as above, that the Clerk of the Course involved himself with the decision making on the day by directing the Steward on her course of action.

98. It is the Tribunal's view that while the Clerk of the Course did not institute the prosecution, the Clerk of the Course interfered with the Steward's duties by telling her that she did not have to impose any penalties or do anything and the matter would be handled by MNSW. This was highly inappropriate as the alleged victim in the matter and as a Member of the MNSW Board.
99. Further, the handling of the matter by MNSW once it received the Steward's Report was inadequate.
100. The MNSW letter dated 20 November 2020 provided a list of offences. Those offences were never particularised for Mr Parker, nor was Mr Parker afforded any opportunity to hear any evidence against him and to respond to that evidence.
101. Mr Parker was invited to respond to the letter, which he did. The Tribunal does not accept the submission made by MNSW that he was afforded the opportunity to "*make representation as to the nature and extent of the penalty*".
102. Natural justice requires that a person charged with an offence is provided with the particulars of the charge and has an opportunity to respond to the charge.
103. The MNSW email to Mr Parker dated 31 March 2021 notified him of the sanctions imposed by MNSW without reasons. The list of Incidents/Complaints and Findings were not particularised.
104. The Tribunal accepts Mr Parker's evidence that he had never been contacted by MNSW about the matters save for the letter dated 20 November 2020.
105. There is no evidence that the MNSW Board having imposed the sanctions on Mr Parker considered the following which is required by its Constitution²⁴:
- *The degree of seriousness of the conduct having regard to the MNSW objectives and MNSW principles.*
 - *Any admissions, apologies and undertakings, or refusal to admit, apologise or give undertakings by the MNSW affiliated club or person subject to the penalty.*
 - *The degree of cooperation or refusal to cooperate by the MNSW affiliated club or person subject to the penalty.*

²⁴ MNSW Constitution, Paragraph 21.8.1.



- *The past conduct of the MNSW affiliated club or person.*
- *The likelihood that the relevant conduct will recur.*
- *Any statements made by the MNSW affiliated club, its representatives of the person subject to the penalty outside the disciplinary proceeding that prejudice or compromise the disciplinary proceedings”.*

106. In respect to the composition of the Board determining Mr Parker’s matter, it was evident from the Minutes of the Board Meeting that the Clerk of the Course had excused himself from the meeting.
107. When questioned by the Tribunal at the hearing, the Clerk of the Course advised that he had left his computer while the Mr Parker decision was made (the meeting was by video).
108. With the decision being made by the colleagues of the Clerk of the Course, the Tribunal finds, on the balance of probabilities, bias or conflict of interest, or both.
109. For the reasons above, the Tribunal is satisfied that on the balance of probabilities, Mr Parker was denied natural justice and the MNSW decision dated 31 March 2021 should be set aside.

Sanctions

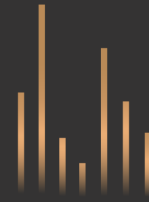
110. It was agreed by the Parties that the Tribunal should consider penalties against Mr Parker in the event that MNSW decision was set aside.
111. The offences alleged by MNSW to have been committed by Mr Parker are:

“6.1.1.1

Any promotor, club, licensee, rider, member or support person, who:

- a) Breaches any of the GCRs Rules, Policies or any SR Supplementary Regulations, Final or Riders briefing instructions,*
- b) Acts in a manner which is prejudicial to the sport or breaches the Code of Conduct,*
- c) Behaves in an offensive or abusive manner toward any competitor or any official exercising authority under the GCRs Rules,*
-*
- g) Acts in a reckless or dangerous manner while participating,*
- h) Disobeys the lawful direction, order or requirement of any Controlling Body, appellate body, inspector or official under the GCRs these Rules,*
-*
- j) Assaults any participant or spectator or any official exercising authority under the GCRs Rules”*

112. Mr Parker submitted at the hearing that he should have been suspended for a total of three (3) months for his involvement in both incidents. He asserted that he was the victim in the



Brothers' incident and that he should be suspended for 3 months for pushing the Clerk of the Course .

113. MA did not make any submissions as to penalty.
114. MNSW urged that the Tribunal impose the maximum penalties in accordance with GCR 6.1.6.5, a \$10,000 fine and a period of suspension for more than two years.
115. In his discussions with the Investigator, Mr Parker provided the following in respect to the Brothers' and the Clerk of the Course incidents:

“During the first lap, on the first bend, Mr Parker came up the inside and he and Brother 1 bumped into each other, Brother 1 came off his bike. When Brother 1 got back on his bike, he cut across the track, trying to make up time for when he was down. Mr Parker cut him off, not letting him jump in front. Then Brother 1 came across on the next bend and ‘T-Boned Mr Parker I’. Both riders came off their bikes at that time. Mr Parker got back on his bike and kept riding. A couple of bends later, Mr Parker was told to stop his bike by Individual 7. Mr Parker stopped and saw that Brother 2 had his foot caught in the spokes and under the mud guard of Mr Parker rear wheel. He stopped the bike to get Brother 2’ foot out then kept riding. as he was coming off a jump, in the next lap, both brothers were at the side of the track where Brother 2’ foot had been caught, one ran across and tried to punch him off his bike, the other rode over and knocked him down and they were throwing stones at him, pushing rocks under his helmet. Mr Parker’s armour was damaged, and his helmet scratched. Mr Parker was bruised down his ribs. The race finished during the time that this was happening. The marshals (sic) came down and pulled the boys off Mr Parker. Not stopping anything but the Clerk of the Course yelled at both Mr Parker and Individual 4 who had run over by that time, Mr Parker felt like he was being attacked by the Clerk of the Course, he was frustrated and upset, told the Clerk of the Course to leave him alone, then as the Clerk of the Course turned his head, Mr Parker pushed the Clerk of the Course away from the back of the head. Mr Parker denies riding over the Clerk of the Course’s foot.”²⁵

116. Brother 1 was interviewed by the Investigator on 12 December 2020 in respect to the incident with Mr Parker and the diary notes were recorded as follows:

“Brother 1 was riding and saw that Brother 2 had his leg caught under the swing arm on the back of Mr Parkers bike. Brother 1 and Individual 8 went over to pull Brother 2’s leg from the bike. Stated that Brother 2 had hurt his hands trying to get his leg out of the bike. After Brother 2 was freed, he was distraught and ran onto the track to ‘Stick his finger up at Mr Parker’. Mr

²⁵ NST Bundle, Volume 2, page 32.



Parker then said to Brother 2 'Do you want a go, do you want a go?' Flag marshal (sic) and others came over. Brother 1 helped his brother by grabbing hold of Michael's chin strap and throwing him to the ground, this is when the officials came over to break it up. Brother 1 states that the Clerk of the Course came over, told them all to move away and wait."²⁶

117. Brother 2 was interviewed by the Investigator on 12 December 2020 in respect to the incident with Mr Parker and diary notes were recorded as follows:

"I took some photos of the racing clothes that had been damaged on the day. Brother 2 did not have any first aid treatment, although he did show me some burn scars on his arm which he said came from trying to get his foot out. The burn scars matched burns on the clothing.

Brother 2' foot was trapped in Michael's bike, Brother 2 was dragged behind the bike and Mr Parker kept trying to go, this meant that Brother 2' foot was being trapped further from the revving of the bike, the wheel dragging the leg in. Mr Parker stopped, got Brother 2' leg out of the bike, then Mr Parker continued on. Brother 2 stated that once the next lap was going around, he pointed at Mr Parker and yelled a few swear words, Mr Parker then stopped, got off his bike and went over to him, told him 'I will F...ing kill you'. Brother 2 got angry, grabbed Mr Parker by the helmet and pulled him to the ground. Some wrestling/fighting on the ground and then someone came over and broke the fight up."²⁷

Acts in a reckless or dangerous manner while participating

118. In the Steward's discussions with the Investigator, the Steward stated:

"If there is an incident on the track, the Clerk of the Course would radio to stop the rider as they are leaving the track to let them know of what has happened. Nothing was picked up in this race to be dealt with by officials prior to the fight."

119. Mr Parker has denied that he acted recklessly on the track and submitted that as soon as he was alerted to Brother 2's foot being caught in his bike he stopped to release it.
120. Mr Parker also submitted that if there was any complaint about his riding on the day, it should have been dealt with on the day.
121. The Tribunal is not satisfied that there is sufficient evidence before it to support the charge that Mr Parker acted in a reckless or dangerous manner while participating and agrees that it should have been dealt with on the day in accordance with the GCRs.

²⁶ Ibid, page 33.

²⁷ NST Bundle, Volume 2, page 32.



The remaining offences

122. The Tribunal accepts the admissions of both Brother 1 and Brother 2 of their physical conduct towards Mr Parker and the evidence from Mr Parker of his injuries.
123. If it is accepted that Mr Parker swore at Brother 2 by saying “*I will f..ing kill you*”,²⁸ at its highest Mr Parker has behaved in an offensive or abusive manner toward a competitor²⁹ thereby also offending GCR 6.1.1.1 a) and possibly GCR 6.1.1.1 b).
124. It is the Tribunal’s view that Mr Parker swearing at Brother 2 constitutes a breach of GCR 6.1.1.1 c) which also triggers the breaches of GCR 6.1.1.1 a) and b).
125. The Tribunal has considered both Mr Parker and the Clerk of the Course’s evidence in respect to the physical contact of the Clerk of the Course by Mr Parker and the claim by the Clerk of the Course that Mr Parker disobeyed his direction.
126. Mr Parker immediately admitted by way of his letter to MNSW dated 24 November 2020 to “pushing” the Clerk of the Course.
127. Mr Parker’s evidence has been consistent and when cross-examined at the hearing, he was steadfast in his responses that he pushed the Clerk of the Course in the back of the head “*in frustration*” when the Clerk of the Course had intervened with the scuffle between Mr Parker and the Brothers. Mr Parker admitted to knocking the Clerk of the Course’s hat off his head.
128. The Clerk of the Course in his Report as Clerk of the Course dated 15 November 2020 says he “*felt what I thought was a punch to the back of my head*”.
129. It is considered that if one was punched in the back of the head or neck, it would be felt as a punch.
130. While the Tribunal takes into account the submissions by MNSW of the seriousness of punches in the community, it is evident from all witnesses that the Clerk of the Course did not stumble or fall, he was not injured and the only consequence was that his hat fell from his head.

²⁸ Ibid, page 33.

²⁹ GCR 6.1.1.1 c)



131. A number of witnesses interviewed by the Investigator said they saw Mr Parker punch the Clerk of the Course but to varying degrees of force. The evidence of these witnesses was not tested.
132. It is accepted that Mr Parker did make physical contact with the Clerk of the Course but it is found to be of low force and contact.
133. In respect the allegation that Mr Parker rode over the Clerk of the Course's foot, there is no evidence or medical evidence of any injury to the Clerk of the Course's foot. All evidence before the Tribunal has been considered including the investigation resulting in Mr Parker denying the allegation and Mr Parker's sister, Individual 4 supporting Mr Parker's denial and having the incident on video.
134. The contact to the Clerk of the Course's head, constitutes an assault and with Mr Parker admitting to the contact of pushing and riding off from the Clerk of the Course, it is found that Mr Parker is guilty of breaching GCRs 6.1.1.1 (a), (b), (c), (h) and (j).
135. While it is accepted that the Mr Parker's contact to the Clerk of the Course was of low force, it is considered more serious to make contact with an official.
136. It is the Tribunal's view that the Steward could have dealt with the matter on the day thereby imposing penalties in accordance with GCR 6.1.6.3.
137. The maximum fine a Steward can impose is \$4,000. The maximum suspension which a Steward can impose is six (6) months. Mr Parker has now been suspended since 20 November 2020 (over seven (7) months), therefore a fine which would ordinarily be considered appropriate against an official should be reduced since Mr Parker has been suspended for an additional month and has paid the NST application fee of \$500.
138. In summary, when considering the sanction for Mr Parker, the Tribunal has also taken the following into account:
- i. GCR 6.1.6.1 and GCR 6.1.6.5.
 - ii. Mr Parker's admissions.
 - iii. Mr Parker's multiple apologies and expressed remorse for his involvement.
 - iv. The injuries Mr Parker sustained in the first incident.
 - v. The Clerk of the Course was not injured.
 - vi. The Clerk of the Course was a volunteer official.
 - vii. The overall deterrence in the sport from future incidents.



- viii. Mr Parker's antecedents including his age of 29 years, he is a father of a young child, he earns around \$750 per week as a spray painter and most of his income pays his mortgage for his family.
- ix. Mr Parker is an amateur rider.
- x. Mr Parker's submission that at the time of the incident he did not know the Clerk of the Course was an official.
- xi. The Brothers' admissions of their involvement and conduct in the first incident.
- xii. The previous penalty range imposed by the Steward and MNSW on the Brothers.
- xiii. There was no evidence before the Tribunal of previous like-natured offending by Mr Parker.
- xiv. The application fee paid to the NST by Mr Parker.
- xv. That the Police were called and the race day was terminated following the incidents.
- xvi. Neither Party referred to any authorities as to sanction.

THE TRIBUNAL THEREFORE DETERMINES:

- 139. The sanctions imposed on Mr Parker on 31 March 2021 by MNSW be set aside.
- 140. Mr Parker be suspended for 6 months from 20 November 2020 from participating in any competition as defined by the GCRs.
- 141. Mr Parker not be further sanctioned for his involvement with Brother 1 and Brother 2 noting that Mr Parker has already served over seven (7) months of suspension for both incidents.
- 142. Mr Parker be fined \$1,500 for the incident with the Clerk of the Course payable to MNSW within 30 days.

Date: 1 July 2021



Rebecca Ogge