

BEFORE THE MNZ BOARD

BETWEEN

GUY MEREWETHER in his capacity as an
MNZ Steward
Complainant

AND

TIM CURR
Respondent

Hearing: 22 December 2007 (by telephone conference)

Board: S Perry, N Boyd, A Cressey, D Morris

Decision: 16 January 2008

DECISION OF THE MNZ BOARD AS TO PENALTIES

Penalty:

- A. 1 year's suspension of membership concurrent with B below.**
- B. 2 year's suspension of membership plus 1 year partial suspension of competition licence (refer below for specific details)**
- C. Fine \$150.**

Introduction

[1] In its decision dated 27 December 2007, the MNZ Board upheld allegations against Tim Curr ("Tim") that:

- (a) He ignored the directions of an MNZ Steward to stop and retire from a race. This direction was communicated to him on at least three separate occasions and by 3 separate means. Tim acknowledged to the Board that he understood what the Steward was directing him to do on each occasion;
 - (b) In ignoring the directions of an MNZ Steward, he rode dangerously/recklessly by charging at, or close to, the Steward at speed on his bike on at least two occasions; and
 - (c) He rode carelessly in the pits and, in doing so, nearly collided with a child on a bicycle; and
- [2] Two further allegations that he had: (1) assaulted a Steward, and (2) uplifted his competition licence before the event had finished, were dismissed. Tim was given until 10 January 2008 to make any submission(s) as to what penalty (if any) is appropriate.
- [3] The Board subsequently received submissions from Tim and his father, Noel Curr. Unfortunately, the submissions did not really address the issue of penalty, but instead focused on why they (Tim and Noel) believed the factual findings and conclusions contained in Board's decision dated 27 December 2007 were incorrect.
- [4] It is clear from the submissions received, and other documentation that Tim and Noel have forwarded, that Tim has no remorse whatsoever for his actions, and believes that he was fully justified and entitled to behave as he did. He appears to regard the allegations as trifling and the disciplinary process as a waste of everyone's time. He even goes so far as to ask in his submissions, somewhat arrogantly, "*why are we here*"?

- [5] The Board rejects Tim's assessment of the situation and regards the allegations as very serious.

Charging the Steward

- [6] Of the three allegations upheld, it regards (b) – charging the Steward - as the most serious because of the potential for the Steward to be seriously injured or worse if he was hit by Tim's speeding motorcycle. For the purposes of penalties, the Board therefore treats (b) as being the primary offence.
- [7] In determining the appropriate penalty for this offence the Board is mindful of its legal obligation to ensure that its events are run safely, and the need to protect persons attending (including its officials) from harm. Given the seriousness of the offence, plus Tim's obvious lack of remorse or comprehension that what he did was wrong, the Board believes that suspension of membership is warranted in the circumstances.
- [8] Tim's membership of MNZ is therefore suspended for 2 years from 30 November 2007. After that time, his membership may be reinstated but his competition licence will be partially suspended for 1 year in that he will only be allowed to compete in club events during this period ("the Probationary period"). For clarity, he will not be allowed to compete in any International, National or Island Championship, the New Zealand Grand Prix, or any major event as defined by the MNZ Manual of Motorcycle Sport. After the Probationary period, Tim's full competition licence may be reinstated provided that he (1) has not been the subject of any further disciplinary action, and (2) produces a letter from the Committee of the Marlborough Motorcycle Club (or whatever other Club he holds his MNZ licence through) attesting to his good character and conduct during the Probationary period.

Ignoring Steward's Direction

- [8] The Board also regards this offence as serious particularly because Tim was directed on three different occasions and by three separate means to stop and retire from the race, but he deliberately defied the Steward.
- [9] In mitigation, Tim has explained to the Board that he defied the Steward because he considered that the Steward's original decision to disqualify him from the race was wrong because he did not assault the Steward. While, after the benefit of a full investigation, the Board has determined that Tim did not assault the Steward, Stewards are often required to make decisions based on the facts known to them at the time. Incorrect decisions can, and often will, result but these can be addressed and corrected through the normal appeal process. This is the course that Tim should have adopted instead of taking matters into his own hands. The Board cannot condone competitors taking matters into their own hands as this may invariably lead to the Steward losing control of the event, and the event descending into chaos and disorder. Safety may also be compromised. Motorcycle racing is a dangerous sport and MNZ takes its legal duty to manage any associated risks very seriously and will it continue to do so.
- [9] In mitigation, Tim also asserts that he was entitled to ignore the 'lap top bag on the pole' because it was not a proper black flag. The Board considers that the rules relating to communications and flags etc need to be interpreted and applied with common sense. Overly technical arguments concerning flag dimensions etc should not prevail over the safe and orderly conduct of events. Reasonable compliance with flag dimension requirements etc is sufficient compliance. In this case, not only would the reasonable person have understood that the 'black lap top bag on the pole' represented a black flag and that the Steward was directing him to stop and retire from the race, but Tim acknowledged to the Board that he actually knew that this was the case.. Of course, the direction to stop and retire from the race was also communicated to Tim by two entirely separate means.

[10] All in all, the Board considers that suspension of membership for this offence is also warranted. Tim's membership of MNZ is therefore suspended for 1 year from 30 November 2007 to be served concurrently with the penalty the Board has imposed above.

Riding Carelessly in the Pits

[11] The Board accepts that this was a careless, and not a deliberate act. The Board also accepts that, when it comes to riding carelessly in the pits, Tim is not the sole offender. Wheelies, excessive speed, and riders riding (and in some cases carrying pillion passengers) without wearing a helmet are ongoing problems, and ones that MNZ needs to address in terms of its risk management policies and procedures.

[12] The Board does not want to single Tim and make an example out of him, and therefore considers that a modest fine in the range of \$150 to \$250 is appropriate in the circumstances. The Board notes that Tim spent around \$70 in cell phone charges participating in the telephone conference with the Board. Taking this into account, together with the other factors previously mentioned, the Board hereby imposes a fine of \$150.