

RACING APPEAL PANEL NEW SOUTH WALES

IN THE MATTER OF THE APPEAL OF JACKSON MORRIS

Heard at Racing NSW Offices on Thursday 9 January 2020

APPEAL PANEL: Mr T Hale SC (Convenor)

Mr P Losh

Ms C Richards

APPEARANCES: Mr W Birch appeared for the Stewards

Mr T Crisafi appeared for the Appellant J Morris

REASONS FOR DECISION

1. **CONVENOR:** Jackson Morris, the Appellant, is a licensed jockey. On Thursday, 19 December 2019 he was engaged to ride a race meeting held at Wyong Race Club.
2. Prior to the running of race 7 an incident or incidents took place involving the Appellant. On 23 December 2019 the Committee of Stewards, comprised by Mr Birch, Chairman, and Mr Albrecht, conducted an inquiry into the incident. As a result of the inquiry the Appellant was charged with and found guilty of a breach of AR 115(1)(a) and AR 232(b).
3. AR 115(1)(a) provides:
*(1) A jockey or apprentice jockey must not:
(a) engage in misconduct.*
4. AR 232(b) provides:
*A person must not:
(b) fail or refuse to comply with an order, direction or requirement of the Stewards or an official.*
5. In respect of the breach of the misconduct charge under AR 115(1)(a) the Appellant was suspended for a period of one calendar month, commencing on

that day and expiring on 23 January 2020, so that he was free to ride on 24 January 2020.

6. In respect of the charge under AR 232(b) the Appellant was fined \$1,000, which fine was to be wholly suspended on the condition that he does not offend the same or similar rule for a period of 12 months.
7. The Appellant initially appealed against both conviction and severity of penalty in respect of both charges pursuant to section 42 of the *Thoroughbred Racing Act 1996*. The appeal is by way of a rehearing.
8. Furthermore, the Appellant sought a stay of the penalties pending the determination of the appeal. On 31 December 2019 I gave my reasons for declining the application for a stay.
9. When the appeal was called on for hearing today, Mr Birch appeared for the Stewards and Mr Crisafi, with leave, appeared for the Appellant.
10. At the hearing before this Panel the Appellant pleaded not guilty to the first charge, that is, the charge under AR 115(1)(a). He pleaded guilty to the charge under AR 232(b). Initially he was only going to contest the severity of penalty in relation to that charge.
11. On behalf of the Panel, I informed Mr Crisafi, for the Appellant, that the Panel had given preliminary consideration to the material in evidence before the Stewards. I drew to Mr Crisafi's attention that, having read that material, but not, of course, having heard all submissions or any additional evidence, we had formed the view that in respect of the second charge it may be appropriate to impose a greater penalty than that imposed by the Stewards. I drew this to the attention of Mr Crisafi as a matter of procedural fairness, consistently with authority and principle: see *Parker v Director of Public Prosecution* (1992) 28 NSWLR 282. As a consequence of bringing this to the attention of Mr Crisafi, the Appellant withdrew the appeal in respect the second charge, that is the charge of breaching AR 232(b). Accordingly, therefore, the penalty imposed by the Stewards in respect of the second charge stands.

12. In relation to the first of the charges, that is, the misconduct charge under AR 115(1)(a), the Appellant maintains his plea of not guilty.
13. The particulars of the misconduct charge under AR 115(1)(a) are as follows:

“The Stewards specify that at the Wyong Race Club on Thursday 19 December 2019 you did engage in misconduct by saying words to the effect to Stipendiary Steward Tilan Lee, “Go and get fucked and the Stewards also can go and get fucked.”
14. We received into evidence exhibit A, which was a bundle of material which was before the Stewards, including the transcript of the hearing and also the Notice of Appeal. We also received as exhibit B the Stewards’ race day rundown for Wyong on Thursday, 19 December 2019 and as exhibit C a further document from the Wyong Race Club in relation to each of the races.
15. We received into evidence, on behalf of the Appellant, exhibit 1, being a document entitled “How Does Mild Dehydration Affect the Body”; exhibit 2, an email sent by Mr Crisafi to jockeys, referring to the Level 2 heat policy, which applied to the race meeting at Wyong on the day in question; and as exhibit 3 a letter from John Thompson of John Thompson Racing Stables, dated 7 January 2020.
16. The factual background to the charge is that the Appellant had been engaged to ride the horse *Quick Finance* in race 7. This was a horse which he had regularly ridden in trackwork. Prior to the running of race 6 the Appellant approached the Stewards with a request to be able to ride the horse half a kilo overweight. His submissions include that, due to the bushfires, he was caught in traffic, which resulted in him being unable to spend enough time in the jockeys’ room to lose the necessary weight. His request was declined, with the consequence that the Appellant had to be replaced by another rider. It was the Appellant’s reaction to this that was the subject of the charges.
17. The facts of what occurred are set out in detail in the statement of Mr Tilan Lee of 23 December 2019. There does not appear to be any substantial dispute as to the facts. The trainer of *Quick Finance*, Kevin Moses, asked Mr Lee, a steward, if he could see the Appellant in the jockeys’ room. Mr Lee told the Appellant that Mr Moses wanted to see him. Mr Lee’s evidence was:

“After finalising the rider replacement with Mr Moses, he did ask me if he could see Jackson Morris. I responded, ‘Yes, that is fine. Let me go and get him for you.’ Mr Moses did continue to follow me into the jockeys’ room. I did then tell Jackson Morris that Mr Moses wanted to see him and Jackson then did turn around and say numerous comments that I cannot be sure what they were. Mr Morris did continue to become quite angry, whereby he did turn around and say to me to go and get fucked and that, ‘The Stewards can go and get fucked’, as we are always picking on him. Following this incident Jockey Valet Chris Barrett did get up and try to calm Jackson Morris down, but had no success and walked away.”

The Appellant’s swearing at Mr Lee formed the basis of the misconduct charge, as the particulars show.

18. The evidence of the Appellant is generally consistent with the account, although it has a different emphasis and puts what was said in a slightly different context. The Appellant said he was informed by one of the Stewards, Daniel Carr, who the Appellant described as the “ginger-haired steward with the beard”, of the decision of the Stewards that the Appellant’s application had been refused and that he would not be permitted to ride. He said that at that point he accepted the decision. His evidence is that that the Steward came over to him and the Appellant said, “Oh, I’m sweet to ride that half over, aren’t I” and the Steward replied, “Jackson, we’re going to take you off it” and the Appellant’s evidence is as follows:

“He come in and said, ‘Jackson, we’re gonna take you off it.’ I said, ‘Are you fucking kidding me?’ I said, ‘Is he serious?’ I said, ‘Hughie Bowman’s just rode half over. They’re all allowed to ride half over. We’re on level 2. Are you kidding me boss?’ He goes, ‘No, they’re gonna replace you on it.’ I just went, ‘Oh mate. I’m just going home. I can’t believe this is happening to me.’ Never said nothing bad to him. He was nice when he come in. He was nice when he come in. He sort of, I think he felt after a little bit sorry for me. No offence, but I think he felt a little bit sorry for me because his words were, ‘Mate, I’m not running the show today. I’m sorry.’ And I’ll tell you the honest truth, that’s what his words were. I said, ‘Yeah, no dramas boss.’ I said, “I’m just going home.’ I said, ‘I’m over it.’ I said, ‘Before I lose my shit.’”

Of significance is the fact that having been informed by Mr Carr of the Steward’s decision the Appellant appeared to accept it with the words “Yeah, no dramas, boss. I’m just going home.”

19. It was the exchange with Mr Lee which was the subject of the charge. This occurred later. According to the Appellant, the cause of his outburst was the attitude of Mr Lee. The Appellant considered that, given Mr Lee's young age, he should have been more deferential. His evidence was:

“And then that wasn't a problem. I started, I had another drink, started packing up and then, initially I was shitty at Kevin Moses because Mr Albrecht actually said to me, 'Oh yeah, Jackson, that'll be all right. We'll just okay that with the trainer.' And I said, 'Yeah, sweet as.' Well, I actually thought at first it was Kevin Moses said no, and I was filthy on Kevin Moses over it. I just thought, 'You low piece of gear. I'll never ride your nag pulling horse again in my life.' I was filthy at Moses over it. And then Tilan come in with Moses, the first one time, I think. He come in with Moses and he goes, 'Kevin wants to see you.' I said, 'I don't want to see Kevin.' I said, 'Mate, Kevin can go and see whoever he's getting to ride his horse.' I said, 'I can't believe you wouldn't let me ride it half over.' He said, 'No, I wanted you to ride it half over.' He said, 'I asked them for you to ride it half over.' I said, 'What?' He said, 'I asked them for you to ride half over.' I said, 'Oh, this is a fucking joke.' I said, 'Hughie Bowman and everyone, they're getting to ride half over.' I said, 'When it comes to me I don't. It's just a joke. It's unfair. All the time. I'm sick of this shit.’”

Which concluded with the Appellant saying:

“Anyway, then Tilan looked at me half smart and goes, 'Mate, just get in the room. We've got to sort you out in the room.' I said - meaning the Appellant - 'I'll tell you what you can do, you can go and get fucked, son, and so can the rest of the Stewards because I'm going home because I've got the fucking shits', were my exact words. I was filthy and I mean deadset filthy.”

As can be seen, the Appellant fully accepts that he swore at the Steward when that Steward was carrying out his business.

20. The Stewards submit that, based upon this evidence, the conduct of the Appellant came within Rule 115(1)(a) which, as I have pointed out, is that a jockey must not engage in misconduct. The submissions of Mr Birch, on behalf of the Stewards, is that it is almost self-evident that for a jockey to swear at a steward in the circumstances, which is in large measure admitted, comes within the definition of “engaging in misconduct”.
21. Mr Crisafi, on behalf of the Appellant, says that there were extenuating circumstances. He refers to a number of matters, such as the impact of

dehydration, the frustration of the Appellant at the time, the impact of his wasting for the purposes of taking the ride.

22. The Panel does not see that those extenuating circumstances in any way diminish or, indeed, are of any particular relevance to the question of whether or not the Appellant, as a jockey, engaged in misconduct. In our opinion what the Appellant did was clearly misconduct. His conduct was unacceptable and, in our opinion, it comes within Rule AR 115(1)(a). Accordingly, therefore, the conviction of the Stewards is confirmed and the appeal in relation to conviction is dismissed.

(The parties made submissions on penalty)

23. Earlier today I gave the reasons and the orders in relation to the Appellant's appeal in relation to conviction and I there set out the relevant facts. It is now for this Panel to determine the appeal on penalty. We have heard submissions on behalf of both the Appellant and the Stewards. The submissions on behalf of the Appellant may be summarised this way.
24. Firstly, the Appellant apologised to Mr Lee for his conduct on the day, albeit this was only today.
25. Secondly, the Appellant has had few rides. He is struggling financially and under some stress due to personal circumstances.
26. Thirdly, the outburst, which we have found to amount to misconduct, was a consequence of his disappointment and frustration. He only had one ride on that day. It had taken him some time to get to the racecourse. He had realistic prospects of winning, with the consequential financial benefits which would flow to him and, in circumstances that he found difficult to accept, that ride was taken away from him.
27. Fourthly, he said that he must have been affected by the substantial weight loss, wasting and dehydration that he had undertaken. He had not eaten since Monday and he had lost approximately 6 kilos in 24 hours.
28. Fifthly, he snapped at Mr Lee, who is a Steward. He did not say anything inappropriate to Mr Carr, the Steward who delivered the decision of the

Stewards that his application to ride half a kilogram over was not to be accepted.

29. Sixthly, Mr Crisafi also points out the fact that the Appellant was stood down on 19 December and has not ridden since then.
30. Seventhly, Mr Cristafi points to the fact that the Appellant has now agreed to see a nutritionist in order to get proper advice about wasting and weight loss and what he in fact should be eating in order to achieve the appropriate weight necessary for him to ride.
31. Finally, he points to the fact that there have been no similar breaches of misconduct by the Appellant in recent times.
32. Mr Birch, in his very helpful submissions, responds this way. Firstly, in relation to the apology, he points out there was little in the way of contrition. The apology to Mr Lee only came today and no apology was offered even at the hearing that took place on 23 December.
33. Secondly, in relation to the fact that the Appellant has few rides and is in difficult and personal circumstances, Mr Birch says that although these matters are not directly reflected in the reasons of the Stewards, they were nonetheless well known to the Stewards and were taken into account. They were amongst the reasons why the penalty was relatively low. Ultimately, it is for this Panel to determine for itself the appropriate penalty, although we take into account the decisions and reasons of the Stewards. We take into account the personal circumstances of the Appellant and in doing so we note that so also did the Stewards.
34. Thirdly, in relation to the argument about his disappointment, Mr Birch submits that that cannot be an extenuating factor. There will always be disappointments and jockeys and other licensed persons cannot be excused from misconduct simply because they are disappointed. We recognise the force of that submission. We accept that the Appellant's outburst was inexcusable and cannot be tolerated. Nonetheless, in our view the fact that the outburst was not calculated but spontaneous and borne out of disappointment is a relevant factor, although of very limited weight.

35. Fourthly, in relation to the issue of the weight loss and its consequences of that, Mr Birch points to the fact that this was an informed and deliberate action of the Appellant. He knew its consequences. He had been riding for 20 years and he understood the impact of sudden weight loss. He must have been aware that losing 6 kilos in 24 hours must have had an impact, as was the fact that he had not eaten since Monday. He also refers to the fact that, when the Appellant was asked about obtaining medical advice at the racecourse about the effects of his weight loss, he said he did not consider that this was necessary. He considered that once he had a can of Coke he was in an appropriate frame of mind and physical state to have ridden. Mr Birch submits that having regard to this evidence it must be accepted that the Appellant's outburst was not affected by his mental state in consequence of his weight loss.
36. Mr Birch also refers to the fact that the evidence establishes that on average the Appellant had two rides per week. So for a period of suspension of four weeks, that is only approximately eight rides and is in that sense an equivalent of a monetary penalty of about \$1,600, which is relatively lenient.
37. In relation to the issue of standing down from 19 December, Mr Birch says that this was related to the second charge of failing to follow a directive. He therefore says that the fact that the Appellant was stood down from that date is not relevant to the appropriate penalty for the first charge.
38. As I say, we have found the submissions of both the Appellant and the Stewards very helpful. We have taken them into account. We also note that the Appellant has now agreed to see a nutritionist in order to get proper advice about wasting and weight loss and what he in fact should be eating in order to achieve the appropriate weight necessary for him to ride. We see this as important for his future health.
39. On balance we agree with the approach and submissions of the Stewards, subject to the reservations to which I have referred. In the circumstances, a period of suspension of one month is appropriate. However, given that the Appellant was stood down on 19 December 2019 for matters that were related to his conduct, albeit partly in relation to the charge of failing to follow a

direction, we consider it would be appropriate if that period of one month suspension were to commence on 19 December 2019.

40. Therefore, we would allow the appeal in relation to the suspension, but only with respect to the date upon which it was to commence. The period of suspension of one month will commence from 19 December 2019 and expire on 19 January 2020, with the Appellant free to ride on 20 January 2020. \$50 of the deposit is refunded.
41. The Panel's orders are as follows:
 - (1) The Appeal against finding of guilt is dismissed.
 - (2) The finding of guilt is confirmed.
 - (3) The Appeal against penalty is dismissed.
 - (4) The period of suspension of one month is confirmed.
 - (5) The commencement of the suspension is to be from 19 December 2019, expiring on 20 January 2020, on which day he may ride.
 - (6) \$50 of the Appeal deposit is refunded.
