

RACING NSW – STEWARDS REPORT



INQUIRY INTO THE CONDUCT OF A NUMBER OF RACING PARTICIPANTS IN BALLINA

Racing NSW Offices
Via Videoconference

5 December 2023

Stewards: S G Railton (Chairperson)
T L Vanderstok

In January 2023, Racing NSW Integrity Department commenced an investigation into the alleged conduct of industry participants in Ballina including licensed trainer, Mr Ethan Ensby. The investigation expanded to include an anonymous complaint received by Racing NSW in respect of animal cruelty allegations made against Mr Ethan Ensby.

On 21 April 2023, Racing NSW Stewards opened an inquiry into complaints made against licensed trainer Mr Ethan Ensby in respect of his conduct towards licensed trainer Mr Tracy Timbery on 15 December 2021, his conduct towards licensed trainer Mr Daiki Chujo on 23 August 2022 and towards Ballina Jockey Club Official Mr Lachlan Metcalf on 6 July 2022. A further complaint against Mr Ensby in relation to his conduct towards Mrs Tracy Timbery and Mr Paul Timbery on an unknown date was also the subject of questioning by Stewards.

During the hearing, Stewards also inquired into an anonymous complaint against Mr Ethan Ensby. The complaint alleged that Mr Ensby committed acts of animal cruelty against horses under his care. Specifically, it was alleged that two horses under Mr Ensby's care had received veterinary treatment for a fractured skull due to acts of cruelty. During Racing NSW's investigation, another specific allegation of mistreatment of a horse with a rake on or about 21 October 2021, was investigated.

At the Stewards inquiry on 21 April 2023, evidence was taken from the following persons:

Mr Ethan Ensby	-	licensed trainer
Mr Daiki Chujo	-	licensed trainer
Mrs Tracy Timbery	-	licensed trainer
Mr Paul Timbery	-	licensed stable hand/rider
Mr Scott Mills	-	licensed stable hand
Mr Nori Masuda	-	licensed jockey
Ms Jade Cole	-	licensed stable hand/rider
Mr Mitchell Fry	-	licensed trainer
Ms Alyssa Bacchus	-	licensed stable hand/rider
Mr John Sheehan	-	Ballina Jockey Club official
Mr Lachlan Metcalf	-	Ballina Jockey Club Official
Mr S Earl	-	Ballina Jockey Club Director
Mr D Daniel	-	Ballina Jockey Club Acting Chairman

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The inquiry reconvened on 10 May 2023, with Mr Ensby assisted by Mr Paul O’Sullivan, Solicitor. At this hearing, the following additional persons attended to provide evidence:

Mr Anthony Meldrum - licensed stable hand
Steven Phelps - registered owner

On 12 September 2023, the inquiry resumed after an adjournment to hear evidence in respect of further complaints made against Mr Ethan Ensby. Stewards also inquired into a complaint into the alleged conduct of Mr Brian Ensby on 12 July 2023. The inquiry also dealt with a complaint from Mr Ensby in respect of the conduct of Mr Steven Phelps towards him over a period of time. Evidence was taken from licenced trainer, Mr Stephen Lee.

The inquiry reconvened on 4 October 2023 where Mr Ensby was assisted by Mr Joe Bryant, Solicitor.

At the hearing on 18 October 2023, evidence was taken from:

Mr Brian Ensby - licensed stable hand
Mrs Carol Ensby - licensed stable hand
Mr Sean Hendry - licensed stable hand

On 29 November 2023, Stewards took further evidence to hear and determine charges issued by Stewards on 1 November 2023 against Mr Ethan Ensby, Mr Brian Ensby and Mr Steven Phelps. Those charges are detailed below.

Racing NSW Stewards today imposed the following penalties upon Mr Ethan Ensby and Mr Brian Ensby after having heard submissions from the respective parties. Consideration of penalty against Mr Steven Phelps will occur on a date to be determined with Stewards having acceded to his request to further adjourn that consideration in relation to charges of which he had been found guilty.

Ethan Ensby

Charge 1

AR228 (b) Improper conduct towards licensed trainer Mrs Tracy Timbery on 15 December 2021.
Plea - Not Guilty
Finding Guilty
Penalty 2 months suspension of trainer’s licence

Charge 2

AR233 (b) Workplace harassment of licensed trainer Mrs Tracy Timbery on 15 December 2021.
Plea Not Guilty
Finding Guilty

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Penalty 2 months suspension of trainer's licence (wholly concurrent with penalty relative to charge 1)

Charge 3

AR228(c) Improper behaviour towards Ballina Jockey Club official Mr Lachlan Metcalf on 6 July 2022.

Plea Not Guilty

Finding Guilty

Penalty 2 months & 2 weeks suspension of trainer's licence

Charge 4

AR233(b) Workplace harassment of Ballina Jockey Club Official Mr Lachlan Metcalf on 6 July 2022.

Plea Not Guilty

Finding Guilty

Penalty 2 months & 2 weeks suspension of trainer's licence (wholly concurrent with penalty relative to charge 3)

Charge 5

AR228(b) Improper conduct towards licensed trainer Mr Daiki Chujo on 23 August 2022.

Plea Not Guilty

Finding Not Guilty

Charge 6

AR233(b) Workplace harassment of licensed trainer Mr Daiki Chujo on 23 August 2022.

Plea Not Guilty

Finding Not Guilty

Charge 7

AR228(b) Improper conduct on a public road after becoming involved in a verbal exchange with Mr Steven Phelps.

Plea Guilty

Penalty 2 month suspension of trainers' licence reduced to 1 month for guilty plea and other relevant considerations

Charge 8

AR228(b) Improper conduct towards a licensed stable hand on 29 August 2023.

Plea Not Guilty

Finding Guilty

Penalty 1 month suspension of trainer's licence

Penalty considerations – Mr Ethan Ensby

Stewards considered the following matters when determining an appropriate penalty to be imposed upon Mr Ensby:

- His Disciplinary record whilst licensed as a trainer for 8 years

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- Principles of specific and general deterrence and what message is sent to the industry in respect of such conduct.
- Purpose of issuing penalties as a protective measure for the image and interests of the thoroughbred racing industry.
- Personal and professional circumstances.
- Guilty plea in respect of charge 7
- The provocation applicable in respect of charge 7

Having regard to the principles of totality of penalty, in addition to the orders in respect of concurrency as set out above, Stewards ruled that total penalty imposed upon Mr Ensby is that his trainer's licence be suspended for a total period of 3 months. Such penalty to commence on 6 December 2023 and to expire on 6 March 2024.

Mr Brian Ensby

Charge 1

AR228(b) Improper conduct after engaging in a heated verbal exchange with Mr Steven Phelps on 12 July 2023.

Plea Guilty

Penalty 2 months suspension of stable hands licence (fully suspended)

Penalty considerations – Mr Brian Ensby

Stewards considered the following matters when determining an appropriate penalty to be imposed upon Mr Ensby:

- Principles of specific and general deterrence and what message is sent to the industry in respect of such conduct.
- Purpose of issuing penalties as a protective measure for the image and interests of the thoroughbred racing industry.
- Unblemished disciplinary record
- Personal circumstances.
- Guilty plea
- The severe provocation applicable in respect of the charge

Stewards ruled that the 2 months suspension imposed upon Mr Brian Ensby be fully suspended for a period of 2 years acting under the provisions of AR283(5) on the basis that he does not breach any conduct-related Rules of Racing.

Mr Steven Phelps

Charge 1

AR228(b) Improper conduct towards licensed trainer Mr Ethan Ensby on 12 July 2023.

Plea Not Guilty

Finding Guilty

Charge 2

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AR228(b) Improper conduct towards licensed stable hand Mrs Carol Ensby on 12 July 2023.
Plea Not Guilty
Finding Guilty

Charge 3

AR228(b) Improper conduct after becoming involved in a heated verbal exchange with licensed stable hand Mr Brian Ensby on 12 July 2023
Plea Not Guilty
Finding Guilty

Charge 4

AR228(b) Improper conduct towards licensed trainer Mr Ethan Ensby on 22 July 2023.
Plea Not Guilty
Finding Guilty

Charge 5

AR228(b) Improper conduct towards licensed trainer Mr Ethan Ensby on 27 July 2023.
Plea Not Guilty
Finding Guilty

Charge 6

AR228(b) Improper conduct towards licensed trainer Mr Ethan Ensby on 1 October 2023.
Plea Not Guilty
Finding Guilty

Findings in respect of Animal Welfare Complaints

In relation to the allegation from an anonymous source, that two horses under Mr Ensby's care had received veterinary treatment for a fractured skull due to acts of cruelty, the evidence before the Stewards confirmed the following:

- On the morning of Thursday 19 August 2021, the horse *Shotgun Bobby*, which was trained by Mr Ensby, was returned to its stable after having galloped at Ballina Racecourse in preparation to race on Monday 23 August 2021.
- Sometime after returning to its stable, *Shotgun Bobby* was noted by a stable staff member to be exhibiting some unusual signs which was promptly reported to Mr Ensby who was still supervising other horses at track work.
- Mr Ensby immediately arranged for his stable veterinarian to examine *Shotgun Bobby* which was attended to promptly. Following an initial assessment, it was decided to perform x-rays which revealed the horse to have sustained a fracture to its poll. All veterinary records were provided to Stewards.
- Mr Ensby questioned all relevant stable staff and it was not able to be identified how the horse had sustained the injury whilst in its stable.

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- *Shotgun Bobby* was treated and managed in accordance with veterinary advice and, after a period of rest, successfully returned to racing.
- A thorough investigation, which included obtaining evidence from all relevant veterinary practices in the Ballina region, did not identify any other horses trained by Mr Ensby that had been treated for a skull fracture, other than *Shotgun Bobby*.
- Stewards were satisfied that there was no evidence of any mistreatment of *Shotgun Bobby* and that the horse had been provided with prompt veterinary care once it was identified that it had sustained a potential injury to its head.

In relation to the specific allegation that another horse trained by Mr Ensby had been mistreated in some manner with a rake on or about 21 October 2021, the following was established:

- A stable staff member responsible for cleaning boxes identified that a rake was observed to be outside the stable occupied by the horse *Stage Entrance* on or about 21 October 2021.
- That same stable staff member noticed that the horse *Stage Entrance* to have sustained wounds to its hindquarter with such wounds having been treated with white cream. The allegation was made on the assumption that *Stage Entrance* had sustained the injuries as a consequence of being mistreated with the rake, although there was no direct evidence of this having occurred.
- *Stage Entrance* had raced at Murwillumbah on 11 October 2021 and on the float trip back to its Ballina stable the gelding had become fractious and “scrambled” on a number of occasions.
- Upon return to its stable, the horse was noted to have sustained abrasions to both hindquarters. *Stage Entrance* was subsequently treated with a white cream applied to the affected areas up to and including 27 October 2021.
- Stewards confirmed that the treatment applied to *Stage Entrance* had been properly recorded in Mr Ensby’s stable treatment records and the stable retained photographic evidence.
- Based on the evidence, Stewards were satisfied that *Stage Entrance* had not been mistreated at Mr Ensby’s stable and that it had been appropriately treated for abrasions to its hindquarters, which it had sustained while being transported from Murwillumbah on 11 October 2021.

The Stewards found that the specific complaints in respect of the horses *Shotgun Bobby* and *Stage Entrance* were unfounded and there was no evidence to indicate that any other horse under Mr Ensby’s care had sustained a fractured poll.

Having considered all of the available evidence regarding the additional allegations of cruelty or mistreatment by Mr Ensby over a period, Stewards found that the complaints did not meet the required standard of proof to establish that he had mistreated horses under his care.

Relevant Rules

AR228 Conduct detrimental to the interests of racing

A person must not engage in:

..

(b) misconduct, improper conduct or unseemly behaviour;

(c) improper or insulting behaviour at any time towards a PRA, the Stewards, a Club, or any official, employee, contractor or agent of any of them in relation to the relevant person's functions, powers or duties;

AR233 Other misconduct offences

A person must not:

..

(b) engage in workplace harassment or bullying of a person while the person is acting in the course of his or her duties while employed, engaged in, or participating in the racing industry;

AR 2 Dictionary

Workplace harassment means behaviour of one person towards another person with whom the person has a workplace connection which:

(a) is unwelcome to and unsolicited by the person who is the subject of the behaviour;

(b) the person subject to the behaviour considers to be offensive, intimidating, humiliating or threatening, and

(c) a reasonable person would consider to be offensive, humiliating, intimidating or threatening.