RACING APPEAL PANEL OF NSW

THE APPEALS OF ADAM HYERONIMUS AND BLAKE PAINE

The Panel: Mr R Beasley SC (Presiding Member); Ms J Madsen; Mr C Tuck

For the Stewards: Mr M Van Gestel, Chairman of Stewards

For the appellant Adam Hyeronimus: Mr P O'Sullivan, Solicitor

For the appellant Blake Paine: Mr M Barnes, Solicitor

Date of Hearing on Penalty: 26 March 2021

Date of Reasons: 8 April 2021

REASONS FOR DECISION ON PENALTY

Presiding Member

Introduction

1. On 24 February 2021, the Panel dismissed an appeal by Adam Hyeronimus against findings made by the Racing NSW Stewards that he had twice breached AR115(1)(e) of the Australian Rules of Racing (**Rules**) relating to having an interest in bets placed on horses that he rode in races (Charges 1 and 2 – **"the in-race betting charges"**). A breach of AR115(1)(e) carries a mandatory minimum penalty of a 2-year disqualification.

2. The Panel also dismissed appeals in relation to charges 3 to 19, and 23 to 25, that related to bets placed for Mr Hyeronimus in thoroughbred races in breach of AR115(c). During the course of the appeal hearing, Mr Hyeronimus also pleaded guilty to three breaches of AR 115(1)(c) (Charges 20 to 22). These are collectively referred to in these reasons as the "**other betting charges**".

3. The Panel further dismissed an appeal against a finding of the Stewards that during the course of their Inquiry into these matters Mr Hyeronimus had breached AR 232(i) (**false evidence charge**).

4. Charges 26 to 30 related to bets placed on Mr Hyeronimus' behalf on international races. The appeals against the findings of breach in relation to these charges were allowed (by majority).

5. Also on 24 February 2021, the Panel unanimously dismissed an appeal by Blake Paine against findings made by the Racing NSW Stewards that he had twice breached AR236 of the Rules by placing bets for Mr Hyeronimus in races in which Mr Hyeronimus rode (the in-race betting charges). Unlike for Mr Hyeronimus, there is no mandatory minimum penalty for a breach of AR236 that facilitates a breach of AR115(1)(e).

6. The Panel further dismissed appeals in relation to Charges 3 to 19, and 23 to 25, relating to the placing of bets on Mr Hyeronimus' behalf, and Mr Paine entered a plea in respect to Charges 20 to 22 – the other betting charges. His appeal in relation to bets placed for Mr Hyeronimus on international races was allowed by majority. Mr Paine's appeal in relation to Charge 32 (false evidence charge) was dismissed.

7. On 26 March 2021, the Panel heard submissions in relation to appeals brought by the appellants against the severity of the penalties imposed upon them by the Stewards. Mr P O'Sullivan, Solicitor, again appeared for Mr Hyeronimus, and Mr M Barnes, Solicitor, again appeared for Mr Paine. The Stewards were represented by the Chairman of Stewards, Mr M Van Gestel. Oral evidence was given by Mr Neil Paine, Blake Paine's father, who is Mr Hyeronimus' uncle. Mr Hyeronimus also gave some oral evidence.

8. On 1 April 2021, the Panel made orders in relation to the Penalties it has imposed on the appellants (set out again at the end of these reasons). These reasons explain those orders. As indicated below, Mr Tuck agrees with the penalties and orders I propose, for the reasons outlined below. Ms Madsen also agrees with the penalties and proposed orders, but does not wish to adopt all aspects of these reasons.

Purpose of imposing penalties

9. The matters of most significance in considering penalties to be imposed for breaches of rules of professional associations and sporting organisations and industries are well settled. Penalties are not primarily imposed for the purpose of punishment, but are a means of protecting the industry. In the case of thoroughbred racing they are to demonstrate to the public that racing officials will take steps to ensure that the reputation of the sport, and its integrity, are protected: *NSW Bar Association v Evatt* (1968) 117 CLR 177 at 183-4 ; *Day v Sanders; Day v Harness Racing New South Wales* (2015) 90 NSWLR 764 per Leeming JA at [70] and Simpson JA at [131]; *The Appeal of Hunter Kilner* (RAP, 27/12/17); *The Appeal of Noel Callow* (RAP, 3/4/17). The Rules, breach of which can result in substantial penalties, are in place so that racing authorities can control the sport as required, and also protect it.

10. While penalty provisions in the Rules of Racing provide a scheme for professional discipline that is quite separate to how sentencing is approached under the general criminal law, deterrence is also said to be another important matter, itself related to both the protection of the sport, and the racing public. Both the racing industry, and the racing and betting public, need to be protected from a variety of conduct that constitutes an objectively serious breach of the Rules. The question to be asked is what kind of penalty is required to deter the conduct involved for a particular breach?

11. For the breaches of AR 115(1)(e) by Mr Hyeronimus, part of the answer to this question has been provided by the drafter of the Rules. Absent "special circumstances" (which would have required a guilty plea by the appellant), the Panel must impose a minimum penalty of a two-year disqualification. Whether a rule that means a jockey who has a $50 bet on a horse he or she is riding in a race should face a penalty as severe as a minimum 2-year disqualification actually does anything to protect the image of the sport is a matter that could be debated, but won't be in these

reasons. Whether such a rider should face the same minimum penalty as a jockey who has a bet on a horse in a race other than the horse they are riding is another matter that could be debated, but again will not be in these reasons. Suffice to say that clearly racing authorities view the in-race betting breaches of Mr Hyeronimus as objectively very serious. That is the basis upon which the Panel must approach his offending under AR115(1)(e).

12. Although no minimum penalty applies, the breaches of AR 236 by Mr Paine relating to Mr Hyeronimus' offending under AR 115(1)(e) must also be treated as objectively serious offending, and we see no basis for not treating the other betting charges as also involving objectively serious offending.

13. There is no doubt that the offending under the false evidence rule by both appellants (AR232(i)) is objectively serious. While it can probably be characterised as the same false evidence given over and over – that the appellants were not involved in a Punter's club that Mr Hyeronimus contributed financial stakes too, and that the betting activity the subject of the betting charges was only Mr Paine's – licenced persons who fail to tell the truth to Stewards seriously undermine the integrity of the sport.

14. In short then, a 2-year mandatory minimum disqualification must be imposed on Mr Hyeronimus for each breach of AR115(1)(e), and all other offending by both appellants must be treated as objectively serious, and the total penalty to be imposed on each of them must reflect the principles outlined in [9] and [10] above.

Subjective circumstances of the appellants

Mr Hyeronimus

15. While by no means as important to the penalty to be imposed as the objectively serious nature of the offending and the need to protect the sport, the subjective circumstances of each appellant have been considered by the Panel.

16. Mr Hyeronimus is young – thirty now, 26 to 27 when the offending occurred. His only work experience and skill set is as the rider of racehorses. He has no trade or qualifications to fall back on during the period of his disqualification. The Panel heard and accepts that he has tried to but has not been able to find employment since his

disqualification commenced last September. It is reasonable to conclude that his employment prospects are poor. Mr Hyeronimus faces disqualification during a period of Pandemic, and general economic uncertainty. It is accepted that finding alternative employment for someone whose entire working life has been as a jockey will be very difficult.

17. Although there is a limit to what can be found absent expert medical evidence, common sense and experience suggests that the Panel should accept the evidence given by Mr Neil Paine that Mr Hyeronimus has faced some dark times since his disqualification, and periods of depression.

18. Evidence was also given as to the impacts the disqualification has had on Mr Hyeronimus's marriage, his family relationships, and obviously on his finances, which is accepted.

Blake Paine

19. When Mr Paine's offending of the Rules commenced, he was not an adult by law. He was still a teenager when the offending he has been charged with ended, and is 21 years of age now.

20. Based on general experience and the evidence of his father, it is accepted that Mr Paine too has had some dark moments and periods of depression since commencing his disqualification.

21. Mr Paine has no skills, trade, qualifications or work experience beyond the work he has done as a stablehand, and as a barrier attendant. He too has not been able to find employment, and his prospects for doing so while disqualified are poor.

22. Mr Paine is however clearly someone with a real aptitude for handling horses, as is evidenced by the reference written by Mr Bott on behalf of the Waterhouse-Bott stable.

Penalties

Adam Hyeronimus – AR115(1)(e)

23. Each breach of AR115(1)(e) carries a mandatory 2-year mandatory minimum disqualification. It would be dishonest not to say that absent this mandatory disqualification, this significantly exceeds the penalty I would otherwise impose. It can be accepted that a jockey placing a bet on a horse they are riding in a race in some manner and to some degree impacts on the integrity of racing. Such conduct therefore warrants either suspension or even disqualification, depending on other circumstances. Absent proper proof however, it should not be automatically assumed that such conduct so damages the integrity of racing that it would justify a penalty as severe as a 2-year disqualification. Proper proof would involve evidence of a survey, or expert qualitative or quantitative data research. The conduct of a jockey betting on their own mount can of course be contrasted to a jockey betting on a horse in a race other than the horse they are riding (something Mr Hyeronimus did not do) which is conduct that raises obvious integrity issues, and would lead a reasonable person to conclude that the rider had an actual conflict of interest, and a bias against giving their own mount every chance to win the race.

24. Because a 2-year mandatory minimum disqualification applies to Mr Hyeronimus's conduct in betting on a horse he was riding, the drafter (or drafters) of this rule clearly considers Mr Hyeronimus's betting conduct to be as culpable in some way to the kind of horrendous conduct caught by other rules where similar mandatory minimum disqualifications are imposed. However, it should be stated that Mr Hyeronimus is not a cheat, and this must be borne in mind when determining an appropriate total penalty for all his offending under the Rules. He did not, for example, administer a prohibited substance to a horse (AR 243(1) – 2-year mandatory minimum disqualification), or do so to affect its performance (AR 244(1) – 3-year minimum disqualification). He did not deliberately (as distinct from through error) fail to ride a horse on its merits to give it every opportunity to win a race. He did not use an electrical device on a horse (AR 231(2)(a) – 2-year mandatory minimum disqualification). He did not administer a steroid to a horse in breach of AR 248(1) – 2-year mandatory minimum disqualification. He did not "stomach tube" a horse engaged in a race (AR 255(1) – 12-month mandatory minimum disqualification). Despite the similarity between the

mandatory minimum penalties for such offending and the mandatory penalty applicable to the breaches of AR115(1)(e) by Mr Hyeronimus for betting on horses he rode, his betting conduct is in a different category. It involves objectively serious breaches of the Rules, but it is not conduct that could rationally be described as involving fundamental dishonesty, an intent to cheat, or cruelty.

25. The Stewards imposed a 2-year disqualification for each of the in-race betting charges, and made those penalties concurrent. In my view, if there is to be a 2-year mandatory disqualification for a breach of AR115(1)(e), then there must be at least some penalty imposed for the separate offending particularised for Charge 2. I would impose a 2-year disqualification for each of Charge 1 and 2, but make 23 months of the penalty for Charge 2 concurrent with the penalty for Charge 1.

AR115(1)(c) – other betting charges

26. The Stewards imposed a 12-month total disqualification for the other betting charges. Reliance was placed by the appellants on some Victorian penalty decisions for breaches of AR115(1)(c), most notably the Decision of Judge Bowman in *Racing Victoria Stewards and John Robertson* (RADB, 28/3/19), where a jockey was suspended for 3 months (6 weeks suspended) in relation to 27 breaches of AR 115(1)(c). Certainly the penalty imposed in that matter is more lenient than that imposed by the Stewards here, although the conclusion should not be made from this alone that breaches of this rule are treated differently in Victoria than in NSW. Mr Roberson also pleaded guilty, and had an established gambling problem for which he agreed to treatment. That said, it would be generally desirable for penalties for this offending to be close to uniform and consistent no matter where the offending occurs.

27. A jockey should not bet on any thoroughbred horse race. That is, first, because it is a breach of the rules and will attract a penalty, and secondly because the perception is – and this may well be right - that this is harmful to the image of racing. There may be other reasons why it is not a good idea for jockeys to gamble on horse racing. It does not appear to have been particularly profitable for Mr Hyeronimus, for example. However, a 12-month disqualification is in excess of the kind of penalty that should be imposed for the offending here. Ordinarily – and depending on the extent of the betting activity and individual circumstances - I would impose a suspension of three

to nine months if the circumstances also involved a plea and cooperation with Stewards. They do not here. A 6-month disqualification is warranted.

AR232(i) – false evidence charge

28. While it is related to the betting charges, the conduct involved here is quite separate offending. The denials made by Mr Hyeronimus as to betting activity were in the face of frankly overwhelming evidence to the contrary, and it should be remembered he ultimately pleaded guilty to three betting offences on Day 2 of his appeal hearing. The best that can be said about it is that it is probably not multiple instances of false evidence, but the same false denial made multiple times.

29. There are numerous precedents for penalties for breaches of AR232(i). Giving false evidence to Stewards, even if that evidence is subsequently retracted, is likely to result in a disqualification. The *Appeal of Clint Lundholm* (RAP, 7/8/20) is a reasonable parallel to the offending here – Mr Lundholm was disqualified after he lied about a race day administration of a substance, although unlike here he retracted it within a relatively short period of time. It is a matter of judgment, but on one view the offending here could be considered more serious. However, taking all matters into account, including the youth of Mr Hyeronimus, I would impose a 4-month disqualification for this breach of the rules.

Total penalty

30. In total then, Charges 1 and 2 result in a 2-year 1-month disqualification. For the other betting charges, a 6-month disqualification is imposed, and for the breach of AR232(i), a 4-month disqualification. In total this would result in 2 years and 11-month disqualification. However, having regard to the relative similarity of all the betting offences, and to the principal of totality in sentencing which can be used analogously when penalising under the Rules of Racing, I would make the 6 month disqualification for the other betting charges concurrent with the penalty for Charges 1 and 2. I would make one month of the 4-month disqualification imposed for the breach of AR232(i) concurrent with the other penalties. This means the total disqualification is a period of 2-years and 4-months.

AR 263

31. A 2-year and 4-month disqualification is a long penalty. It has drastic consequences for Mr Hyeronimus, and the Panel is not blasé about them. As indicated above, Mr

Hyeronimus's conduct was stupid, in breach of the rules, and damaging to the image of racing. However, as also noted above, his betting activity does not make him a cheat. Nor did he engage in a cruelty offence, or an offence involving use of Prohibited substances which can readily be seen to be offences that severely impact on what can be described as racing's "social licence".

32. Although the Panel has no such powers, in those circumstances I would respectfully ask Racing NSW as a Principal Racing Authority to consider - should application be made to it by Mr Hyeronimus – using its powers under relevant parts of AR263 to allow Mr Hyeronimus to resume track riding and riding in trials at some reasonable period prior to the time when he may reapply for his licence.

Blake Paine

Betting offences

33. The Stewards imposed an 18-month disqualification on Mr Paine for his breaches of AR236 that related to the offending by Mr Hyeronimus under AR115(1)(e). In doing so, they seem to have used the 2-year mandatory minimum penalty applying to Mr Hyeronimus as a guide of some kind to the penalty they imposed on Mr Paine. That is not the approach taken by the Panel, as no mandatory minimum penalty applies to Mr Paine.

34. Mr Paine naively and stupidly went along with his cousin and facilitated his betting activity. He could have placed much of the blame for the offending on his elder cousin, but did not. He was a teenager when the offending occurred. An 18-month disqualification is in the Panel's view a longer penalty than his offending warrants, and is in excess of what is required to send a message that racing will not tolerate this kind of conduct, or to protect the reputation or image of racing. A 6-month disqualification is imposed for each breach of AR236 relating to the in-race betting charges. For the second charge, 5-months of this is to be concurrent with the penalty imposed for charge one.

35. For the balance of the betting offences, a 6-month disqualification is also imposed, to be served concurrently with the penalty for Charges 1 and 2. This reflects the similar nature of the conduct, and the application of the principle of totality of sentencing.

AR232(i)

36. As with Mr Hyeronimus, the offending under the false evidence rule is in a different category. For the same reasons as applied to Mr Hyeronimus, a 4-month disqualification is appropriate, with only 1-month of that to be concurrent with the penalty imposed for the betting charges.

Total penalty

37. The total penalty to be imposed on Mr Paine for the betting offences is a 7-month disqualification. To this, 3 months of the penalty for the breach of AR232(i) is added, meaning a total penalty of a 10-month disqualification.

AR263

38. As mentioned, Mr Paine was not an adult when the offending first occurred. The entirety of his offending occurred while he was a teenager. He is now 21. Based on the evidence heard by the Panel, his employment prospect outside of the racing industry appear grim. Again, I respectfully ask Racing NSW to consider authorising Mr Paine to be able to seek some form of work prior to the expiration of his disqualification by an exercise of discretion under AR 263.

Time served

39. Both appellants have already served some period of disqualification. There was a period of 3 days prior to a stay being granted on 21 August 2020. That stay was revoked from 22 September 2020 following their plea of guilty to three of the charges brought against them.

Mr C Tuck

40. I agree with the penalties imposed by the Presiding Member, with the orders made, and with his reasoning outlined above.

Ms J Madsen

41. I agree with the penalties proposed by the Presiding Member, and with the orders made.

ORDERS

Adam Hyeronimus

1. Appeal against severity of penalty allowed.

2. In lieu of a 3-year disqualification, the appellant is disqualified for 2 years and 4 months. The appellant's disqualification commenced on 22 September 2020, when he pleaded guilty to charges 20 to 22 (and there is another three days to take into account as well). The appellant may therefore reapply for his licence on 19 January 2023.

3. As mentioned in [32] above, the Panel respectfully asks that the Principal Racing Authority (Racing NSW) give consideration to exercising its discretion under AR263(1)(d) and (e) to authorise Mr Hyeronimus to resume riding trackwork and trials at some reasonable time prior to the expiration of his disqualification.

4. Appeal deposit forfeited.

Blake Paine

1. Appeal against severity of penalty allowed.

2. In lieu of a 2-year 4-month disqualification, the appellant is disqualified for a period of 10 months. That penalty commenced on 22 September 2020 (with a further 3 days needing to be taken into account). The appellant may reapply for his licence on 19 July 2021.

3. As indicated in [38] above, the Panel respectfully asks Racing NSW to consider exercising its discretion under AR263 to allow Mr Paine to attempt to gain some form

of employment within the racing industry prior to the expiration of his disqualification.

4. Appeal deposit forfeited.