

APPEAL PANEL OF RACING NEW SOUTH WALES

IN THE MATTER OF THE APPEAL OF LICENSED TRAINER JAMES LESLIE JARVIS

Heard at Racing NSW Offices

Appeal Panel: **Mr L. Vellis - Convenor; Mrs J. Foley; Mr J. Murphy**

Representatives: **Racing NSW - Mr M. Cleaver, Operations Manager - Integrity**
Appellant - Mr M. Callanan, Solicitor for the Appellant & Director of the NSW Trainer's Association

Date of Hearing: **12 August 2024**

Date of Reasons and Orders: **13 March 2025**

REASONS FOR DECISION

1. On 17 April 2024 Racing NSW Stewards conducted an inquiry in relation to licensed trainer Mr J. Jarvis (**Appellant**) towards Northern Rivers Racing Association (**NRRA**) swab official Ms E. Pollard at a Grafton race meeting on Wednesday, 7 March 2024.
2. At the inquiry two charges were issued against the Appellant, as follows:

Charge 1 | AR 233(c) of the Australian Rules of Racing (**Rules**) | Sexual Harassment

- a. The details of the charge being that whilst Ms Pollard was acting in the course of her official duties at the Grafton race meeting on Thursday, 7 March 2024, he did engage in the sexual harassment of Ms Pollard by subjecting her to an unsolicited act of physical intimacy in circumstances where a reasonable person would have anticipated the possibility that Ms Pollard would be offended and / or humiliated and / or intimidated by the action.
- b. AR 233(c) is in the following terms:

A person must not engage in sexual harassment of a person employed, engaged in, or participating in the racing industry.

Charge 2 | AR 228(b) of the Rules | Improper Conduct

- c. The details of the charge being that whilst Ms Pollard was acting in the course of her official duties at the Grafton race meeting on Thursday, 7 March 2024, he did engage in improper conduct towards Ms Pollard by subjecting her to an unsolicited act of physical intimacy before directing words towards her regarding her body weight.
- d. AR 228(b) is in the following terms:

A person must not engage in misconduct, improper conduct or unseemly behaviour.

3. The Appellant pleaded not guilty to both charges and was found guilty of both charges. The following orders were made:
 - a. Charge 1 – penalty of a six month suspension of his trainers licence, reduced to five months allowing for mitigating factors;
 - b. Charge 2 – penalty of a six month suspension of his trainers licence, reduced to five months allowing for mitigating factors;
 - c. The penalties for Charges 1 and 2 to be served concurrently (i.e., a five month suspension of his trainers licence); and
 - d. Acting under AR 283(7) the Stewards deferred the commencement of the suspension for a period of seven days to enable Mr Jarvis to disperse his stable on the basis that he is not permitted to start a horse in a race or official trial during such time.
4. The Appellant applied for and was granted a stay of proceedings and such stay continues until the resolution of this matter.
5. The Appellant has appealed to the Panel against both the findings of guilt and the severity of penalties. He was represented on appeal by his solicitor, Mr Michael Callanan, who is also the Director of the NSW Trainers' Association. The Stewards were represented by the Operations Manager of Integrity, Mr Michael Cleaver.
6. The Appeal Book was tendered as Exhibit A and other documents (including written submissions on behalf of the Appellant, character references in favour of Mr Jarvis and previous Appeal Panel decisions) were also tendered and discussed during the hearing. Oral evidence was given by Mr Masurawo Ikeda, a Licensed Stablehand.

Background

7. This matter is slightly unusual in that there appears to be conflicting evidence regarding the order and timing of events giving rise to the incident in question, as well as different views as to what transpired during the incident. Based on the Appeal Book as well as the written submissions of Mr Callanan on behalf of the Appellant, we have set out below pertinent aspects of what is alleged to have occurred on the date in question.
8. Saxon Brave won Race 1 at Grafton on 7 March 2024, the race having been run at 1:10 pm.
9. Ms Pollard, in her position as a swab official, said that she followed Saxon Brave and strapper Mr Ikeda from the enclosure.
10. Ms Pollard alleges (during two interviews with Stewards on 7 March 2024) that shortly thereafter *"I looked over my shoulder and saw Jim Jarvis walking behind me when he slapped*

me on the arse and made a comment that I had lost some weight. I sort of just giggled and laughed it off then the interaction was over" (Appeal Book, Exhibit 2, Page 5, Lines 59-62).

11. Ms Pollard alleges that the comment regarding her weight was as follows: *"Looks like you have lost a little bit of weight lately"* (Appeal Book, Exhibit 1, Page 1, Line 34).
12. Mr Jarvis had employed the Complainant for about 2 years as a stablehand, up until September 2022 with Ms Pollard appearing to have had a favourable experience with Mr Jarvis during this time, noting that *"it has always been sort of like pretty chilled, nothing like that"* (Appeal Book, Exhibit 1, Page 3, Line 128).
13. In her second interview with Stewards on 7 March 2024, Ms Pollard provided additional colour on her previous interactions with Mr Jarvis and explained that while the Appellant has called her *"sexy, beautiful, all these other things"* (Appeal Book, Exhibit 2, Page 5, Line 85), that *"he's never touched me before. He just makes silly comments, but has never touched me"* (Appeal Book, Exhibit 2, Page 5, Lines 79-80).
14. Mr Jarvis has a different version of key events, which is as follows:
 - a. he had walked back from the jockey's room and recalls going to the toilet;
 - b. he recalled being near the tie-ups not the wash bay (although Mr Callanan notes that they are all quite proximate to one another);
 - c. Mr Jarvis has seen Ms Pollard (the location is also subject to conflicting evidence) and recalled saying *"How are you going? You're near down to your riding weight"* (Appeal Book, Exhibit 4, Page 2, Lines 79-80); and
 - d. He said he may have brushed her with his race book on the arm or her shoulder and objected to any suggestion of body contact.

Submissions

15. Mr Cleaver submitted that both charges were serious in their own right and that the penalties given were entirely appropriate.
16. Mr Cleaver acknowledged that there was some conflicting evidence regarding exactly where at Grafton racecourse the incident giving rise to the two charges occurred but pointed to the general consistency in the statements of Ms Pollard during her interviews and the inquiry in describing the incident, and conversely the inconsistency in statements of the Appellant in describing the incident.
17. Mr Cleaver then preferred to rely upon the material contained within the Appeal Book.
18. Mr Callanan also pointed out the conflicting evidence in this matter and submitted that the evidence of different parties was so different that there was a genuine question as to whether the incident occurred in the way Ms Pollard described it, with the Appellant defiant in his

stance that the incident as described did not occur. Mr Callanan noted that there differences in location and timing that called into question the accuracy of Ms Pollard's evidence.

19. Mr Callanan submitted that the lack of corroborating evidence made it difficult to accept Ms Pollard's version of events, especially in light of the Appellant's 60 plus years as a participant in the industry without similar incidents. Mr Callanan also submitted that the Appellant was showing early signs of Alzheimer's disease and that it was unlikely that he would continue training for an extended period of time.
20. Mr Callanan called Mr Masurawo Ikeda, a Licensed Stablehand, to provide oral evidence about the incident. Unfortunately it appeared that Mr Ikeda was having difficulty fully understanding some of the questions that were asked and his evidence could be considered neutral at best. Relevantly, Mr Ikeda said that he did not see the incident that led to the two charges but also conceded it may have happened. Given the language barriers and lack of relevant evidence provided, the evidence of Mr Ikeda was not considered by the Panel to be of significant probative value.
21. Mr Callanan submitted that there were numerous inconsistencies with respect to Ms Pollard's version of events, including with respect to location, timing and the conduct involved. Mr Callanan also submitted that there was a lack of evidence supporting Ms Callan's allegations and suggested that her story was developed during the course of the interviews with Stewards and could not be relied upon.

Panel Resolution

22. The inconsistencies in the evidence provided by Ms Pollard and Mr Jarvis during the inquiry and various interviews made the Panel's assessment of this matter a more involved process.
23. Having considered the evidence and the submissions made by Mr Cleaver and Mr Callanan, the Panel is of the unanimous view that Charges 1 and 2 are made out having regard to the standard required (i.e., the Briginshaw standard).
24. The Panel accepts Ms Pollard's version of events with respect to the unsolicited act of physical intimacy and the words used towards her regarding her body weight, which having accepted the incident occurred in this manner, then satisfies the requirements to make out the requirements of:
 - a. Charge 1 (AR 233(c)) - the Panel considers the actions of Mr Jarvis to be sexual harassment of a person employed, engaged in, or participating in the racing industry; and
 - b. Charge 2 (AR 228(b)) - the Panel considers that the actions of Mr Jarvis to be misconduct, improper conduct or unseemly behaviour.
25. In considering this matter the Panel gave weight (among other matters) to the following:

- a. Ms Pollard's prompt reporting of the matter to Stewards, which tends towards Ms Pollard's truthfulness and reliability, as does Ms Pollard's consistency in describing the physical contact and words spoken by Mr Jarvis;
- b. The effect of the matter upon Ms Pollard, which resulted in Ms Pollard becoming upset and feeling as though she was going to faint shortly after the incident, which required Ms Pollard to request that Mr Brody Lisha (a Swab Steward) take a sample from *Saxon Brave* instead of Ms Pollard. This was corroborated by Mr Ikeda in his interview with Stewards on 7 March where he stated that it was "Ben" that took the sample from *Saxon Brave*;
- c. Ms Pollard had multiple opportunities to level additional allegations towards Mr Jarvis, having worked with him for two years previously as a stablehand, but Ms Pollard did not seek to expand the scope of the allegations and explained that while the Appellant has called her "*sexy, beautiful, all these other things*", that "*he's never touched me before. He just makes silly comments, but has never touched me*";
- d. Mr Jarvis' recollection of what was said and done varied as between the inquiry and his interview with Stewards, including inconsistencies within the same inquiry or interview. By way of inexhaustive example:
 - i. when first asked about his interaction with Ms Pollard on 7 March 2024, Mr Jarvis (Appeal Book, Exhibit 4, Page 1, Lines 45-46) said "*I just walked past her and said, 'How are you going?' That's all I said and, as I've just walked past, I just brushed her and that was the only time I've seen her today*".
 - ii. then later in the same interview (Appeal Book, Exhibit 4, Page 2, Lines 79-80), Mr Jarvis says that he actually also said "*You're near down to your riding weight*", which later in the same interview became "*Oh, you're trimming down, you'd be near down to your riding weight*" (Appeal Book, Exhibit 4, Page 4, Lines 168-169);
 - iii. after stating that he "*just brushed past her*", Mr Jarvis then mentioned (at #90) that he "*might have just brushed her arm with the race book*" (Appeal Book, Exhibit 4, Page 2, Line 90), which later on then became "*I had the book in my hand and I might have just hit her with the race book on the arm*" (Appeal Book, Exhibit 4, Page 3, Lines 107-108); and
 - iv. later on in his interview with Stewards, Mr Jarvis then stated that the contact may have been "*on her arm or her shoulder, I don't know*" and that he "*might have flicked her with the race book*" (both at Appeal Book, Exhibit 4, Page 6, Lines 256-258), which is different to "brushing" past someone.
- e. It is accepted that Mr Jarvis has Alzheimer's disease and it is reasonable to conclude that this may have impacted his ability to recall events accurately. Mr Jarvis himself acknowledged this at the inquiry when in responding to a query as to whether he was

maybe confused in describing aspects of the incident, he responded with "*Listen, it's a big chance. I am 80. I have got Alzheimer and other problems in me brain. So there's a lot of possibilities, but I'm doing my best*" (Appeal Book, Page 17, Lines 773-774).

26. With respect to penalty, Mr Cleaver submitted that the penalties issued to Mr Jarvis were appropriate in the circumstances, reflective of the seriousness of the Charges and necessary to protect the racing industry and to act as a general deterrence to others.
27. Mr Callanan submitted that if Mr Jarvis was found guilty of the Charges then the matter should be considered to be towards the lower end of offending, and that a lower period (if any) of suspension was more appropriate.
28. In support of his argument for a lesser penalty, Mr Callanan also referenced the Appeal Panel decision in the matter of *Michael Dwyer (2023)*, in which Mr Callanan submitted that the offending was more serious than that alleged against Mr Jarvis, and yet in the *Dwyer* matter Mr Dwyer was suspended for four months.
29. Numerous character references were also provided by Mr Callanan in support of Mr Jarvis, each of which was provided by a lady and offered strong support for the Appellant's good character and favourable treatment of women in the industry.
30. Finally, Mr Callanan also submitted that Mr Jarvis' excellent disciplinary record over the course of his 60 plus years in the racing industry warranted greater consideration.
31. In considering the penalties for Charges 1 and 2 the Panel considered the following matters:
 - a. Disciplinary history, which the Panel considers to be excellent with this matter being the first time Mr Jarvis has been convicted of offences of this nature across an exceedingly long career;
 - b. Personal and professional circumstances;
 - c. The nature and circumstances of the offences;
 - d. Principles of specific and general deterrence and what message is sent to the industry in respect of such conduct;
 - e. The purpose of issuing penalties as a protective measure for the image and interests of the thoroughbred racing industry, with the main purpose of the imposition of penalties for breaches of the Rules being to protect the image and integrity of the sport, and to send a message to the community that racing takes steps to always do that); and
 - f. Precedent penalties for similar offences.

32. Having considered the matters described above, the Panel is unanimously of the view that the appeal in relation to penalty should be allowed, and that the penalty for Charge 1 (AR 233(c)) should be reduced to a suspension of three months. Given it is substantially the same conduct that also resulted in the breach of AR 228(b) (i.e., Charge 2), the Panel is of the view that the penalty for Charge 2 should also be reduced to a suspension of three months.
33. The Panel agrees with the Stewards' approach in relation to how the penalties are to be served and has determined that it is appropriate for the penalties for Charges 1 and 2 to be served concurrently.
34. By arrangement between the Appellant and the Stewards the suspension may be deferred under AR 283(7) for seven clear days in order to allow the Appellant the opportunity to get his affairs in order. The Appellant is not permitted to start a horse in a trial or in a race during this seven day period.
35. The orders of the Panel are:
- a. Charge 1 (AR 233(c)) - appeal against finding of breach dismissed;
 - b. finding of a breach of AR 233(c) confirmed;
 - c. Charge 1 - Appeal against severity of penalty allowed, with the penalty reduced from a 5 month suspension of the Appellant's trainers licence to a 3 month suspension of the Appellant's trainers licence;
 - d. Charge 2 (AR 228(b)) - appeal against finding of breach dismissed;
 - e. finding of a breach of AR 228(b) confirmed;
 - f. Charge 2 - Appeal against severity of penalty allowed, with the penalty reduced from a 5 month suspension of the Appellant's trainers licence to a 3 month suspension of the Appellant's trainers licence;
 - g. the penalties for Charges 1 and 2 will be served concurrently (i.e., a total suspension of 5 months). This suspension may be deferred under AR 283(7) for 7 days from the date of these reasons by arrangement between the Appellant and the Stewards; and
 - h. Appeal deposit to be partially (50%) refunded.
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