

RACING APPEAL PANEL OF NEW SOUTH WALES

APPELLANT: MR DENNIS MITCHELL

Appeal Panel: **Mr R. Beasley SC, Principal Member; Mr J. Murphy; Ms J Madsen**

Date of Appeal hearing: **11 August 2017**

Date of decision: **22 August 2017**

Appearances: **Appellant: Mr A Byrne of Counsel, instructed by Ms S. Connor of Laxon Lex Lawyers**

Stewards: **Mr Marc Van Gestel, Chairman of Stewards**

REASONS FOR DECISION ON JURISDICTION

Mr R. Beasley SC, Principal Member

Introduction

Charges

1. On 3 March 2017 and 13 April 2017, the Racing NSW Stewards conducted an inquiry into matters concerning the conduct of employees of the Australian Turf Club (“ATC”) who were associated with the ATC’s Mounted Security Division (“the Security Division”).

2. Following the Stewards’ inquiry, three charges were brought against the Appellant, Mr Dennis Mitchell. Until 9 June 2017, Mr Mitchell held the position of General Manager Security, Risk and Investigations at the ATC. He had overall responsibility for the Security Division. The charge sheet, containing the full particulars for each charge, is Annexure “A” to these Reasons for Decision.

3. Charges 1 and 2 brought against Mr Mitchell allege that he had breached AR175(o)(iii) of the *Australian Rules of Racing* (“Rules of Racing”) which is in the following terms:

AR175 The Principal Racing Authority (or Stewards exercising powers delegated to them) may penalise:

...

- (o) *any person in charge of a horse who in their opinion fails at any time ...*
- (iii) *to provide for veterinary treatment where such treatment is necessary for the horse.*

4. In summary, the particulars for charge 1 allege that Mr Mitchell failed to obtain necessary veterinary treatment for the horse “Jabba Star” following that horse suffering an injury in Byron Bay on 24 July 2015. At that time, the Security Division had been engaged by the organisers of the “Splendour in the Grass” music festival to provide mounted security for the festival. Mr Mitchell was riding the horse when it was injured.
5. The particulars concerning charge 2 are that Mr Mitchell failed to obtain necessary veterinary treatment for the horse “Turbulent Jet” when it suffered an injury on 31 December 2016, also at Byron Bay. On this occasion the Security Division had been engaged by the organisers of the Falls Music Festival to provide mounted security for the festival.
6. Charge 3 brought against Mr Mitchell was for an alleged breach of AR175A which is in the following terms:

AR175A Any person bound by these Rules who either within a racecourse or elsewhere in the opinion of the Principal Racing Authority (or the Stewards exercising powers delegated to them) has been guilty of conduct prejudicial to the image, or interest, or welfare of racing may be penalised.

7. There are four sets of particulars in relation to charge 3. Particulars i. to p. repeat the particulars for charges 1 and 2 concerning the horses Jabba Star and Turbulent Jet at

the two music festivals. Particulars b. to d. of charge 3 relate to an allegation that another employee of the Security Division, Ms Michelle Steele, issued directions to other employees “*to not remove wet urine-soaked shavings during their afternoon shifts from the stables of horses utilised by the ... Security Division*”. It is alleged that this direction resulted in horses from the Security Division being housed in stables (at Centennial Park, in Sydney) that were found to be soaked in urine on at least 6 separate days.

8. Particulars e. to h. in relation to charge 3 concern an allegation that a number of horses in the Security Division developed saddle sores, and that one horse (Jabba Star) was made to complete a 7-8 hour shift at Randwick Racecourse on 14 January 2017 while suffering from open saddle sores, thereby exposing the horse to pain.

Plea and appeal

9. On 6 June 2017, Mr Mitchell pleaded guilty to each charge. He was penalised by way of a \$1,000 for each breach of AR175(o)(iii), and by way of a \$3,000 fine for the breach of AR175A. Pursuant to AR196(3), the total fine imposed on Mr Mitchell was the sum of \$4,000.
10. On 9 June 2017, Mr Mitchell’s employment with the ATC was terminated. On 16 June 2017, he commenced this appeal, seeking to challenge both the findings of guilt, and the severity of penalty imposed on him.
11. Mr Mitchell’s appeal was not lodged within the time required by LR106(2)(b). He made an application to seek to have the Panel hear the appeal out of time by means of an exercise of discretion under LR106(2)(c). This required the Panel to be satisfied that “exceptional circumstances” existed in order to hear the appeal.
12. In support of his application to have the appeal heard out of time, Mr Mitchell relied on an affidavit he swore on 4 July 2017, and on written submissions lodged by his legal advisers. The evidence given by Mr Mitchell in his affidavit was not challenged, and the Panel (then comprising myself, Mr R. Clugston, and Mr J. Fletcher) accepted Mr Mitchell’s version of events as set out in his affidavit for the purposes of the application to have his appeal heard out of time. For the reasons

outlined in our Reasons for Decision dated 13 July 2017, the Panel granted leave to Mr Mitchell to appeal out of time.

13. As was clear from his Notice of Appeal, Mr Mitchell also sought to change his plea from “guilty” to “not guilty” in respect to each charge. Ultimately, the Stewards did not oppose this change of plea, a matter that was communicated to the Panel by email on 13 July 2017.

Hearing on 11 August 2017

14. The hearing of this appeal commenced on 11 August 2017. As a result of illness and unavailability, Mr Murphy and Ms Madsen replaced Mr Clugston and Mr Fletcher on the Appeal Panel. The Stewards were represented on the appeal by Mr Marc Van Gestel, the Chairman of Stewards. Mr Mitchell was represented by Mr Andrew Byrne of counsel, instructed by Ms S. Connor of Laxon Lex Lawyers. The Appeal Book was tendered and marked as Exhibit A before the Panel, and all exhibits from the Stewards’ Inquiry were also tendered, and given the exhibit number they were given at the Inquiry.
15. Prior to the appeal commencing, it was clear that the Appellant now challenged the Stewards’ jurisdiction to inquire into his conduct, and to charge and penalise him. Prior to the appeal hearing the Panel made orders that the parties file written submissions on this issue, and that order was complied with. During the course of the appeal hearing, the parties indicated that their preference was for the Panel to reach a decision concerning the jurisdiction issue before it considered the evidence and arguments specific to the three charges. The Panel agreed with this course. The argument therefore on 11 August was limited to the jurisdiction issue. These Reasons for Decision relate only to that issue.

Factual matters relevant to jurisdiction

The Security Division

16. The Security Division was established by the Australian Jockey Club in 2009. The horses attached to it are ex-racehorses which have been retrained as mounted security horses. One of the aims of the Security Division seems to have been to use former racehorses to ensure that they had a “second life” after racing: Exhibit 24 at [15]. The

Security Division performs a number of roles. One is the performance of security and ceremonial duties on race days at ATC race tracks. Another is to provide private security roles when engaged for non-race meeting events such as music festivals. The Security Division also performs a community engagement role. This may involve the Security Division making appearances on television shows, or making appearances at aged care homes, schools, hospitals or at other community charity events: Exhibit 24 [17].

17. Mr Mitchell had overall responsibility for the Security Division at the time relevant to the three charges brought against him. He is an experienced horseman, and first commenced employment with the Australian Jockey Club in September 2008, as the Assistant Security and Risk Manager at Warwick Farm and Randwick racecourses. When the AJC and STC merged, he became the Security Risk and Transport Manager for the Randwick and Canterbury racecourses. He held this position until February 2015, when he became the General Manager of Security, Risk and Investigations at the ATC, a position he held until, as stated above, his employment was terminated on 9 June 2017.
18. It would appear that when the horses of the Security Division perform their duties, they wear branding identifying themselves as part of the ATC. An example of the badge or branding apparently worn by the horses can be found at tab 2 of Exhibit 24, which is an extract from the ATC's website concerning the Security Division. It informs the reader that the horses may fulfil race day duties, and that they can be "*hired out for private and public events and promotions....or hired out for private mounted security for major public events, ceremonies or festivals*".

Charge 1

19. "Splendour in the Grass" 2015 was a three day music festival held near Byron Bay in northern New South Wales. The Security Division was engaged by the festival to provide 5 horses as mounted security for the event: Exhibit 24 at [59]. One of the horses was Jabba Star, which was ridden by Mr Mitchell. Mr Mitchell does not dispute that on the evening of 24 July 2015, Jabba Star hit a barbed wire fence while he was riding the horse. It would appear that the horse was treated for his injuries,

including the next morning by Michelle Steele, who at the relevant time was the Security Division stable coordinator: Exhibit 23 at [85].

20. In charge 1 it is alleged that it was necessary to provide veterinary treatment for Jabba Star. Mr Mitchell initially denied this (he subsequently conceded breach of AR 175(o)(iii) when pleading guilty, and in his statement that is exhibit 36), and the statements of Ms Steele and Michael Jenkinson (Exhibits 23 and 25) also disputed the contention that any veterinary treatment was necessary for the horse. This however is not a matter that the Panel needs to resolve now. The only issue presently before the Panel is whether the Stewards had jurisdiction to inquire into the incident involving Jabba Star at the Splendour in the Grass music festival, and subsequently charge and penalise Mr Mitchell for allegedly not obtaining necessary veterinary treatment.

Charge 2

21. The Falls Music Festival 2016 was another multi-day music festival conducted in various locations throughout Australia, including Byron Bay. Mr Mitchell also attended this music festival with the Security Division, which was again engaged to provide mounted security: Exhibit 24 at [79].
22. The horse Turbulent Jet, part of the Security Division, was ridden at the Falls Music Festival by Lucy Duel, an employee of the Division. On the afternoon of 31 December 2016, Turbulent Jet tripped and fell while Ms Duel was riding it: Exhibit 9 at [7]. The horse suffered an injury to his lip. Some loose tissue from the lip was removed by Ms Steele with a knife, and the wound treated with antiseptic: Exhibit 9 at [12]; Exhibit 24 at [82]; Exhibit 23 at [162]. The wound was subsequently monitored.
23. It is alleged in charge 2 that Mr Mitchell should have arranged for necessary veterinary treatment for Turbulent Jet. Mr Mitchell again initially denied that veterinary treatment was needed, prior to his plea of guilty (and see exhibit 36). The Panel again is not determining that matter in these Reasons for Decision. It is again only determining whether the Stewards had jurisdiction to inquire into the facts that form the particulars to charge 2, and to charge and penalise Mr Mitchell.

Charge 3

24. Certain conduct of Mr Mitchell is alleged to be conduct that is prejudicial to the image or interests or welfare of racing, and as such a breach of AR175A.
25. As mentioned above, particulars i. through to p. repeat the allegations made against Mr Mitchell that he failed to obtain necessary veterinary care for Jabba Star and Turbulent Jet at the two music festivals.
26. Particulars b. to d. in relation to the AR175A charge, however, relate to the condition of the stables of the horses at Centennial Park, and an alleged direction given by Ms Steele to not remove urine-soaked shavings from the stables.
27. Particulars e. to h. relate to horses in the Security Division allegedly suffering from saddle sores, and that the horse Jabba Star was made to complete a 7-8 hour shift at Randwick Racecourse on a race day (14 January 2017) when suffering from open saddle sores.
28. These allegations are now denied, but again the matter to be determined is whether the Stewards had jurisdiction to inquire into the circumstances relating to charge 3, and to charge and penalise Mr Mitchell.

Statutory Regime and Rules of Racing

29. Both the Stewards and the Appellant referred to the Rules of Racing and certain provisions of the *Thoroughbred Racing Act 1996* (“the Act”), when advancing their respective positions concerning jurisdiction.
30. One submission they share in common is the following statement concerning the nature of the Rules of Racing by Hodgson JA in *New South Wales Thoroughbred Racing Board v Waterhouse* (2003) 56 NSWLR 691; [2003] NSWCA 55 at [35]:

The Rules of Racing are rules to which participants in racing become contractually bound; but they are also given statutory consequences, for example by s.14 of the ... Act.

31. It has also been said that the Rules of Racing themselves, as a contract, must be “*consistent with any statutory provision which affects the relationship*”: *Director-General of Education v Suttlng* (1987) 162 CLR 427 at 437 per Brennan J, cited with approval by Payne JA in *Golden v V'Landys* [2016] NSWCA 300 at [65].
32. Section 13 of the Act sets out the functions of Racing NSW. The relevant provisions are as follows:

S. 13(1). Racing New South Wales has the following functions:

- (a) *all the functions of the principal club for New South Wales and committee of the principal club for New South Wales under the Australian Rules of Racing,*
 - (b) *to control, supervise and regulate horseracing in the State,*
 - (b1) *such functions in relation to the business, economic development and strategic development of the horseracing industry in the State as are conferred or imposed by this Act,*
 - (c) *to initiate, develop and implement policies considered conducive to the promotion, strategic development and welfare of the horseracing industry in the State and the protection of the public interest as it relates to the horseracing industry,*
 - ...
 - (e) *such functions as may be conferred or imposed on Racing NSW by or under the Australian Rules of Racing or any other act,*
 - (f) *such functions with respect to Horseracing New South Wales as may be prescribed by the Regulations.*
33. “Horse racing” is defined in the Act to mean “*the racing of galloping horses as referred to in the Australian Rules of Racing*”, and the “Australian Rules of Racing” is defined to mean the “*Australian Rules of Racing as adopted by the Australian Conference of Principal Racing Clubs*”.
 34. Section 14 of the Act sets out the powers of Racing NSW. It is relevantly in the following terms:

S.14(1) Racing NSW has power to do all things that may be necessary or convenient to be done for or in connection with the exercise of its functions.

(2) Without limiting subsection (1), Racing NSW has power to do the following:

- (a) investigate and report on proposals for the construction of new racecourses, and inspect new racecourses or alterations or renovations to existing racecourses,*
- (b) register a licence, refuse to register a licence, or cancel or suspend the registration or licence of, a race club, or an owner, trainer, jockey, stable hand, bookmaker, bookmaker's clerk or another person associated with racing, or disqualify or suspend any of those persons permanently or for a specified period,*
- (c) supervise the activities of race clubs, persons licensed by Racing NSW and all other persons engaged in or associated with Racing,*
- (d) enquire into and deal with any matter relating to racing and to refer any such matter to Stewards or others for investigation and report and, without limiting the generality of this power, to inquire at any time into the running of any horse on any course or courses, whether or not a report concerning the matter has been made or decision arrived at by any stewards,*

...

- (h) register and identify galloping horses,*
- (i) disqualify a horse from participating in a race,*
- (j) exclude from participating in a race a horse not registered under the Rules of Racing,*
- (k) prohibit a person from attending at or taking part in a race meeting,*
- (l) impose a penalty on a person licensed by it or on an owner of a horse for a contravention of the Rules of Racing...*

35. The Rules of Racing submitted to be important to the issue of jurisdiction were said to be the following:

AR2: *Any person who takes part in any matter coming within these Rules thereby agrees with the Australian Racing Board and each and every Principal Racing Authority to be bound by them.*

AR7: *A Principal Racing Authority shall:*

...

- (ii) *have the control and general supervision of racing within its territory;*
- (iii) *in furtherance and not in limitation of all powers conferred on it or implied by these Rules, have power, in its discretion:*

...

(c) *to inquire into and deal with any matter relating to racing and to refer, report and/or for hearing and determination and, without prejudice to the and/or delegate any such matter to stewards or others for investigation and generality of the foregoing power, to inquire at any time into the running of any horse upon any course or courses, whether a report concerning the same has been made or decision arrived at by any stewards or not;*

(d) *to penalise:*

- (i) *any person contravening the Rules or disobeying any proper direction of any official, or*
- (ii) *any licensed person or official whose conduct or negligence in the performance of his duties has led, or could have led, to a breach of the Rules.*

AR8: *To assist in the control of racing, Stewards shall be appointed according to the Rules of the respective Principal Racing Authorities, with the following powers:*

...

- (d) *To regulate and control, inquire into and adjudicate upon the conduct of all officials and licensed persons, persons attendant on or connected with a horse and all other persons attending a racecourse.*

(e) To penalise any person committing a breach of the Rules.

AR10: *The Stewards may at any time inquire into, adjudicate upon and deal with any matter in connection with any race meeting or any matter or incident related to racing.*

Stewards' Submissions

36. The Stewards' submissions centred upon the proposition that the Security Division is "inextricably" linked to racing, no matter what it is doing, even if providing mounted security at a music festival. In support of the submission that the Stewards had jurisdiction to inquire into the relevant conduct and matters the subject of the charges brought against Mr Mitchell, Mr Van Gestel relied in particular on ss.13(1)(b), (b1) and 14(2)(c) of the Act, and AR8(d).
37. In relation to AR8(d), Mr Van Gestel submitted that Mr Mitchell was an "official" within the meaning of LR5 which is in the following terms:

"Official" includes a committeeman, director, board member or any person employed, engaged or appointed by the Board, or by a club, association or registration board, for the purpose of conducting its race meetings, tracks, training tracks, offices, business and affairs and all matters incidental thereto.

38. The submission was that AR8(d) gave the Stewards power to inquire into and adjudicate upon the conduct of Mr Mitchell as an official, and this included all aspects of his conduct in having responsibility for the Security Division.

Appellant's Submissions

39. Mr Byrne first referred to the fact that Mr Mitchell is neither a licensed person, nor is he a "participant in racing" as that term is defined in the Rules of Racing.
40. Reduced to its nub, the Appellant submits that none of the powers enumerated in AR8(a) to (z) of the Rules of Racing empower the Stewards to inquire into the matters the subject of the charges. Mr Byrne argued that the only two powers of any possible relevance were AR8(d) and (e).

41. As outlined above, AR8(e) gives to the Stewards power to “penalise any person committing a breach of the Rules”. This sub-rule of course only has any relevance if the “person” is subject to the Rules in the first place, and that it is within power for the Stewards to inquire into the conduct and lay a charge.
42. In relation to AR8(d), Mr Byrne argued that the words “*attending a racecourse*” apply to each of the preceding phrases “*the conduct of all officials and licensed persons*” and “*persons attendant on or connected with a horse*”. Read any other way, he submitted, the phrase “*persons attended on or connected with a horse*” might have an absurdly wide reach, including applying to people who keep horses of all breeds as pets, rather than racehorses.
43. However, the main thrust of Mr Byrne’s submission related to the chapeau of AR8 which provides that all of the powers enumerated in sub-rules (a) to (z) are for an express purpose: “*to assist in the control of racing*”. Mr Byrne’s submission was that none of the conduct of Mr Mitchell as outlined in the particulars to any of the charges has any relevance to “racing” or to the “control of racing”. As such, the Stewards had no power to inquire into that conduct, and hence no power to bring the three charges against Mr Mitchell.

Resolution

Charges 1 and 2

44. While the purpose or purposes of the Rules of Racing are not expressly stated in them, it seems non-controversial to hold that one clear purpose is to provide for rules and powers to regulate and control thoroughbred horseracing. The Act shares at least this purpose with the Rules. The Rules also have penalty provisions, which no doubt serve the purpose of seeking to uphold the image and integrity of horseracing.
45. While the purpose of the Rules of Racing is relevant to their construction, the starting point to interpretation must begin with the text or language used. With this in mind, I turn to the language of AR8(d) which gives to the Stewards the power to “*regulate and control, inquire into and adjudicate upon the conduct of all officials and licensed*

persons, persons attended on or connected with a horse and all other persons attending a racecourse”. In relation to this sub-rule:

- (a) First, I accept that Mr Mitchell is an “official” within the meaning of the sub-rule by reason of the definition of that term in LR5, and because LR1 provides that the Local Rules and the Rules of Racing *“must be read, interpreted, and construed together”*. There is no definition of “official” in the Rules of Racing, and so in my view, as an employee of a race club, Mr Mitchell is an official for the purposes of AR8(d).
 - (b) Secondly, I do not accept the submission of the Appellant that the words “attending a racecourse” in the sub-rule apply to the phrases “inquire into and adjudicate upon the conduct of all officials and licensed persons” and “persons attended on or connected with a horse”. In my view, this sub-rule should be read so that it applies to officials and licensed persons and persons connected with a horse in circumstances where they are not “attending a racecourse”.
 - (c) Thirdly, however, I do accept the Appellant’s submission that the phrase “persons attendant on or connected with a horse” could, read alone, have an absurdly wide application – without some constraint, the phase would give the Stewards power to conduct an inquiry into the conduct of a person connected with any breed of “horse” in circumstances where the horse was merely a pet not involved in racing. There is, however, a constraint on this phrase. It is found in the express purpose of AR8. All of the powers in AR8 are given to the Stewards in order to *“assist in the control of racing”*. The purpose of the rule and the Rules of Racing generally would confine the “horse” referred to in the sub-rule as a thoroughbred horse connected with horse racing.
46. Turning to the words “to assist in the control of racing”, I note that charges 1 and 2 concern the conduct of the Appellant in not obtaining what is alleged to be necessary veterinary care for Jabba Star and Turbulent Jet at two music festivals at Byron Bay when the Security Division was engaged by the organisers of those festivals. While I appreciate that the Security Division is part of the ATC, in my view, the conduct of

Mr Mitchell or any of the other persons while engaged to provide security at a private music event has nothing to do with “racing”.

47. The Security Division was at Byron Bay at the relevant times because the organisers of the two music festivals contracted with the ATC for them to provided mounted security at these events. The events themselves, and the security services provided, have nothing at all to do with the racing of thoroughbred horses. An inquiry into the conduct of Mr Mitchell at these music festivals does not “assist in the control of racing”. “Racing”, while not defined in the Rules, must be a reference to the conducting and organisation of thoroughbred horseracing. That is what the Rules of Racing (and the Act) concern. Inquiring into the conduct of mounted security horses (even ones supplied by a turf club) at a private music festival has nothing to do with horseracing in my opinion, or to the control of horseracing. For these reasons, in my view, AR8(d) did not empower the Stewards to inquire into Mr Mitchell’s conduct at these music festivals, or to lay the charges against him under AR 175(o)(iii).
48. I have also considered whether the Stewards had power to inquire into Mr Mitchell’s conduct at the music festivals under AR10, which is in the following terms:

The Stewards may at any time inquire into, adjudicate upon and deal with any matter in connection with any race meeting or any matter or incident related to racing (emphasis added).

49. In my view, this rule did not empower the Stewards to inquire into Mr Mitchell’s conduct at the music festivals. The words “or any matter or incident related to racing” suggest that a broad approach should be taken to this term. The phrase “related to” or “in relation to” has frequently been given a broad interpretation or wide meaning in cases dealing with the construction of statutory provisions where this or a similar phrase is used. However, the meaning of the phrase “related to racing” must be determined from the context in which it appears (which includes AR10 itself and the Rules of Racing more broadly) and from the purpose of the Rules of Racing. Context and purpose here indicate in my view that the phrase “related to racing” in AR10 should not be given such a broad meaning that *anything* that has the barest relationship to racing falls within its scope. In my view, “related to racing” again has to have some direct and reasonable relationship to the conduct and control of the

racing of thoroughbred horses. In my view, this phrase should not be interpreted so broadly that it could apply to the conduct of Mr Mitchell while providing mounted security services at a private music festival, even accepting again that the Security Division is part of a race club.

50. In my view, neither AR8(d) nor AR10 empowered the Stewards to conduct the inquiry that led to charges 1 and 2 being issued against Mr Mitchell. The Stewards were not empowered to bring the charges or to penalise him. I would allow the appeal in relation to both charges 1 and 2, and set aside the penalty imposed.

Charge 3

51. As mentioned above, particulars i. through p. of the charge brought under AR175A relate to Mr Mitchell's conduct at the music festivals. For the reasons indicated above in relation to charges 1 and 2, in my view, the Stewards did not have power to bring the AR175A charge based on any of Mr Mitchell's conduct at the music festivals.
52. The first set of particulars (b. to d.) in relation to charge 3 relate to an alleged direction given by Ms Steele concerning not clearing urine-soaked shavings from the stables of the horses in the Security Division at Centennial Park, and to those stables being found to be saturated with urine on at least 6 separate days.
53. In my view, directions given concerning the stabling of the horses at Centennial Park that form part of the Security Division, and the condition of those stables, are not "related to racing", nor do they go to the "control of racing". The condition of the stabling for the horses of the Security Division is not a matter that is related to the control or conduct of thoroughbred horseracing. In my view then, the Stewards were not empowered to conduct an inquiry into any conduct or omission of Mr Mitchell in relation to the condition of the stables.
54. I hold a different view in relation to the particulars relating to saddle sores. Particulars g. and h. in the charge sheet outline an allegation that Jabba Star performed a security shift on a race day at Randwick Racecourse when that horse was suffering from saddle sores. I assume that particulars e. and f. relate to alleged ill-

fitting saddles causing saddle sores at a time when the horses were providing security services as part of the Security Division on race days at race tracks.

55. The provision of security services during the course of a race meeting seems to me to have a real connection to the “control of racing”, and also to be “related to” the racing of thoroughbred horses. In my view then, the Stewards were empowered to conduct an inquiry into any conduct of Mr Mitchell relevant to particulars e. to h. to charge 3.

Power to Penalise Mr Mitchell

56. I did have a concern that there was no power to penalise Mr Mitchell, given that he is an employee of the ATC, and not a licensed person or an owner. This was because s14(2)(l) of the Act does not provide any power to penalise an “official.” As a result of this concern, I invited supplementary written submissions on this issue, which were provided.
57. Having considered the matter fully now, I am of the view that in relation to the matters particularised in particulars e. to f. of charge 3, the Stewards do have power to penalise Mr Mitchell under AR 175A if the charge is sustained. I hold this view because he was at the time, and agreed to be, an “official” of the ATC. As such, in my view he agreed to be bound by the Rules of Racing (AR2), which provides that *“any person who takes part in any matter coming within these Rules thereby agrees With every Principal Racing Authority to be bound by them.”* Because Mr Mitchell’s alleged conduct (charge 3, particulars e. to h.) is conduct that in my view the Stewards have power to inquire into and adjudicated on under AR8(d), it is conduct that is a “matter coming within” the Rules of Racing. He is therefore subject to a penalty under AR 175A if the charge is sustained.

Summary

58. For the above reasons, I would allow the appeal in relation to charges 1 and 2. I would set aside the finding of guilt against Mr Mitchell in relation to these charges, and set aside the penalties imposed.
59. I find, however, that the Stewards did have power to inquire into the circumstances outlined in particulars e. to h. to charge 3, and to bring a charge against Mr Mitchell

under AR175A on the basis of those particulars. Mr Mitchell has pleaded not guilty to charge 3, and the Panel will need to determine that charge based on the facts before it.

60. The orders I would make are as follows:
 - (a) Appeal in relation to charges 1 and 2 brought under AR 175(o)(iii) allowed.
 - (b) Set aside both findings of breach of AR175(o)(iii).
 - (c) Set aside the penalties imposed of fines of \$1000 for the Stewards' findings of breach of AR175(o)(iii).
 - (d) Allow the appeal in relation to any finding of breach of AR 175A based on particulars b. to d. and i. to p. of charge 3.
 - (e) Direct that the appeal in relation to the finding of breach of AR 175A based on particulars e. to h. of charge 3 be listed for further hearing.

Mr J Murphy and Ms J Madsen

61. We have read the reasons for decision of the Principal Member.
62. Having closely considered the arguments, and the relevant provisions of the Rules of Racing and the Act, we agree with the Principal Member's reasons for decision, and with the orders he proposes.

Orders of the Panel

- (a) Appeal in relation to charges 1 and 2 brought under AR 175(o)(iii) allowed.
- (b) Set aside both findings of breach of AR175(o)(iii).
- (c) Set aside the penalties imposed of fines of \$1000 for the Stewards' findings of breach of AR175(o)(iii).
- (d) Allow the appeal in relation to any finding of breach of AR 175A based on particulars b. to d. and i. to p. of charge 3.
- (e) Direct that the appeal in relation to the finding of breach of AR 175A based on particulars e. to h. of charge 3, and to the severity of the penalty imposed, be listed for further hearing as soon as possible after 10 September.