

RACING NEW SOUTH WALES APPEAL PANEL

IN THE MATTER OF THE APPEAL OF BRUNO NETO

Appeal Panel: **Mr T Hale SC – Convenor**
Mrs Judith Foley
Mr C Tuck

Appearances: **Racing NSW: Mr Marc Van Gestel, Chairman of Stewards**

Appellant: Himself

Date of Hearing and **18 May 2020**

Orders:

Date of Reasons: **18 May 2020**

REASONS FOR DECISION – Given by the Convenor on behalf of the Panel

Introduction

1. The appellant, Bruno Neto, is a licensed stablehand. He holds a stablehands' licence with Racing NSW. He is employed by Mr Rick Worthington at Warwick farm
2. On 15 January 2020 the appellant made application for a NSW Jockey's Licence. The information that he supplied with that application led to the Stewards (Mr Van Gestel and Mr Birch) conducting an inquiry into the application, which was held by telephone on 21 April 2020.
3. The inquiry led to the appellant being charged with a breach of AR 229(1)(a), which provides that:
 - (1) A person must not:
 - (a) engage in any dishonest, corrupt, fraudulent, improper or dishonourable action or practice in connection with racing;
4. The appellant pleaded guilty to the charge. The Stewards imposed a penalty of six months disqualification to commence immediately on 21 April and to expire on 21 October, on which day he would be free to re-apply for a licence.

5. In coming to that decision, the Stewards said that the starting point was a 12-month disqualification, which they reduced by 25% because of his guilty plea and a further 25% because of the current circumstances of the COVID-19 pandemic.
6. The appellant, as he is entitled to do, has appealed to this Panel against the severity of the penalty pursuant to s.42 of the *Thoroughbred Racing Act 1996*.
7. The appellant made application for a stay of the penalty pending appeal. The stay was granted without opposition from the Stewards.

Charges

8. The particulars of the charge are:

That you licensed stablehand Mr Bruno Neto did commit a fraudulent action in connection with racing in that:

1. On 13 March 2020 you attended an interview with Deputy Chairman of Stewards Mr Wade Birch and Mr Gary Rudge in respect to a jockey's licence application with Racing NSW, whereby you advised you had been licensed as an apprentice jockey in France.
2. On 14 March 2020 you provided Mr Rudge by email a race record which you purported to be your race riding record in France as supplied by France Galop (Exhibit 2).
3. On 16 March 2020 you provided Mr Rudge with a Licence Record purported to be your Licence Record in France as supplied by France Galop (Exhibit 3).
4. Such actions detailed in paragraphs 2 and 3 being fraudulent actions in that you supplied documents that you fraudulently falsified to attempt to deceive Racing NSW in that you had been licensed by France Galop between 18/2/2010 and 5/2/2013 as an apprentice jockey and had ridden in races in France during 2010, 2011 and 2012 when such information was false and for the purpose of obtaining a jockey's licence with Racing NSW.

Representation

9. The appeal was held by audio visual link. Mr Van Gestel (Chairman of Stewards) appeared for the Stewards. The appellant was not represented and appeared for himself.

Plea

10. Before this Panel the appellant maintained his plea of guilty

Evidence

11. We received into evidence the appeal book as Exhibit A. It contained the exhibits and transcript of the hearing before the Stewards. We also received as Exhibit B a schedule of precedents of penalties of similar offences. Exhibit 1 was a letter from the appellant's employer Rick Worthington attesting to his skills as a trackwork rider and the valuable contribution that he makes to Worthington Racing.

Facts

12. The relevant facts are not in dispute. The appellant completed the standard form *Licence Application – Jockey*, which was Exhibit 1 before the Stewards. The application form contained a section in which the applicant was required to certify that he or she declared that:
I understand that it is a serious offence under the Rules to make a false declaration
13. The completed application itself did not contain any false declaration. The form disclosed that the appellant had held an apprentice jockey licence in Ireland and England from 2009 to 2011.
14. In his evidence before the Stewards the appellant explained the circumstances in which he provided false documents this way:
Gary [Rudge] ask me for the letters and then I saw my letters are from Brazil, England and Ireland and then he still ask me for more letters. So I just lie to him and say, "Oh I did rode in France. I try to get letter from France."
15. Mr Rudge and Mr Birch were the licensing supervisors who conducted an interview with the appellant in assessing his application. In his evidence before the Stewards the appellant admitted that he told Mr Rudge and Mr Birch that he had ridden as an apprentice in France and that this was untrue.
16. In order to make good on his statement that he would try to get a letter from France, he fabricated an email which purported to confirm his false statement.
17. On 14 March 2020 the appellant sent an email to Mr Rudge attaching what purported to be an email trail from France Galop setting out his Race Record and which included a document dated 13 March 2020 which was certified in this way:
- I undersigned, Dariusz Zawiejski, Licensing Department Manager, hereby certify that Mr Bruno Neto apprentice jockey race record in France is the following:
18. The document then purported to set out the appellant's record of races in which he rode, the number of wins and places and the prize money that he had won.
19. Amongst the documents that the appellant provided in this email chain was a document dated 16 March 2020 which was in these terms:

- *Licence Record, Mr Bruno Neto held an apprentice jockey licence and it was issued on 18/02/2010 and expired on 05/02/2013 during this time he does not receive any suspensions or fines.*

20. The Stewards made enquiries of France Galop. On 23 March 2020, Mr Rudge sent an email to France Galop in which attached documents in the email trail he had been sent by the appellant. In that email he asked:

- *Can you please provide for us the date in which Bruno Neto was first registered with France Galop as an Apprentice Jockey and the date in which his licence expired?*

21. On 23 March 2020 Mr Rudge received this reply:

- *Dear Gary,
Please note that Mr Bruno Neto has never been licensed In France.
It seems that the history record he sent you is a false document. We have never established this clearance for Mr Neto.
The request for the history record was sent to us for german jockey Mr Francisco Franco da Silva as you will see in the attached emails we received.
These emails have visibly been altered fraudulently.*

22. Before the Stewards the appellant admitted that he fabricated the documents he said that he had received from France Galop. The transcript records the following exchange:

- *CHAIRMAN: Yes, but I mean did you provide those letters so that Racing NSW would issue you with a jockey's licence. Is that why you lied to the licensing?*
- *B NETO: Yeah, yeah. Well, I just lied for the transfer and I know I did big mistake and I apologise for that.*

23. The transcript of his evidence before the Stewards shows that the appellant was genuinely remorseful. However, the fact remains that he fraudulently provided fabricated documents to Racing NSW to support his application for a jockey's licence.

Submissions

24. Mr Van Gestel made the following submissions on penalty:

- a. He referred to the seriousness of the dishonesty involved and in particular the fact that the fabricated France Galop documents that the appellant provided were intended by him to be relied upon by Racing NSW in considering his application for a jockey's licence.
- b. He also submitted that in the public interest and in the interests of racing, jockeys must have the necessary level of training. Amongst other things this is

a safety issue, both for the protection of the jockey who applies for the licence as well as for the protection of the other jockeys and riders with whom he or she may be riding.

- c. An important consideration in determining penalty is the protection of the industry. A penalty should be of sufficient severity to deter others from breaching the rule.
- d. He relied upon a table of precedent penalties for the breach of AR 229(1)(a). The conduct of the appellant must be considered as fraudulent within the meaning of the rule. He submitted that this was the most serious or one of the most serious of the conduct identified in the rule. He referred to three occasions on which there had been convictions for fraudulent conduct. For those breaches, penalties of disqualification for 6 months, 12 months and 3 months were imposed. Having regard to the circumstances of the present case in relation to those other cases, he submitted that the appropriate penalty was 6 months disqualification. That penalty took into account the appellant's guilty plea, his contrition and the current circumstances of the pandemic.

25. The appellant submitted:

- a. That a lesser penalty should be imposed due to the hardship that would be inflicted upon him if disqualified for such a lengthy period
- b. He also expressed his deep regret for what he had done. We accept that in that respect he is genuine in his remorse

Resolution

- 26. While we have sympathy for Mr Neto's position and the hardship that disqualification will cause, the fact remains that he deliberately provided fraudulent documents to Racing NSW in an attempt to obtain a jockey's licence, which he knew he was not qualified to obtain. Having lied to Mr Rudge about having ridden in France, he had the opportunity to confess to his lie. Instead he compounded his wrongdoing by fabricating documents to support his lie.
- 27. We accept the submissions of Mr Van Gestel on penalty and consider that a penalty of 6 months disqualification is the appropriate penalty to be imposed.
- 28. We therefore dismiss the appeal and confirm the disqualification imposed by the Stewards.
- 29. As I have mentioned, the disqualification was stayed pending appeal. Now that the appeal has been dismissed, a new starting date must be imposed. The starting date of the appellant's disqualification will be tomorrow, 19 May 2020 and it will expire on 19 November 2020, on which day the appellant is free to reapply for a licence.

The orders of the Panel are therefore:

- 1) The appeal is dismissed;
- 2) The disqualification of 6 months imposed by the Stewards is confirmed;
- 3) The appellant is disqualified for a period commencing on 19 May 2020 and expiring on 19 November 2020, on which day the appellant is free to reapply for a licence;
- 4) The appeal deposit is forfeited.