

## **RACING NEW SOUTH WALES APPEAL PANEL**

### **IN THE MATTER OF THE APPEAL OF ELIZABETH HASLER**

Appeal Panel:               **Mr T Hale SC – Convener**  
                                      **Ms J Madsen**  
                                      **Mrs S Skeggs**

Appearances:               **Racing NSW: Mr P Dingwall, Deputy Chairman of**  
                                      **Stewards**  
                                      **Appellant: Mr P O’Sullivan, Solicitor**

Date of Hearing:             **31 August 2018**

Date of Reasons:         **31 August 2018**

### **REASONS FOR DECISION**

#### **Introduction**

1. The appellant, Ms Elizabeth Hasler, is a licensed stable hand. She works for Edward O’Rourke who has stables at Randwick. In addition to being a stable hand she also carries out clerical work for Mr O’Rourke at his stables.
2. On 20 April 2018, the appellant was charged with and pleaded guilty to a breach of AR175(q) which provides: The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise:  
*Any person who in their opinion is guilty of any misconduct, improper conduct or unseemly behaviour’*
3. The Stewards (Mr P C Dingwall (Chairman), Mr T J Vassallo and Mr R T Debels) disqualified Ms Hasler for a period of six months to commence immediately and to expire on Friday 20 October 2018. The particulars of the charge were:

4. *[O]n Saturday 3rd March 2018 at approximately 11.30pm, she physically assaulted Ms Sophie Johnson, by punching her on 2 occasions, such conduct resulted in Ms Johnson having to seek medical attention.*
5. The appellant has appealed to this Panel pursuant to s.42 of the *Thoroughbred Racing Act*.
6. On 7 May 2018 Mr R Beasley SC, Principal Member, granted a stay of the disqualification he ordered:
  - (a) Pursuant to LR 107(1)(a), a stay is granted on the penalty imposed on the appellant Ms Elizabeth Hasler by the Stewards on 20 April 2018, until such time as the outcome of her appeal is determined.
  - (b) Pending the outcome of the appeal, on the undertaking given to the RNSW Stewards and the Panel, the appellant is not to perform any duties as a stable hand, and will perform only clerical and related duties at the place of her employment at Randwick Racecourse.
  - (c) Appeal to be listed for hearing as soon as possible.
7. As she is entitled to do, the appellant now pleads not guilty to the charge. The change of plea is based on a question of jurisdiction and/or power. The facts found by the Stewards are not in issue.
8. In the hearing before this Panel, Mr P C Dingwall, Deputy Chairman of Stewards, appeared for the Stewards. Mr P O'Sullivan, solicitor, appeared, with leave, for the appellant. We received into evidence as exhibit "A" the transcript and evidence before the Stewards. No additional oral evidence was called.
9. At the conclusion of the hearing on 31 August 2018, the Panel announced its decision and made orders which appear below. We announced that our reasons would be published at a later time. These are those reasons.

## **THE BACKGROUND FACTS**

10. Saturday 13 March 2018 was a race day at Randwick. After the races the appellant went to the Doncaster Hotel in Anzac Parade Kensington. The hotel is almost adjacent to Randwick Race Course. The appellant went to the hotel with other colleagues from the races. Ms Sophie Johnson is also a licenced stable hand. She is employed by Ms Gai Waterhouse and Adrian Bott. Ms Johnson had strapped one of the horses that ran that day. It had been ridden by Adam Hyeronimus, who is the appellant's fiancé. After the races, Ms Johnson and others, with whom she worked at the races, went to the Doncaster Hotel. She and others were "chatting away in the pub just like normal". Ms Johnson left the hotel at closing time, which was 11.30pm.

11. The appellant also left the Doncaster Hotel at closing time.

12. Outside the hotel, a disagreement took place between the appellant and a friend of Ms Johnson. Ms Johnson then became involved. It is not necessary to recount the details, other than to say that the appellant punched Ms Johnson twice in the face, occasioning Ms Johnson serious injury. Although they each knew of each other through racing, they had not previously met.

13. Ms Johnson was taken to hospital. She sustained serious injuries, which included a broken nose, a hairline fracture of the cheek bone and a broken tooth. She later required surgery to have the nose re-broken and reset.

14. The appellant subsequently apologised to Ms Johnson for what she had done. She did so by a Facebook message. She also wrote a letter of apology to Ms Johnson which is in these terms:

*On Saturday night I made a grave error of judgement and for that I am truly sorry. I have made a complete fool of myself and I am very embarrassed by my outrageous aggressive behaviour. It is too late now, but I only wish I could have made different choices on Saturday night, you did not deserve to end up with the terrible injuries you*

*have suffered because of my aggressive behaviour. I would like to offer to pay for any expenses you may have incurred through my actions. I know I can't reverse what has happened but hope this goes a small way to show that I am sorry for my terrible behaviour.*

15. The matter was reported to the police. The appellant was charged with the offence of assault occasioning actual bodily harm. At Waverly Local Court the appellant pleaded guilty to the offence and was sentenced to 250 hours of community service.
16. When the matter came on for hearing before us on 31 August 2018, the appellant had, by reason of the terms of the stay, not been permitted to work as a stable hand for almost four months but had been permitted to carry out her clerical duties for Mr O'Rourke on licensed premises.

## **SUBMISSIONS**

17. Although the appellant pleaded not guilty to the charge under AR175(q), she did not dispute the essential facts that founded the charge. Further, Mr O'Sullivan accepted that the appellant's conduct amounted to misconduct and improper conduct within the meaning of AR175(q), if that rule applied to the present circumstances.
18. Mr O'Sullivan submitted, however, that on a proper construction of the rule it did not apply to the present circumstances. Initially, he put the argument in terms of jurisdictional power, but in my view, the issue is really one of the proper constructions of the rule.

19. Both the appellant and Ms Johnson are persons who are licenced under the Australian Rules of Racing. Under s.14 of the *Thoroughbred Racing Act* (the Act) the powers of RNSW include power to:

- Licence or disqualify any stable hand: (s: 14(2)(b))
- Supervise persons licenced by RNSW and all other persons engaged in or associated with racing: s14(2)(c));
- Impose a penalty on a person licenced by it for a contravention of the Rules of Racing: s.14(2)(d).

20. Pursuant to s.14AA of the Act, Racing NSW is to exercise its licensing functions so as to ensure that all individuals licensed by RNSW are persons who, in the opinion of Racing NSW, are fit and proper persons to be so licensed: s.14AA(1).

21. Pursuant to Local Rule LR82(1), any person holding a trainer's license must apply on or before 1 November each year to register every person employed by him or her or assisting him or her in connection with the training or care of race horses. Further, provision is made in relation to stable hands in AR93, AR183D.

22. AR2 provides:

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.

23. AR8(d) the Stewards have power:

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 race course.

24. By reason of the combined effect of AR8(d) and AR175(q), the Stewards have power to penalise any person who in their opinion is guilty of misconduct improper conduct or unseemly behaviour. The power under AR175(q) is not expressed to be

the subject of any limitation. This is to be compared with AR175(a) and AR175(qq). I accept, however, that as a matter of construction there is an implied limitation on the application of the rule.

25. Mr O'Sullivan submits that the power is limited to matters relating to racing and that in the present circumstances the conduct is not related to racing and therefore does not come within the scope of the rule because:

- (i) The misconduct did not take place on licensed premises;
- (ii) It took place more than six hours after the race meeting at Randwick Race Course;
- (iii) The incident did not arise from anything that had taken place at the race meeting that day or any other incident arising from licensed premises. He points out that the appellant and Ms Johnson had not previously met, although they knew of each other;
- (iv) The incident was a purely private matter with no connection to racing.

## **RESOLUTION**

26. I accept that as a matter of construction there are implied limitations on the conduct and behaviour to which the rule applies. The rule must be construed in a way that is consistent with the purposes of the Act and the Rules of Racing as revealed in their text. I do not consider that it is necessary or desirable to mark out those limits.

27. In the present case:

- (i) The conduct was misconduct and improper conduct by one licensed stable hand against another;
- (ii) It took place in the Doncaster Hotel, which is almost adjacent to Randwick Race Course where employees and licensed persons

habitually go after a race meeting at Randwick Race Course, and did so on this occasion.

28. As I have pointed out, the functions and powers of Racing NSW under the Act are broad. While the appellant and Ms Johnson may not have previously met, they nonetheless had a work place connection. They are were both stable hands at licensed premises at Randwick over which Racing NSW has and had responsibility. That Racing NSW has such a responsibility for stable hands and licensed persons is demonstrated by AR175(x) which makes specific provision in relation to work place harassment. The Australian Rules of Racing regulate the employment of stable hands, see for example AR93, AR96, Local Rule LR82(6). Racing NSW has a protective role in that respect.

29. The misconduct of the kind referred to in AR175(q) may well indicate that the person is not a fit and proper person to be licensed: see s.14AA(1). A person of a violent disposition may pose a risk to other licensed persons, which is likely to be a relevant matter in determining whether the person should be licensed.

30. Viewed in this light, I do not agree that the misconduct and improper conduct, the subject of the charge, cannot and does not meet the description of misconduct and improper conduct under AR175(q). I think it does. Given Mr O'Sullivan's concession, properly made, that the appellant's conduct is misconduct and improper conduct within the meaning of the rule, if the rule applies, it must follow that the charge has been established. The appellant's appeal against conviction is therefore dismissed and the finding of the Stewards of 20 April 2018 is confirmed.

J MURPHY: I agree

MS J MADSEN: I agree

## **DECISION AND REASONS ON PENALTY**

### **CONVENOR:**

31. Having determined that the appeal on conviction should be dismissed, we must now consider the appeal against the severity of the penalty imposed by the Stewards, which was six months disqualification.
32. There are a number of considerations to be taken into account in determining penalty. This has been emphasised in a number of decisions of this Panel over the years. The considerations include the upholding of the image, interests and integrity of racing, the protection of the public, as well as the promotion of the safety of horses and jockeys and others who work in the industry.<sup>1</sup> Under the Act and the Australian Rules of Racing, penalties are directed to achieve these ends and not to punish. However, in determining penalty, consideration may be given to the deterrent effect that the penalty might achieve in deterring a repetition of the offence and in deterring others who might be tempted to fall short of the high standards required of them under the Rules of Racing. The penalty may also be seen as publicly marking the seriousness of the offence.<sup>2</sup>
33. In terms of determining penalty, the present matter has a number of unusual features. Firstly, the appellant has been sentenced in the criminal courts to a sentence of 250 hours of community service. The penalty imposed was one of punishment. However, it took into account the importance of deterrence and of marking the seriousness of the offence. The fact that the appellant is serving this sentence, which takes these matters into consideration, is a matter to which this Panel must give weight.

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<sup>1</sup> See *In the Matter of the Appeal of Noel Callow* 9 May 2017 at [41]-[42], *In the Matter of the Appeal of Licenced Trainer Carl Poidevin* 20 July 2018 at [25]-[28], *In the Matter of the Appeal of John Sprague* 22 February 2018 at [18]-21].

<sup>2</sup> *In the Matter of the Appeal of of Noel Callow*.



34. Secondly, this is not a case in which a licensed person has given into the temptation to breach the Rules of Racing in the hope of gaining an advantage. In such circumstances, the seriousness of the penalty is intended to deter that temptation. Here, the appellant was drunkenly violent. Her conduct was not in any way rationally motivated by the hope of advantage. The violent temptation to which she yielded was the very matter to which the deterrent considerations in the criminal court were directed.
35. Thirdly, the appellant's conduct in breach of the rules was not conduct on licensed premises or conduct in connection with her duties as a licensed person.
36. Nonetheless, as I have pointed out in the Panel's reasons in dismissing the appeal on conviction, under the Act and under the Rules of Racing, Racing NSW has responsibilities to licenced persons. The appellant's misconduct and improper conduct might be seen as bearing on whether she is a fit and proper person to be a licenced stable hand. Her violent assault on Ms Johnson, another licensed stable hand, might be seen as being out of character, but it is relevant in imposing penalty to seek to protect other licensed persons from the risk of similar misconduct by her, by imposing a penalty to deter her from any similar future misconduct and also to deter other licensed persons from similar conduct against licensed persons. These considerations are protective in nature.
37. As I have pointed out, the appellant carries out clerical work for Mr O'Rourke at his stables on licensed premises in addition to her duties as a licensed stable hand. The clerical duties that she performs are not required to be licensed. Were, however, the appellant to be disqualified, she would not be permitted to carry out those clerical duties because they are carried out on licenced premises. Pursuant to AR182, except with the consent of Racing NSW, a person who is disqualified

must not during the period of that disqualification enter upon any race course or training premises or provide any service in any capacity to any thoroughbred racing stable. The effect of the orders for a stay has been that the appellant has not been permitted to carry out her duties as a stable hand for almost four months. In that sense she has already served a form of penalty.

38. The approach to penalty that I have adopted is twofold. Firstly, I consider that the appellant should be permitted to continue in carrying out clerical duties during the period of the penalty to be imposed. Secondly, I consider that the period of the penalty should be suspended, in part, while the appellant is of good behaviour and does not breach the Rules of Racing. In practical terms, to permit the appellant to continue to carry out her clerical duties, the disqualification would need to be converted to a suspension. The disqualification is for a period of six months. Mr Dingwall, on behalf of the Stewards, submitted that if the disqualification is to be converted to a suspension, the suspension should be considerably longer than six months. I think that submission has force, and I have adopted it. Therefore, I consider that the disqualification for a period of six months should be revoked and in substitution a suspension of twelve months should be imposed.

39. In the circumstances, and having regard to the criminal sentence which the appellant is serving, I consider that sufficient deterrence and protection of other licensed persons can be achieved by suspending the operation of that suspension pursuant to AR196(4) from 1 January 2019, on condition that:

(a) The appellant is of good behaviour; and

(b) Does not breach the Rules of Racing

during the period from 31 August 2018 to 31 August 2019.

40. For these reasons I consider that the appeal on severity should be allowed.

Mr J Murphy: I agree

Ms J Madsen: I agree

41. The orders of the Panel in relation to the appeal on penalty are that the appeal is allowed and that in substitution of the orders of the Stewards the following orders are made:

1. That the appellant's license as a stable hand is suspended for a 12-month period beginning 31 August 2018 and ending on 31 August 2019, during which period the appellant will be permitted to perform clerical and related duties at the place of her employment at Randwick Race Course.
2. Pursuant to AR196(4), suspend the operation of that suspension from 1 January 2019 on condition that:
  - (a) The appellant is of good behaviour; and
  - (b) Does not breach the Rules of Racing.during the period from 31 August 2018 to 31 August 2019.
3. 50% of the appeal deposit is to be forfeited.