

APPEAL PANEL OF RACING NEW SOUTH WALES

APPEAL OF MR BRENT EVANS

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

Appearances: **Racing New South Wales: Mr M. Van Gestel, Chairman of Stewards**
Appellant: Mr Tony Cristafi, CEO NSW Jockeys Association

Date of Hearing: **10 June 2021**

Date of Reasons: **11 June 2021**

REASONS FOR DECISION

Principal Member

1. On 26 May 2021, NSW Racing Stewards conducted an inquiry into an incident that occurred between licensed stable hand Brent Evans (the Appellant) and licensed trainer Mr Cody Morgan at the Tamworth Racecourse on Friday 21 May 2021, during the course of track work.
2. Having taken evidence during the course of their inquiry, the Stewards charged the Appellant with improper conduct in breach of AR228 which is in the following terms:

“AR228 Conduct detrimental to the interests of racing

(1) A person must not engage in:

...

(b) misconduct, improper conduct or unseemly behaviour.”

3. The particulars of the charge brought against the Appellant were as follows:

“...that you, licensed stable hand Mr Brent Evans, did engage in improper conduct when on the morning of Friday 21 May 2021 at approximately 6.30am whilst track work was in operation at the Tamworth Racecourse you did approach licensed trainer Mr Cody

Morgan and instigate a heated verbal conversation whereby you aggressively invaded his personal space by placing your face close to his in an aggressive manner and levelled strong verbal abuse towards Mr Morgan, including statements such as “you are lucky I don’t belt the fucking shit out of you” and “go and dob on me you fucking pussy” and, further, that you forcefully opened the driver’s door of the vehicle of Mr Morgan’s car and asked him to alight so that further confrontation could occur.”

4. The Appellant pleaded guilty to the charge as particularised. The Stewards imposed a penalty of a three-month full suspension of his licence, with the last two months of that suspension suspended for a period of two years under AR283(5).
5. The Appellant has appealed against the severity of the penalty imposed by the Stewards. He was represented by Mr Tony Cristafi on the appeal hearing, who is the CEO of the NSW Jockeys Association. Mr M. Van Gestel, the Chairman of Stewards, appeared for the Racing NSW Stewards.
6. At the appeal hearing the Appellant gave oral evidence during which he admitted to the particulars of the charge brought against him. He said his actions were out of character, and he deeply regretted them. He explained the circumstances that led to the incident with Mr Morgan. They involved Mr Morgan sending the Appellant a text message just before the incident in which he indicated that he no longer wished to engage him to perform work for him. This upset the Appellant. He was also tired as he has been deprived of sleep in recent months by his young child who suffers from a disability.
7. The Panel unanimously makes the following findings:
 - (a) The improper conduct to which the Appellant has pleaded guilty to, whilst involving an aggressive altercation with Mr Morgan, is towards the lower end of the seriousness of improper conduct.
 - (b) The words used, however, and the aggressive manner that they were conveyed by the Appellant, were highly inappropriate. Mr Morgan was entitled to feel, at a minimum, intimidated and possibly frightened.

- (c) The conduct was out of character for the Appellant. That is evidenced by his 16 years of good conduct in the racing industry.
 - (d) The Appellant has proper insight into his conduct, and understands that it was not acceptable.
 - (e) The Appellant at all times dealt with the Stewards honestly, and with the Panel. He pleaded guilty at the first opportunity.
 - (f) The penalty imposed by the Stewards is causing great financial hardship to the Appellant, who has a young family that is financially dependent on him, and other significant debts.
 - (g) The conduct was in part caused by the text from Mr Morgan indicating that he would not be engaging the Appellant to do further work for him, and because of the Appellant's tiredness.
8. Whilst the Panel has agreed on all of the above matters, we are not in agreement as to appropriate penalty.
9. Accepting all the mitigating factors for the Appellant, Mr Murphy and I are of the view that the penalty imposed by the Stewards is appropriate. Penalties are not imposed under the Rules as a means of punishment. Equally, subjective factors such as the financial hardship caused to an appellant, are not the main focus for determining an appropriate penalty for a breach of the Rules. That focus is on the protection of the integrity and image of Racing. The incident that occurred here occurred in Mr Morgan's workplace, and was witnessed by other persons. That workplace admittedly might be one where a more robust level of conduct might sometimes be tolerated than in some offices. However, Mr Murphy and I considered that the penalty imposed by the Stewards is really the minimum that can be imposed for the conduct particularised in the charge.

10. Ms Skeggs would allow the appeal. She considers an appropriate penalty to be a suspension that equates to time served – that is, a suspension of the Appellant’s licence from 26 May 2021 until 10 June 2021. By no means does Ms Skeggs condone the Appellant’s conduct, but she considers that his genuine remorse, his understanding of his poor behaviour, and the unlikelihood of it being repeated are all reasons as to why a reduction in penalty is warranted. She feels a sufficient penalty would be time served also in light of the financial impact that the Appellant has already suffered.

11. By majority then, the orders of the Panel are as follows:

- (1) Appeal against severity of penalty dismissed.
- (2) Penalty of a three-month full suspension confirmed, but with the last two months of that penalty suspended for a period of two years under AR283(5).
- (3) Appeal deposit to be forfeited.