

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

### **APPEALS OF KATHY O'HARA and CHARLES DUCKWORTH**

Panel: Mr R Beasley SC, Presiding Member; Ms J Madsen; Mr K Langby

For the Stewards: Mr M Van Gestel, Chairman of Stewards

For the Appellants: Mr W Paserfield, Solicitor.

### **REASONS FOR DECISION**

1. On 8 August 2019, the Stewards discovered licenced jockey Kathy O'Hara in possession of her mobile phone while in the jockeys' room of the Kembla Grange Racecourse. She was also found in use of the phone. These matters are in breach of AR 218(4) (a) to (c) of the Australian Rules of Racing.
2. Ms O'Hara's phone was confiscated, and forensically imaged. This resulted in two charges being brought against her under AR218 – Charge 1 relates to possession of the phone in the jockeys' room at Goulburn on 28 April 2019. The second relates to use of the phone on over 60 occasions between August 2018 and August 2019.
3. Ms O'Hara pleaded guilty to the charges. She was penalised by way of a suspension of her licence to ride of three months.
4. Some of Ms O'Hara's calls were to Mr Charles Duckworth. He is a licenced foreperson, and Ms O'Hara's partner. Under AR 227 (b), he was charged as a person

aiding and abetting Ms O'Hara of her breaches of AR 218(4). He pleaded guilty to the offence, and was fined \$2000.

5. Both Ms O'Hara and Mr Duckworth have appealed the severity of the penalties imposed on them. They were represented on appeal by Mr W Pasterfield, solicitor. The Stewards were represented by Mr M Van Gestel, the chairman of Stewards.
6. The transcript of the Stewards' Inquiry was tendered as Exhibit A in the appeal. The most relevant matters to note from this are that Ms O'Hara knew she was committing a breach of the rule, and that she has 4 prior offences for similar breaches. The last resulted in a 2-week suspension and a \$1000 fine. Mr Duckworth knew it was an offence for Ms O'Hara to call him. He otherwise has an unblemished record.
7. In his submissions, Mr Pasterfield tendered a letter from Ms O'Hara's psychologist, indicating she was receiving treatment for mobile phone addiction. He said this was at the root of the offending.
8. In his submissions, Mr Van Gestel drew these matters to the Panel's attention:
  - (a) The prime purpose of penalising a person for breach of the rules of racing is not to punish, but to uphold the image and integrity of racing. AR 218(4) is designed to protect the integrity of racing, and breaching it causes damage to the image of racing as an honest sport.
  - (b) The appellant has a poor record, and the offending here is aggravated by over 60 calls. The penalty imposed must satisfy the requirements of both specific deterrence, but also general deterrence, and must send a message to the public that racing is administered in a manner whereby it seeks to uphold its rules, and that it takes integrity issues with upmost seriousness.

(c) He submitted that the suspension and fine imposed on Ms O'Hara was appropriate given the appellant's poor record and the other relevant matters to take into account. He drew the Panel's attention to the reasoning of the Stewards, noting that they said they took into account the appellant's plea, and her potential future racing engagements in feature races.

(d) He also acknowledged that the transcripts of texts from the appellant's phone did not raise any integrity issues of significance, although drew the panels attention to some comments about the appellant's rides. This in part supported the size of the fine imposed on Mr Duckworth.

9. Mr Pasterfield submitted both penalties are excessive. The suspension imposed on Ms O'Hara is a significant increase on her past penalty for this offence, and appears excessive on its face. Mr Pasterfield drew the Panel's attention to a submission from the Jockeys' Association, which asserted that a 3-month suspension for Ms O'Hara is equivalent in money terms to a fine of over \$60,000. It will keep Ms O'Hara out of racing for the entire spring carnival. Subjectively, she has an addiction, and she has now taken steps to get help. There are no integrity issues involved here – indeed, most of the messaging is about mundane domestic matters. As for Mr Duckworth, Mr Pasterfield submitted that a \$2000 fine is clearly excessive for someone who was not the primary offender, and who has no relevant priors. It appears out of kilter when compared to penalties imposed on primary offenders for breaches of this rule.

10. Mr Pasterfield invited the Panel to consider increasing the penalty imposed on Ms O'Hara to 6 months, but to wholly suspend it, and impose a fine.

11. The panel is not inclined to substitute a fine in Ms O'Hara's case. That course potentially favours jockeys who have the means to pay a fine, and risks sending the message that a jockey can buy their way out of suspension.

12. However, we unanimously feel the penalty imposed on Ms O'Hara is excessive, and should be reduced. This is not an appeal that requires us to find error in the way the Stewards have approached penalty. We do note however that at page 33 of the transcript they state they have taken into account both Ms O'Hara's plea, and the upcoming feature races. They do not explain precisely how. If the normal discount has been imposed, that would mean a primary penalty of about 4.5 months. That is, in our view, out of proportion with the offending.

13. Ms O'Hara is a repeat offender. She must receive a significantly increased penalty than her past, 4<sup>th</sup> breach of this rule. Over 60 calls were made. However, no actual integrity issue is involved beyond the breach of the rule. The increase from 2 weeks to 3 months in our view is out of proportion with the offending. We would in lieu of 3 months, impose a five-week suspension, which still covers a good part of the spring carnival.

14. As for Mr Duckworth, his penalty is more than we think should be imposed too. Bearing in mind he is an accessory, and his good record, a \$500 fine is appropriate in our view

#### Orders in the appeal of O'Hara:

1. Appeal in relation to severity of penalty allowed.
2. In lieu of a 3-month suspension, the appellant's licence is suspended for five weeks. Such penalty is to commence on 20 September 2019, and expires on 25 October 2019, on which day the appellant may ride.
3. Appeal deposit to be refunded

#### Orders in the appeal of Duckworth

1. Appeal in relation to severity of penalty allowed.
2. In lieu of a fine of \$2000, a fine of \$500 is imposed.
3. Appeal deposit to be refunded.