

APPEAL PANEL OF RACING NEW SOUTH WALES

APPEAL OF LICENSED TRAINER JEREMY SMITH

Appeal Panel: **Mr R. Beasley SC, Principal Member; Mr C. Tuck; Mr J. Rouse**

Appearances: **Appellant: Mr P. O’Sullivan, Solicitor**
Racing New South Wales: Mr Marc Van Gestel, Chairman of Stewards

REASONS FOR DECISION – 6 July 2021

THE PANEL

Introduction

1. On 22 May 2021, the Appellant, licensed trainer Mr Jeremy Smith, pleaded guilty to a breach of AR140(1)(a) of the Australian Rules of Racing which was described this way in the Stewards Report of the same date:

“...[the appellant]...after leading his horse OBELIUS prior to and following the running of race 2 at the Newcastle race meeting on Tuesday 18 May 2021, did provide a sample of his breath which was found, upon analysis, to contain the prohibited substance alcohol at a concentration of 0.144g/100ml, in excess of the threshold level of 0.05g/100ml.”

2. After considering submissions and matters relevant to the Appellant’s disciplinary record, the Stewards took the view that an appropriate penalty was a full suspension of his trainer’s licence for a period of 9 months. Taking into account his guilty plea, the Stewards reduced the period of that penalty to 7 months. The penalty was backdated to commence on 18 May 2021, meaning it is to expire on Saturday 18 December 2021 on which day the Appellant may resume training. The final month of the Appellant’s suspension is to be suspended if Racing NSW is provided with evidence from Mr Smith that he has completed a satisfactory period of drug and alcohol counselling, in which case he may resume training on Thursday 18 November 2021.

3. The Appellant has now appealed against the severity of the penalty imposed upon him to the Panel.

Appeal

4. The Appellant was represented on appeal, with leave, by Mr P. O'Sullivan, solicitor. The Stewards were represented by Mr Marc Van Gestel, the Chairman of Stewards.
5. An Appeal Book containing the transcript from the Stewards' Inquiry and the exhibits from that inquiry was admitted into evidence on the appeal, and marked as Exhibit A.
6. Mr Smith also gave oral evidence at the appeal. He explained that in the 15 minutes prior to leading his horse before the running of race 2 at Newcastle on 18 May 2021 he drank three full-strength beers in the Newmarket Bar. He explained that he was nervous because his horse, Obelius, whilst talented, has a history of playing up. He denied drinking before arriving at the racecourse. He gave evidence in which he indicated that he had insight into the inappropriateness of his conduct, and that he fully understood the work, health and safety risks associated with a person handling a racehorse at a race meeting while under the influence of alcohol. He indicated regret for his actions, and provided evidence that he had already undergone one session of counselling to address his alcohol-related problems, and would continue to seek professional care in this regard.
7. The Panel was also provided with a copy of the Appellant's disciplinary record. This record must be seen in the light that the Appellant has been involved in racing for a significant period of time, including about the last 14 as a licensed trainer. However, of significance is a recent breach of AR139(1)(b) (12 June 2020) where Mr Smith was suspended for three and a half months when he refused to provide a urine or breath sample to Stewards following track-work. He gave evidence that he had consumed three beers before 6.00am on the day of that incident. Of some relevance too is the Appellant's breach of then AR175q (improper conduct rule) back in April 2016, when his licence was suspended for two months following an assault (the penalty imposed by the Stewards was a disqualification of two months, reduced on appeal to the Panel to a suspension of two months).

Submissions

Mr Van Gestel

8. Mr Van Gestel emphasised in his submissions the obvious matter that there are grave safety risks involved when inebriated people are in charge of horses. This applies to riders, jockeys and other handlers of horses, whether at track work or a race meeting as here. The risks to the safety of the handler, the horse, to other licensed persons and even members of the public are obvious. Mr Van Gestel did not have to convince the Panel that this is serious offending.
9. Mr Van Gestel suggested that the Panel should doubt the Appellant's evidence that he only consumed three beers prior to the race in question given his blood alcohol reading. While the Panel understands why that submission would be made, in the absence of expert evidence the Panel is unable to make a finding that the Appellant's alcohol consumption on the day in question was not limited to three beers as he said. Nevertheless, those beers were clearly "sculled", and as a matter of obviousness they resulted in a blood alcohol reading way above the threshold level.
10. In support of the penalty imposed by the Stewards, Mr Van Gestel placed significant weight on the Appellant's breach of AR139(1)(b) which occurred less than 12 months ago. The submission was made that clearly the Appellant has not learnt his lesson from the penalty imposed for the offending then.

Mr O'Sullivan

11. Mr O'Sullivan did not seek to diminish the gravity of the Appellant's offending. He recognised the risks involved, although highlighted that the Appellant had clear and candid insight into his offending, and was now taking serious steps to redress his problems with alcohol. Mr O'Sullivan understandably also emphasised the very severe financial impact a full suspension would have on the Appellant. While he has some training as a chef, clearly he has derived almost all of his income for decades now from racing. Mr O'Sullivan's principal submission was not that the seven-month

period of the suspension should be reduced, but that the Panel should make two alterations:

- (a) First, to allow at least for some period of time (pursuant to AR267) for the Appellant to ride track work prior to the expiration of the suspension. The Appellant's evidence was that there was plenty of track work riding available to him, and he could ride up to 20 horses on any particular track work morning.
- (b) Mr O'Sullivan also submitted that the one-month suspension period should instead be a period of four months, subject to the Appellant completing a satisfactory drug and alcohol counselling course. The Appellant also indicated a willingness to undergo any testing regime imposed by the Stewards, including monitoring himself and providing those results to the Stewards.

Resolution

- 12. The Panel accepts that a full suspension of 7 months (even with the last month suspended) will have a severe financial impact on the Appellant. We accept that this would produce hardship for his family for whom he is the sole income winner. We also recognise that he does have proper insight into the seriousness of his offending, and we do not doubt his genuineness now to seek to get on top of the problems that he has with alcohol which are clear from his record.
- 13. We are nevertheless of the unanimous view that the appeal should be dismissed. The Appellant engaged in relevantly similar offending as recently as June last year. For that he received a three-and-a-half-month suspension. It does not appear as though the penalty imposed for that offending has had much (or any) of a deterrent effect. The Panel views the offending here as very serious. If a horse were to get out of control at a race meeting on an intoxicated handler, the image of racing would be greatly damaged. That of course did not happen here, and we do not penalise the Appellant as though it did, but that is the risk taken by licensed persons who handle horses in circumstances where their blood alcohol content is 0.144g/100ml.

14. In short, the Panel is of the view that the penalty imposed by the Stewards is entirely appropriate, and is the penalty we ourselves consider should be imposed. The appeal is dismissed.

Orders

- (1) Appeal dismissed.
- (2) Penalty of a seven-month full suspension confirmed. Such suspension commenced on 18 May 2021 and expires on 18 December 2021.
- (3) Upon receipt by Racing NSW of evidence from Mr Smith that he has completed a satisfactory period of drug and alcohol counselling, the final month of his seven-month suspension is to be suspended. In those circumstances, he may resume training on 18 November 2021.
- (4) Appeal deposit forfeited.