

DECISION

Racing Integrity Act 2016, sections 252AH, 252BM

Review application number	RAP-88	
Name	Glenda Bell	
Panel	K J O'Brien AM (Chairperson) P O'Neill (Deputy Chairperson) J McCoy OAM (Panel Member)	
Code	Thoroughbreds	
Rule	Australian Rules of Racing 210(2) <i>If a rider breaches subrule (1), the rider's horse may be disqualified from that race unless there are exceptional circumstances justifying the rider's failure in that respect</i>	
Penalty Notice number	Not Applicable	
Appearances & Representation	Applicant	Self represented Assisted by C Partington
	Respondent	Queensland Racing Integrity Commission W Kelly
Hearing Date	19 March 2024	
Decision Date	19 March 2024	
Decision	Application not accepted <i>(delivered ex tempore)</i>	
Case References	<i>Endresz v Queensland Racing Integrity Commission & Ors [2022] QSC 262</i> <i>Price v QRIC, Racing Appeals Panel RAP 23, 30 May 2023</i>	

Reasons for Decision

- [1] This is the decision in RAP-88, an Application for Review lodged by Ms Glenda Bell on 11 March 2024.
- [2] There are two issues that arise today for determination:
- (a) The first issue is the standing of the applicant Ms Bell to bring the application;
 - (b) The second issue is whether this Panel has the jurisdiction to entertain this particular application.
- [3] The issue of standing is a matter on which the Applicant presents evidence to establish her standing to bring the application. In this case the Applicant has not provided any evidence to establish that she has standing to bring the application.
- [4] In any event, the more significant issue that falls for determination is whether this Panel has jurisdiction to hear the Application for Review.
- [5] Ms Bell is a licensed trainer and is the trainer of the thoroughbred Inreadyness.
- [6] Ms Bell ('the Applicant') has applied for the review of a decision made by a panel of thoroughbred Stewards, pursuant to Australian Rules of Racing AR210(2) that the horse Inreadyness be disqualified from race 2 at Springsure on the 9th of March 2024.
- [7] Relevantly, AR210 relevant to this application provides:

AR 210 Consequence if a rider does not weigh-in properly

- (1) A rider must weigh-in when required to do so.
 - (2) If a rider breaches subrule (1), the rider's horse may be disqualified from that race unless there are exceptional circumstances justifying the rider's failure in that respect.
- [8] The relevant factual background is that following the running of race 2 which was won by Inreadyness, the jockey of Inreadyness, W. Satherley failed to weigh in following the completion of the race.
- [9] The Stewards conducted an inquiry into the failure by Mr Satherley to weigh in. Mr Satherley told the Stewards that it was an error of judgment and he simply forgot to weigh in. The Stewards' report relevantly reported as follows:

When considering the matter stewards could not be completely satisfied that INREADYNESS did carry the handicapped weight when competing in the event. The stewards were also of the opinion that the submissions tendered by jockey W. Satherley were not an exceptional circumstance and subsequently INREADYNESS was disqualified under the provisions of AR210(2)

...

Jockey W. Satherley subsequently pleaded guilty to a charge under AR210(1) for failing to weigh in when required to do so. Mr. Satherley was issued with a 10 day suspension of his licence to ride in races from M/N 16/03/2024 till M/N 26/03/2024. When considering penalty stewards were mindful of the seriousness of the breach, Mr. Satherley's clear record in relation to this rule, the fact that his actions cost INREADYNESS 1st place, Jockey Satherley's extensive experience as a senior rider, his guilty plea and forthright evidence.

- [10] The Applicant was afforded an opportunity to be heard by the Stewards, prior to the decision being made to disqualify Inreadyness. The Applicant failed to provide any additional evidence to the Stewards' Inquiry of exceptional circumstances.

[11] The Panel notes that AR210(2) provides the Stewards with a discretion as to whether the horse will be disqualified or not arising from a failure by a jockey to weigh in, in breach of AR210(1). From the wording of AR210(2), it appears to the Panel that the discretion to not disqualify a horse will arise in circumstances where the Stewards are satisfied that there are exceptional circumstances which justify the jockey's failure to weigh in.

[12] The Stewards were not satisfied that Mr Satherley's explanation that he forgot to weigh in constituted exceptional circumstances.

[13] The application in the Application for Review lodged on 11 March 2024 provides the following reasons why she is applying for a review:

Negligence of both jockey and weighing out steward lost me the race.

[14] The Applicant identifies the outcome that she is seeking from the review that the 'race win be given to my horse as it won the race and the Stewards failed to ensure the jockey weighed in'.

[15] In the Application for Review the Applicant has failed to provide any information which establishes her standing to bring the application. The Applicant has also failed to establish in the Application for Review the basis upon which she contends that the Panel has jurisdiction to entertain the Application for Review.

[16] For the Respondent it is submitted that in accordance with the decision of this Panel in the matter of *Jack Price*¹ that this Panel has no jurisdiction to entertain the application, as the application does not meet any of the categories set out in section 252AB of the *Racing Integrity Act 2016*.

[17] The Respondent further contends that the disqualification of the horse Inreadyness was not disciplinary or exclusionary action as defined in the RIA for the purposes of section 252AB(1)(a) and (b) of the *Racing Integrity Act 2016*.²

[18] Section 252AB(1) provides that:

A person may apply to the panel for a review, under this part, of a racing decision of a steward to—

- (a) take disciplinary action relating to the person's approval or licence; or
- (b) take exclusion action against the person; or
- (c) otherwise impose a penalty, whether monetary or non-monetary, on the person.

[19] Disciplinary action is defined in the *Racing Integrity Act 2016* as follows:

disciplinary action, relating to an approval or licence, means 1 or more of the following—

- (a) cancelling the approval or licence;
- (b) suspending the approval or licence for a stated period;
- (c) varying the approval or licence in either of the following ways, except if the variation is made as the result of an application of the control body for the approval or the licence holder—
 - (i) changing a condition stated in the approval or licence to which it is subject;

¹ Queensland Racing Appeals Panel RAP-23 – In the matter of Jack Price, 30 May 2023 at paragraphs [11]-[17].

² Paragraph 8 of the Respondent's written submissions dated 18 March 2024 citing paragraph 11 of the *Jack Price* decision.

- (ii) stating a new condition to which the approval or licence is to be subject;
- (d) for a licence—
 - (i) imposing a monetary penalty; or
 - (ii) closing, for a stated period, premises or part of premises stated in the licence as premises at which an activity may be conducted under the licence.

[20] The term exclusion action is defined in s252 AA of the Act in the following way:

exclusion action, against a person, means action taken by a steward—

- (a) to name the person on a list kept under the rules of racing that identifies persons whose entitlements under the rules are forfeited; or
- (b) to warn off the person from entering, or remaining at, a place being used for a race meeting.

[21] In the decision of the Racing Appeals Panel in RAP-23 in the *Price* matter, this Panel found at paragraph [11] that the decision to disqualify End Assembly could not amount to either disciplinary action or exclusion action within the meaning of those terms as set out in the legislation.

[22] The Panel went on to hold as follows in paragraphs [12] to [19]:

[12] *The term penalty is not defined in the Act, however, the Australian Rules of Racing do provide a definition in these terms; penalty includes the suspension or partial suspension of any licence, disqualification, reprimand and the imposition of a fine (penalise has a corresponding meaning).*

[13] *The Acts Interpretation Act 1954 defines penalty to include forfeiture and punishment.*

[14] *Ms Murphy, who appears for the respondent, has also made reference to the Australian Concise Oxford Dictionary definition of the term penalty to mean punishment, especially payment of a sum of money for breach of rule, law or contract; disadvantage imposed on competitor in sports, etcetera who has broken a rule.*

[15] *Logically, the term penalty would seem to connote the taking of some form of action or the imposition of some form of sanction against a person or persons in response to some offending conduct, whether criminal or civil in nature, engaged in by that particular person or persons. That would accord with the commonly understood meaning of that term.*

[16] *In the context of the particular provision, section 252AB, the imposition of a penalty means the imposition of a punishment by the stewards on an individual person, as a consequence of their act or omission.*

[17] *Section 252AB(1)(c) speaks expressly of the imposition, monetary or non monetary, “on the person”. It is clear that the legislative intent is that the penalty imposed is personal to the individual.*

[18] *Such an interpretation is confirmed by the express language used in each of the other subparagraphs of section 252AB(1), namely that the racing decisions of the stewards which invoke the jurisdiction of this Panel are only those which involve disciplinary action relating to “the person’s” approval of a licence, the taking of “exclusion action against the person”, or the imposition of a penalty on “the person”.*

[19] *The decision that Mr Price is seeking to have reviewed is a decision to disqualify a horse pursuant to AR 240(1). That decision is not a decision to impose a penalty on the applicant, Mr Price or any of his fellow co-owners, even though a consequence of that decision to disqualify the horse is that any prize money the horse won in that race will not be paid to the owners of the horse.*

[23] This Panel is satisfied that the conclusions expressed by the Racing Appeals Panel in RAP-23 as to how the relevant provisions in the *Racing Integrity Act 2016* are to be interpreted and applied are correct, and should be followed by this Panel.

[24] A further issue raised on the Respondent's written submissions is the potential applicability of AR280(1)(a) and the availability of relief under that rule.

[25] AR280(1) relevantly provides as follows:

Division 3 – Stewards' hearings and appeal rights

AR 280 Appeals to a PRA

(1) Subject to subrule (2) and the Rules, a person to whom a decision relates may appeal to a PRA in respect of:

- (a) a penalty imposed by a PRA or the Stewards; or
- (b) a restriction imposed by a PRA or the Stewards in relation to a horse in which the person has an interest.

PRA is defined in the Australian Rules of Racing as the Principal Racing Authority, which in Queensland is noted in the definition to be the Racing Queensland Board.

[26] In the Respondent's submissions, it is contended in paragraph 12 that as a consequence of the decision of the Supreme Court of Queensland in *Endresz v Queensland Racing Integrity Commission & Ors*³ that judicial review to the Supreme Court is currently the only available avenue, pending the outcome of the appeal to the Court of Appeal⁴ from the decision of Burns J. which will determine whether the process under AR280 is also available.

[27] The *Endresz* decision involved the owners' syndicate of a thoroughbred racehorse, Alligator Blood, seeking to review the decision to disqualify the horse from Race 6 held at the Gold Coast on 11 January 2020. Alligator Blood had won the race and the owners' syndicate would have been entitled to substantial prize money of almost one million dollars.

[28] In determining the matter, Burns J considered the application of AR280 in paragraph [29] as follows:

[29] *First, although the right conferred by AR 280(1) for "a person" to appeal is defined under the ARR to include "any syndicate"³⁴ and the term, "penalty", is defined to include a "disqualification",³⁵ the right is limited. It may only be exercised by a person to whom a decision relates in respect of a penalty where the penalty is imposed by a principal racing authority or the stewards. In no sense can it be said that the disqualification about which the owners complain was imposed by the stewards. Rather, it came about through operation of the rules.³⁶ Put another way, the moment the stewards found that a prohibited substance was detected in the sample taken from the horse following the race, the disqualification was automatically effected by AR 240. Of*

³ [2022] QSC 262.

⁴ *Queensland Racing Integrity Commission v Endresz & Ors* CA769/23; CA776/23.

course, it will be noticed that different language is used in AR 280(1) – “imposed by a PRA or the Stewards” – to that which is used in AR 282 – “imposed under these Australian Rules” but AR 282 is a facilitative provision and plainly subordinate to AR 280(1). To the point, before AR 282 can operate to confer power to suspend or stay a disqualification, there must be an appeal of the kind contemplated by AR 280(1), and that will only be where the disqualification about which the appeal is concerned was imposed by a principal racing authority or the stewards. (footnotes omitted)

- [29] The one significant difference between this matter and the *Price* review application is that the disqualification of End Assembly was mandatory once the Stewards were satisfied that there had been a breach of AR240(1) and (2). As noted by his Honour Burns J in the *Endresz* decision, the disqualification was automatically effected by AR240.
- [30] In the present case, AR210(2) provides a discretion to the Stewards as to whether a horse should be disqualified following a breach of AR210(1).
- [31] The Respondent in its written submissions does not address this difference between the present application and the two cases of *Price* and *Endresz*. This issue was the subject of discussion during the hearing and both parties were afforded the opportunity to make submissions to the Panel as to the significance (if any) of this difference.
- [32] In conducting the Stewards’ Inquiry the Stewards were firstly satisfied that Mr Satherley had not weighed in, in breach of AR210(1).
- [33] Secondly, during the Stewards’ Inquiry the Stewards afforded both Mr Satherley and the applicant the opportunity to provide evidence to the Stewards regarding whether there were exceptional circumstances. Given this, the Panel is satisfied that both Mr Satherley and the applicant were afforded procedural fairness by the Stewards.
- [34] The audio of the Stewards’ Inquiry, which forms part of the material available to the Panel, reveals that Mr Satherley told the Stewards that he was talking to Ms Bell immediately following the race and in effect that he was distracted. Mr Satherley conceded that he had not weighed in. He further conceded that he had no excuse for his failure to weigh in. He reiterated that he was talking, and he simply walked in and set his gear down.
- [35] The Applicant provided no additional evidence to the Stewards’ Inquiry of any matter that would constitute exceptional circumstances.
- [36] In light of that evidence, the decision of the Stewards to find that exceptional circumstances had not been made out is unsurprising.
- [37] Given the finding by the Stewards of a failure to establish ‘exceptional circumstances’, the Stewards in accordance with AR210(2) disqualified Inreadyness from the race.
- [38] In accordance with the decision of the Racing Appeals Panel in the *Jack Price* Application for Review, this Panel is satisfied that the decision to disqualify Inreadyness is not a decision to impose a penalty on the Applicant, Ms Bell.
- [39] The fact that the Stewards in this matter had a discretion as to whether Inreadyness was to be disqualified or not, does not convert the decision to disqualify the horse into a penalty being imposed upon the Applicant.

- [40] This Panel is not satisfied that the differences between AR240 and AR210 regarding the circumstances in which the disqualification of a horse occurs for a breach of the rules alters the position that the Panel does not have jurisdiction under the relevant provisions in the *Racing Integrity Act 2016* to conduct a review into the disqualification of Inreadyness from the race.
- [41] This conclusion is sufficient to dispose of the Application for Review. However, assuming that it had been established that the Panel had jurisdiction to consider the current Application for Review, the Panel is not satisfied that the Applicant has established that there were exceptional circumstances given the evidence available to the Panel.
- [42] The Panel notes that AR210(2) speaks of exceptional circumstances 'justifying the rider's failure in that respect', that is, justifying the rider's failure to weigh in. The only matter that has been put forward in this hearing as constituting exceptional circumstances is the alleged negligence of the Stewards in failing to ensure that Mr Satherley weighed in.
- [43] The Panel is satisfied that even if this allegation were to be made out (noting that it has not been the subject of evidence provided to the Panel), this would not be something that justified Mr Satherley failing to weigh in. It may provide some explanation for the failure of Mr Satherley to weigh in, however, it would not be sufficient to 'justify' a jockey of Mr Satherley's experience from weighing in.
- [44] When this is combined with the actual evidence provided to the Stewards Inquiry by Mr Satherley (as noted in paragraph [34] above), the Panel is satisfied on the balance of probabilities that the Applicant has failed to establish that there were exceptional circumstances justifying the failure of Mr Satherley to weigh in, in breach of AR210(1).
- [45] In light of the finding made in paragraph [38], this Panel does not have jurisdiction to hear the appeal under s252AB(1) of the *Racing Integrity Act 2016*.
- [46] The decision of the Stewards' Panel made on 11 March 2024 to disqualify Inreadyness from Race 2 at Springsure is not subject to review by this Panel.
- [47] Accordingly, the Panel has no jurisdiction to entertain this matter. The application by Ms Bell for review cannot be accepted and should be dismissed.