Queensland Racing Appeals Panel

DECISION

Racing Integrity Act 2016, sections 252AH, 252BM

Review application number	RAP-101
Name	Jason Devine
Panel	Mr K J O'Brien AM (Chairperson) Mr P Cullinane KC (Panel Member) Ms J Overell (Panel Member)
Code	Thoroughbreds
Rule	Australian Rules of Racing AR 227(a) *Without limiting any other powers, a PRA or the Stewards may penalise any person who:* *(a) commits any breach of the Rules or engages in conduct or negligence which has led or could have led to a breach of the Rules.* Australian Rules of Racing AR 232(i) *A person must not give any evidence at an interview, investigation, inquiry, hearing and/or appeal which is false or misleading*
Penalty Notice number/s	PN-010209 PN-010210 PN-010211 PN-010212
Appearances & Representation	Applicant: G Hutchinson Clutch Legal Respondent: Queensland Racing Integrity Commission E Ballard
Hearing Date	30 July 2024
Decision Date	30 July 2024
Decision *(delivered ex tempore)*	Pursuant to 252AH(1)(c) the Racing decision is Set Aside & The Panel's Decision Substituted.

AR 227(a), the Applicant is fined the sum of $1500.

AR 232(i), on each charge the Applicant's licence is suspended for a period of six months, such suspensions to be suspended for a period of two years conditional upon the Applicant not committing any further offences against AR 232(i) during that period. All penalties to be served concurrently.

Case References

Australian Building and Construction Commission v Pattinson 2022 HCA 13
Racing Victoria Stewards v Kelly - Victorian Racing Appeals and Disciplinary Board 19 June 2019
Racing Victoria v Trudi Cotter – Victorian Racing Appeals Tribunal 28 February 2022
Morrow v Queensland Racing Integrity Commission RAP-41 2023

Reasons for Decision

[1] The Applicant in this matter is licenced thoroughbred trainer Mr Jason Devine.

[2] On 10 July 2024 following an inquiry conducted by Stewards, Mr Devine was found guilty of an offence against Australian Rule of Racing 227(a) and three offences against Australian Rule of Racing AR 232(i)

[3] He had pleaded guilty to each of those charges and by way of penalty, for the first mentioned offence received a licence suspension of three months. For each of the three offences against AR 232(i), the penalty was one of six months suspension, suspended after a period of three months for an operational period of two years. All penalties imposed were ordered to be served concurrently.

[4] Pursuant to section 252AB of the *Racing Integrity Act 2016*, the Applicant now seeks a review of those decisions on the ground that the penalties imposed were in each case excessive.

[5] AR 227(a), as relevant, provides that Stewards may penalise any person who commits any breach of the Rules or engages in conduct which has led to a breach of the Rules. Of relevance to the charge in this case is AR 79(4)(a), which provides that a horse which in the opinion of the Stewards has had an attack of bleeding, must not without permission of the Stewards be trained, exercised, or galloped on "a racecourse, recognised training track, private training establishment, or other place" for a period of two months after the attack of bleeding.

[6] AR 232(i) provides that a person must not give false or misleading evidence at any interview, investigation, inquiry, hearing, and/or appeal.

[7] The charge against the Applicant in relation to AR 227(a) was in these terms:

> *That you as a licenced trainer with the Queensland Racing Integrity Commission, under your direction on multiple occasions whilst in your care, exercise the registered thoroughbred MILKY ROCKET during the colt's required two months spin down period, which in the opinion of the Stewards has led to a breach on the provisions of AR 79(4).*

[8] The three charges under AR 232(i) were alleged to have occurred on 10 June 2024, 28 June 2024, and 1 July 2024. In each case, the charge alleged that the Applicant, when interviewed by Stewards, had provided false and misleading statements regarding the exercise routine of the thoroughbred Milky Rocket whilst in his care.

Background

[9] On the 11th of April 2024, apprentice jockey Jamie Lee Donovan, who is the Applicant's daughter, rode the horse Milky Rocket in barrier trials at the Rockhampton Jockey Club. Following those trials, a three-month embargo was placed on Milky Rocket after it suffered an attack of bleeding from both nostrils[1]

[10] The registered owner of Milky Rocket is Miss Vivian Doolan, and the registered trainer is Mr Ricky Vale of Rockhampton. On or about the 9th of April 2024, pursuant to an agreement between the horse owner and the Applicant and his daughter Jamie Lee, Milky Rocket was transferred to the stables of the Applicant at Thangool for the purpose of Jamie Lee using Milky Rocket to compete in shows. This in fact occurred, with the horse and Jamie Lee being successful at the Callide Valley Show in May 2024.

[11] On the 10th of June 2024, Stewards conducted what was described as a random stable inspection at the Applicant's Thangool stables. When asked about Milky Rocket, the Applicant, who was of course

[1] Respondent index document #32 – Milky Rocket – Embargo – Racing Australia

aware that the horse had suffered a bleeding attack, stated that Milky Rocket had only been ridden in the racecourse car park and not on the training track or racecourse[2].

[12] On the 30th of June 2024, the Stewards received what is referred to as "further information" and as a result, they spoke again to the Applicant on 28 June 2024. The Applicant again stated that Milky Rocket had not worked on the track "or anywhere else galloping- wise or even slow work"[3].

[13] When Stewards spoke again with the Applicant on 1 July 2024, he volunteered that Milkey Rocket had been trotted, occasionally cantered, but not worked on the racecourse. He still maintained that Milkey Rocket had not been ridden on the track.[4]

Steward's Hearing

[14] At the Steward's hearing on the 10th of July 2024, the Applicant admitted that the horse had gone onto the track[5] He said that "it never got any faster than a canter" for "a couple of laps"[6] He maintained his belief that Milkey Rocket was being legitimately exercised as a show horse, not as a racehorse[7]. So far as the horse's welfare was concerned, he said "we've looked after that horse more than anything …like there was no tomorrow"[8]…" I thought we were just doing a father-daughter thing" As indicated, the Applicant pleaded guilty to the charges.

[15] In his Application for Review of the penalties imposed, the applicant maintains that the Stewards failed to have proper regard to all the relevant facts and circumstances when assessing penalty for each charge, including:

a. The Applicant's exemplary record as a licensee for approximately 30 years (jockey and trainer);

b. That the Applicant's offending was caused by a mistake of law, as the Applicant did not have a proper understanding of the relevant rule which had been amended on 1st February 2024;

c. That the offending was not done to confer any benefit on the Applicant or the Applicant's horse;

d. The Applicant's plea of guilty and other personal factors raised in the course of the Steward's inquiry[9]

Respondents Submissions

[16] The principal argument for the Respondent is that any breach of these rules is one which is likely to cause harm to the image and integrity of thoroughbred Racing. AR 79 is concerned with animal welfare and any offence of providing false statements to stewards hinders the proper administration of racing. As general statements, it might be said that these propositions should be self-evident.

---

[2] Transcript of Steward's interview with Jason Devine 10 June 2024. Lines 103-144
[3] Transcript of Steward's interview with Jason Devine 28 June 2024. Lines 37-54
[4] Transcript of Stewards interview with Jason Devine 1 July 2024 Lines 102-110
[5] Transcript of Stewards Inquiry-audio 1 10 July 2024 lines 79-80; 206-208; 485-492
[6] Transcript of Stewards Inquiry -audio 1 10 July 2024 lines 254-260
[7] Transcript of stewards Inquiry-audio 1 10 July 2024 lines 40-72
[8] Transcript of Stewards inquiry-audio 2 10 July 2024 lines 40-43
[9] Application for Review 11 July 2024 Attachment "A"

[17] In relation to the false and misleading information the Respondent referred to the decision of the New South Wales Racing Appeals Panel in *Racing NSW v Schembri*[10]

[18] The charges involved in that case were ones of conspiracy to commit two offences of race day administration contrary to AR255 and AR249. The applicant was charged also with an offence of failing to supply his mobile phone records and an offence of giving false evidence at the Steward's hearing. He had pleaded not guilty to the charges.

[19] They were plainly very serious matters and, unsurprisingly, attracted penalties of disqualification. The total period of disqualification involved there was one of two years, including twelve months disqualification for the false evidence offence.

[20] The circumstances of that matter differ greatly from the present and Ms Ballard, who appears for the respondent, does not rely upon that case as providing any degree of comparability so far as penalty is concerned. However, the Panel there accepted the importance with which offences of providing false and misleading statements to stewards must be viewed. It is a serious offence, which means that stewards are hampered in their task and the integrity of racing can be thereby damaged.

[21] For the Respondent, reference is also placed on a decision of the Racing Appeals Panel New South Wales in *Racing NSW v Boal*[11] where the Panel said:

> *[53] Licensed persons owe a duty to tell the truth. A number of decisions of the Racing NSW Appeal Panel and the Victorian Racing Tribunal have emphasised this, and have also emphasised the importance of there being a degree of trust between those who enforce the rules of racing and licensed persons, otherwise confidence in the racing industry will be eroded. The giving of false and misleading evidence hinders the proper administration of racing. It is of sufficient seriousness that it goes to the fitness of a person to hold a licence in the racing industry. This is why such breaches of the rules of racing is so often met with disqualification.*

[22] This panel accepts the tenor of those observations and accepts that offences of this nature will often meet with a period of suspension. That is not to say that such an outcome will be inevitable.

Applicants Submissions

[23] Mr Hutchinson, who appears for the Applicant submits that as far as the bleeding offence is concerned, there are several factors of relevance. They include the following:

a. The applicant was at no time the trainer of the horse Milky Rocket;

b. There was no personal gain for him involved in any activities involving that horse;

c. The horse was not subject to any strenuous work;

d. The horse was only moved to the track because as a 5-year-old entire there were difficulties with keeping the horse of the Applicant's home, brood mares and foals were paddocked:

e. The Applicant has an unblemished record as a trainer;

f. He did not set out to in any way deliberately flout the rule; and

[10] Racing New South Wales Appeals Panel 14 May 2019
[11] Racing Appeals Panel NSW, 16 October 2020 at [53]

g. His conduct might be viewed as a misunderstanding of the application of the rule.

[24] In relation to that last mentioned matter, it should be observed that AR 79 was amended as and from the 1st of February 2024. Until that time the rule had prohibited the training, exercise, exercising, or galloping of a relevant horse, that is a horse who had suffered a bleed, "on a racecourse". As of 1 February 2024, the rule was amended such that it applied not only to a racecourse, but also to other locations such as a private pre training property, recognised training tracks, beach or other place[12].

[25] It is also worthy of note that the Summary of Consultation Notice[13] which accompanied Racing Queensland's advice of Rule amendment refers to veterinary advice that, while low intensity exercise is generally acceptable before the end of the two-month prohibition, there is overall benefit for the horse to be spelled for two months. However, because of the difficulties of defining "low intensity exercise", and in the interests of horse welfare and rider safety, a blanket ban was the most appropriate position.

[26] Misunderstanding or even ignorance of that Rule does not excuse the Applicant and cannot be a matter of defence, but it is a matter which is relevant to a consideration of the degree of culpability involved in his conduct.

[27] Mr Hutchinson submits that in the absence of any comparative cases which may assist by way of penalty, the conduct of the Applicant in this case might be considered analogous to other cases in which a trainer has breached the Rule of Racing which imposes an obligation to report a bleed.

[28] He referred to two cases, the first being a decision of the Queensland Racing Integrity Commission on 11 November 2020 involving trainer Kathy Stabe[14] and the second a decision following an internal review of Steward's determination in the matter of Stephen Potiris[15]. In each of those cases fines were imposed on the offender.

[29] So far as the offences of providing false or misleading evidence is concerned, Mr Hutchinson accepts the seriousness of those offences, but he submits that in the circumstances of this case, a monetary penalty or at worst, a period of a suspended suspension would be appropriate.

[30] He submits that it is apparent that the Stewards had information which caused them to suspect that the horse had been worked contrary to the Rule when they first spoke to the Applicant on 10 June 2024. It may be that they did not physically acquire photographs or videos until 13 June, but they were certainly taken before that date, and not supplied to the Applicant until the formal hearing on 10 July 2024. Mr Hutchinson submits that the Stewards had continued to draw misleading information from the Applicant without showing him the contradicting material that was in their possession.

[31] A consideration of the interview of 10 June does indeed suggest that the Stewards did have knowledge of the fact that Milkey Rocket had been on the racetrack, something they did not disclose on that occasion. In any event, the statements made by the Applicant on 10 June were themselves sufficient to indicate a breach of AR 79(4)(a) in its amended form. The matter however continued until the hearing of 10 July.

[32] Mr Hutchinson submits in those circumstances that the considerations the Queensland Racing Appeals Tribunal considered relevant in *Ballard*[16] may be of relevance here. The circumstances of that case,

[12] Respondent Index Document No.34 Bleeder Rule Amendment
[13] Respondent Index Document No.34- Consultation Notice-Rules of Racing Amendment
[14] Queensland Racing Integrity Commission Steward Report – Kathy Stabe 11 November 2020
[15] Queensland Racing Integrity Commission Internal Review – Stephen Potiris 6 November 2019
[16] Queensland Racing Appeals Tribunal 29 – 18 November 2008

where the Tribunal considered that the Stewards should have taken a "more reasonable attitude," are not directly comparable to the present, but the Panel accepts that those important considerations of procedural fairness should apply in all investigations of this nature.

[33] Mr Hutchinson submits that the misleading statements of the Applicant were based upon his view that Milky Rocket had only been exercised on the inside of the training track and not the actual race track itself. He understood that to be permissible under the rules, although now acknowledges that he was mistaken in that view.

[34] When shown the evidence for the first time at the Stewart's inquiry, the Applicant conceded that the horse had been on the track and that he had not been entirely truthful in his earlier dealings.

[35] Importantly, Mr Hutchinson submits that the Applicant's misleading statements did not inhibit the investigation in any meaningful way because the Stewards already had the relevant evidence.

Discussion

[36] Although it is submitted that the Stewards have failed to give proper regard to considerations of relevance under the Rules and Penalty Guidelines, it is not necessary that some error on the part of the Stewards be demonstrated. This Panel must form its own view of the appropriate penalty.

[37] Under the Penalty Guidelines[17] the purpose of a penalty is to maintain standards of integrity and animal care in the thoroughbred code, which are maintained by enforcement of the rules of racing; provide general deterrence to the industry by ensuring that the penalties imposed on an individual for a Rule breach is sufficiently serious to discourage other participants from breaching the rule; and provide specific deterrence to the individual contravening the rule, that is, the penalty imposed on the individual for a rule breach must be sufficiently serious to discourage the particular individual from engaging in similar conduct.

[38] The guidelines recognise that imposing a penalty involves a balance between the severity of the offence, the need for deterrence both specific and general, any mitigating considerations relevant to penalty including the circumstances of the offence itself, the degree of culpability associated with the offending, any early acknowledgement of guilt, and the disciplinary record of the offender.

[39] Proceedings such as these are not penal in nature and, as with all cases involving the imposition of civil penalties, the important purpose of penalty should be deterrence and not punishment[18].

[40] The Panel has been referred to several comparative penalty cases so far as the false or misleading charge is concerned. One of the cases referred to by the Applicant was *Racing Victoria Stewards v Kelly*[19]. That case involved a jockey charged with five counts of placing a bet or having an interest in placing a bet contrary to AR115(1).

[41] The charges were described, unsurprisingly, as being very serious, particularly as they related to a bet placed on a horse in a race in which the Applicant was riding. Because of his plea of guilty and other mitigating factors, he received a penalty of 16 months disqualification and a lesser concurrent penalty of three months disqualification for the other betting offences.

[17] Queensland Racing Integrity Commission Thoroughbred Penalty Guidelines 2023
[18] *Australian Building and Construction Commission v Pattinson* 2002 HCA 13 paragraphs 66-72
[19] *Racing Victoria Stewards v Kelly* - Victorian Racing Appeals and Disciplinary Board 19 June 2019

[42] On the charge of giving false and misleading evidence to Stewards, where he was said to be the driving force behind the behaviour and deceit, he received a concurrent penalty of four months disqualification.

[43] That was clearly a much more serious case than the present. It demonstrates that periods of disqualification may sometimes be appropriate for a charge under AR232(1), but otherwise it is of no real assistance in determining penalty in this case.

[44] In *Racing Victoria v Trudi Cotter*[20], the applicant there faced two charges as a licenced trainer, one of improper conduct, and another of providing false information. The charges arose from an attempt to discredit another trainer with whom she was in dispute. For the charge of giving false evidence a licence suspension of three months and a fine of $2500 was imposed. The offending was described as "bizarre from someone of high character and spotless record" and was said to have occurred against a background of "conflict and psychological stress".

[45] In *Racing Victoria v Brunton*[21] a period of six months suspension, three months of which was itself suspended for two years, was imposed on a trainer who had provided false information concerning the shoeing of a horse racing at Warrnambool which had resulted in the horse being scratched at the barrier. Mr Brunton, however, had a very large number of prior offences for race day and administrative matters, including at least one which involved a shoeing offence. Additionally, in 2020 he had received a three-month suspension for a presentation offence. As the Tribunal there observed he had a poor record. The seriousness of Mr Branton's overall conduct was aggravated by his failure to attend a Stewards hearing in relation to the false plating information on the day of the offence, when required to do so. For that matter, effectively, a further cumulative penalty of one month licence suspension was imposed.

[46] In *Queensland Racing Integrity Commission v Afford*[22] The false information given by licence trainers related to the welfare of a gelding which had suffered significant injury in a barrier incident on race day. The false information seems to have involved an assertion that the horse had been euthanised. A penalty of three months suspension was imposed in that case, although on appeal by one of the respondents that was reduced to an effective penalty of two months suspension with a further one month suspended. As Mr Hutchinson submits, however the seriousness of that offending lies in the fact that, if it had remained undetected, the industry was being deceived as to the welfare of a registered thoroughbred. That alone serves to distinguish its seriousness from the present case.

[47] In the matter of *Alicia Ross*[23], there were several charges the details of which are sparse on the material available. One charge of misconduct under AR 229 apparently involved the alteration of a doctor's clearance for which a penalty of eight months disqualification was imposed. Lesser concurrent periods of four months disqualification were imposed for other offences including one of providing false information, In the absence of greater detail, the period of disqualification imposed there might appear to be harsh, but in any event, it is of doubtful assistance here in the Panel's view.

[48] Reference was also made to the decision of this Panel in *Morrow v Queensland Racing Integrity Commission*[24] That case was concerned primarily with offences against AR 231(1)(b) and a failure to provide proper and sufficient nutrients to racehorses. A period of 21 months disqualification was there

[20] *Racing Victoria v Trudi Cotter* – Victorian Racing Appeals Tribunal 28 February 2022
[21] Victorian Racing Appeals Tribunal 31 August 2023
[22] Stewards Report 22 January 2020
[23] Stewards Report 12 October 2021
[24] *Morrow v Queensland Racing Integrity Commission* RAP-41 2023

imposed. For other offences, concurrent penalties, also of disqualification, were imposed. One of those other offences was that of providing false or misleading information, for which a concurrent period of three months disqualification was imposed. The circumstances of that case which merited the period of disqualification imposed were more serious than the present.

[49] Finally, in Queensland Racing Integrity Commission v Munce[25], a licenced trainer was charged with injecting a horse contrary to AR 254 and with an offence of making a false and misleading statement to a QRIC official relating to the possible injection. The injection offence attracted a period of three months suspension and the breach of AR 232(i) a fine of $5000. That case demonstrates that although periods of actual suspension are frequently imposed for offences of this nature, a monetary penalty is not necessarily outside the relevant range.

[50] Considering the issue of penalty, it is firstly to be observed that the Applicant is someone with an unblemished disciplinary record. Personal deterrence is a not a factor of any real relevance in his case.

[51] He has pleaded guilty to the charges. This is not a case of any deliberate infringement of the rule and not a case of infringement in pursuit of personal gain. That the Applicant misunderstood the provisions of the rule does not, as we have stated, provide him with any defence to the charge. As a licenced trainer he is bound to comply with the rules. However, his misunderstanding of the requirement of the rule is a matter which bears upon the level of culpability or moral blameworthiness involved in his offending. This is especially recognised under the guidelines as a factor of relevance. There is nothing to cast doubt upon his account in that regard.

[52] The Applicant's personal circumstances also require consideration. It is apparent from the material that he and indeed his family are heavily involved in the ongoing operation and management of the Thangool race club. He operates a country racing stable and it is apparent that he does not have significant financial resources to call upon.

[53] His work in the industry involves training horses, pre-training with other trainers, breaking horses, and other related work. His income is supplemented to some degree by his work in the coal mines. Importantly, he is the master for his daughter, apprentice jockey Jamie Lee. She is a student in year 12 and her apprenticeship is arranged through her schooling. If a suspension were imposed on the Applicant, then arrangements involving family disruption would likely follow. This represents a significant consequential impact of an order involving a period of actual suspension.

[54] In the view of the Panel, weighing all of these matters, including the comparative decisions to which we have been referred, we consider that the requirements of penalty can in this case be met by an order which does not involve a period of actual suspension.

[55] The charge of providing false or misleading information to Stewards must be regarded most seriously. It scarcely needs to be said that the requirement that those involved in the industry should be truthful in their dealing with Stewards is of fundamental importance to the maintenance of the integrity and standing of the industry.

[56] That does not mean that periods of actual suspension must be imposed in all cases involving AR 232. However, we consider that in a case involving repeated instances of maintaining the false information, even if actual suspension is not ordered, there should be a head penalty of suspension sufficiently high to mark the disapproval with which such offending is viewed.

[25] Stewards Report 24 March 2021

[57] Pursuant to section 252AH(1)(c) of the Act the decision of the Panel is that the orders the subject of this Applications should be set aside, and the Panel's own decision substituted.

[58] In relation to the charge under AR 227(a) the Applicant is fined the sum of $1500.

[59] In relation to each of the charges under AR 232(i) a penalty of six months suspension of licence is imposed. Pursuant to AR283(5) of the Rules it is ordered to that the operation of that suspension be wholly suspended for a period of two years dependent upon the Applicant not committing any further offences against AR 232(i) All penalties are to be served concurrently.