

## DECISION

***Racing Integrity Act 2016, sections 252AH, 252BM***

<b>Review application number</b>	RAP-89	
<b>Name</b>	George Sitek	
<b>Panel</b>	Mr K J O'Brien AM (Chairperson) Ms L Hicks (Panel Member) Ms S Bogenhuber (Panel Member)	
<b>Code</b>	Thoroughbreds	
<b>Rule</b>	Racing Queensland Local Rule 30(1)(b) <i>Time for runner to be in the saddling paddock; Provincial TAB meeting or Country TAB Meeting, at least 1.5 hours prior to the time appointed for the start of the race, unless the runner is engaged in a Listed, Restricted or Feature Race, in which case it is 2 hours prior to the time appointed for the start of the race.</i> Australian Rules of Racing Rule 228(b) <i>A person must not engage in:</i> <i>(b) misconduct, improper conduct or unseemly behaviour</i>	
<b>Penalty Notice number</b>	PN-009521 PN-009522	
<b>Appearances &amp; Representation</b>	Applicant	Self represented
	Respondent	Queensland Racing Integrity Commission W Kelly instructed by E Ballard
<b>Hearing Date</b>	25 March 2024	
<b>Decision Date</b>	25 March 2024	
<b>Decision</b> <i>(delivered ex tempore)</i>	Pursuant to 252AH(1)(a) the Racing decision for Penalty PN-009521 is confirmed  Pursuant to 252AH(1)(c) the Racing decision for Penalty PN-009522 is set aside and a finding of not guilty is substituted	
<b>Case References</b>	<i>David Vandyke v Queensland Racing Integrity Commission, RAP-59, 27 October 2023.</i>	

## Reasons for Decision

- [1] The Applicant in this matter is licenced trainer, Mr George Sitek.
- [2] On the 3 February 2024, Mr Sitek was found guilty of having contravened Australian Rule of Racing 228(b) and Racing Queensland Local Rule 30(1)(b).
- [3] The charge under AR228(b) was one of improper conduct, particulars being that on the 3 February 2024 at Bundaberg, the Applicant had removed his runner Divine Falls from the designated race day stabling area without seeking permission from the Stewards.
- [4] The particulars of the charge under LR30(1)(b) were that on the 3 February 2024 at Bundaberg he had failed to present his runner Divine Falls engaged in Race 6 to the race day stalls by the prescribed time.
- [5] It is accepted that race 6 was listed for 5:37PM on that date and it is also accepted that, being a TAB meeting, the Applicant was required to present his runner to the saddling paddock no later than 4:07PM, that being 1.5 hours prior to the appointed race time.
- [6] The Applicant was fined the sum of \$200.00 and \$300.00 respectively for those two breaches.
- [7] In his Application for Review, the Applicant maintains that he is not in breach of AR228(b). His application includes the following (grammar uncorrected):

*I did not breach AR 228B, an I was in my rights to rest my selfes an an the horse after driving 6 hours, An stewards had no power to apply penalty as Racing Appeals Tribunal NSW on 22 October 2018 found stewards had no power to apply penalty on AR Rule 175, witch is now AR 228b. Stewards had full knowledge that I was on course at 12:15 PM on 3/2/24 an their is no such area known as Saddling Paddock at Bundaberg Racecourse, so LR 30(1)(b) can not be breached.*

*I left Darra at 6.am an arrived at Bundaberg Racecourse at 12.15 pm [ my race starting time was 5.37 pm ] I hosed my horse down on arrival an walked him to day yard stables on course , My intention was to rest the horse an my Selfe till 3.pm an bring him to race day saddling stables .On my way to pick up the horse from day yard stables i received a ph call that the person i the carer for had a fall an could not get up with out help . I phoned several people that help me with the care of this person , an i got Pamula lee to drive to darra to help other lady to help him get up . I then had to make follow up ph calls that he was not injured from the fall he had . I am the appointed carer for this disabled person an i have a duty of care to make shore he was not injured from this fall . This is the reason I was late getting the horse to race day saddling stables . If i had stayed in the race day saddling stables from 12. 15 pm it would be a 12 hr day.*

- [8] There is a preliminary issue that must be determined in this matter. Section 252AB (2) of the *Racing Integrity Act 2016* requires that applications such as these should be made within 3 business days after the person is given notice of the decision. However, although that rule is expressed in mandatory terms, section 252AB (3) provides that the Chairperson may decide to accept the application outside that three-day period if in the opinion of the Chairperson it would be unjust to refuse to accept the application.
- [9] Considerations of relevance to abridgement of time in proceedings of this nature where considered by this Panel in *Queensland Racing Integrity Commission v Van Dyke*.<sup>1</sup> Factors of relevance include any explanation that is advanced for the delay, whether it is fair and equitable in the circumstances to extend the time limit, whether any action has been taken by the Applicant apart from the application to

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<sup>1</sup> *David Vandyke v Queensland Racing Integrity Commission*, RAP-59, 27 October 2023.

extend time, whether extending time would cause any prejudice to the Respondent, and, of course, the merits of the substantive case.

- [10] In this matter, the decision was imposed on the Applicant on the 3 February 2024. The evidence indicates that the Penalty Notices were sent to him by e-mail communication on the 5 February 2024.
- [11] The Applicant was of course present at the time the orders were made and he was then and there informed of his right of appeal.
- [12] The Application seeking this review was lodged on the 20 March 2024 and it was therefore 28 business days delayed or 40 calendar days.
- [13] The Applicant provides an explanation for the lateness of his lodgement of the Application. He does not habitually use e-mail as a means of communication and his computer was not working until the 24 February 2024. He had in the meantime been awaiting the receipt of the written notices, expecting them to arrive by mail.
- [14] He had attempted to contact Queensland Racing Integrity Commission (QRIC) without success. On the first occasion, his email "bounced back" and although he was apparently successful with an alternate QRIC address, he had received no response. He telephoned QRIC and was ultimately contacted by Mr. Daly in response. Within three days of speaking to Mr Daly, he lodged his notice of Application.
- [15] The explanation is not entirely satisfactory, but it is to be said that Mr Sitek presents as an unsophisticated man and we acknowledge that his explanation is not without plausibility.
- [16] Beyond that, given what are the essentially undisputed factual issues involved here, there is no real prejudice to the Respondent if the extension of time were to be granted. A further factor of relevance involves a consideration of the merits of the application.
- [17] The background to the matter is well summarised in the Respondents outline of submissions as follows:
6. *On 3 February 2024, the Applicant attended the Bundaberg Turf Club in his capacity as a licensed Thoroughbred trainer. The Applicant had one horse (Devine Falls) nominated to race in race 6 on that date.*
  7. *The Applicant drove his horse float from Darra to Bundaberg on the 3 February 2024 leaving Darra at about 6am. The Applicant arrived at the Bundaberg Turf Club at approximately 12.10pm on 3 February 2024.*
  8. *Race 6 was the last race of the day and the Applicant arrived in ample time prior to the start of the race. The Applicant only had one horse nominated to race that day at Bundaberg. The Applicant unloaded Devine Falls from the float and took the horse to the tie up stalls.*
  9. *The Applicant subsequently removed Devine Falls from the tie-up stalls and walked the horse to another area which is the on-course stables owned by another trainer. The Applicant did not advise the Stewards he was removing his horse to that location off track.*  
*(Footnote 2: 1. Document 7: Trainer & Horses Document 03.02.2024 (redacted). 2 See Document 18: Satellite image of Bundaberg racetrack.)*
  10. *Devine Falls was one of the six horses selected for a pre-race sample. When the sample officer went to the tie up stalls to take the pre-race sample, Devine Falls was not at its designated location.*

11. *Stewards then contacted the Applicant who advised he was just returning to the tie-up stalls with Devine Falls. A pre-race sample was then taken Devine Falls and the horse was then disqualified from competing in the race. The sample result has not yet been confirmed by the Racing Science Centre.*
12. *The Applicant was charged with one breach of AR 228(b) and one breach of LR 30 (1)(b) and entered a plea of not guilty to breaching AR228 (b) and guilty to breaching LR 30(1)(b).*

- [18] The evidence clearly establishes that the Applicant arrived at the course at 12:10PM and that he had travelled that day from Darra. His evidence before the Stewards and his submission to this Panel, is that, after arrival, he had hosed the horse, walked him around and then taken him to the adjoining stables. This is said to be improper conduct because he had no approval to have taken the horse from the designated stabling area without the steward's permission.
- [19] The Applicants account is that it had been a long day and a hot day, the race was not until the very late afternoon, the horse was a fractious animal, and his conduct was purely designed, as he put it, "to settle the horse down". His intention had always been to present Devine Falls at the appropriate place at the required time. There is certainly no evidence of any deliberate intention by him to avoid the Stewards or to flout the rules.
- [20] The concern of the Stewards is understandable. The horse had been recorded as arriving at 12:10PM, it was not at the tie up area by the appointed time (4:07PM) and the Stewards would obviously have no knowledge what had transpired in the intervening period if then the horse had been removed from that area.
- [21] The real difficulty in the Panel's view is whether this conduct is such to fall within the meaning of Rule AR228(b), in particular whether it constitutes improper conduct. The ordinary meaning of improper in this context is that of being "unbecoming, unseemly or indecorous". That meaning is supported by the context in which the word is used in the Rule. We have great difficulty in seeing how the incident described falls within that meaning.
- [22] We do not say that the conduct is not prohibited by some other rule, although had Devine Falls been re-presented at the race-day stalls by 4:07PM it is not immediately apparent what that Rule might have been. AR 228 is headed "Conduct detrimental to the interests of Racing" and AR 228(b) deals expressly with "misconduct. Improper conduct or unseemly behaviour". The incident alleged here does not sit comfortably within any of the types of conduct prohibited by AR 228 and Mr. Kelly who appears for the Respondent was unable to identify any case in which the provision had been used in this way. The view of the Panel is that AR228 (b) is not designed to encompass circumstances such as these. The Panel considers that there is merit to the application, at least so far as that charge is concerned.
- [23] Some further reference should be made to the time frames involved here. As noted, the Applicant arrived about 12:10PM. The race was due to commence at 5:37PM and the horse was due in the relevant area 1.5 hours prior to that time, that being 4:07PM. In fact, it did not arrive there until 4:54PM, 47 minutes after the due time.
- [24] When first spoken to by Stewards, the Applicant indicated that he thought the relevant arrival time was one hour before the race. On hour is in fact the timeline for Country Non-TAB race meetings.<sup>2</sup> He told Stewards that he had left the bar area at about 4:00PM and had then experienced trouble bridling his

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<sup>2</sup> LR.30(1) (c)

horse thereby causing his late arrival. He later said he had watched the 4:22PM race before moving from the bar area to the stabling area.

- [25] Later, in a second interview, he informed Stewards there that he had received an important call relating to a "medical emergency" at 3:07PM. The emergency related to a person in Brisbane for whom the Applicant had the responsibilities of being a sole carer. He had to make several calls in response to that 3:07PM call, which he said led to him being distracted. He estimated this probably took some 40 minutes.
- [26] It is apparent that the Applicant's accounts do demonstrate a degree of inconsistency and it is understandable that the Stewards may have had some concerns in that regard. Assuming his evidence of the medical emergency calls to be correct, and there is no reason to doubt what he says in that regard, then on his evidence they would have been attended to by about 3:47PM. This still left him at least 15 minutes in which to present the horse as required at 4:07PM. This did not occur, and in fact it did not occur until more than an hour later at 4:54PM. Consequently, acting pursuant to AR165 the horse was scratched by Stewards from the race.
- [27] The initial account given by the Applicant of leaving the bar area at 4:00PM to collect his horse, or even his account of having watched the 4:22PM race before having done so, is suggestive of a mistaken belief on his part that the required time was 4:37PM, as it would have been if this was not a TAB meeting. Even allowing for the medical emergency which the Applicant subsequently described there was still ample time in the Panel's view for him to have had his horse at the relevant place 1.5 hours before the starting time. We see no reason why the determination of the Stewards in relation to that charge should be disturbed.
- [28] The two Applications here are closely related, they arise from the one set of circumstances. Considering all the above matters and in particular the conclusion expressed in Paragraph [22] above, pursuant to section 252AB (3) of the *Racing Integrity Act 2016*, it would be unjust to refuse to accept this application.
- [29] Pursuant to section 252AH(1)(c) of the *Racing Integrity Act 2016* in relation to the charge under AR228(b), that is penalty notice 009522, the order of the Panel is the racing decision should be set aside.
- [30] In relation to Penalty Notice 009521, the charge under LR30(1)(b), pursuant to section 252AH(1)(a) of the *Racing Integrity Act 2016* the racing decision is confirmed.