

## DECISION

*Racing Integrity Act 2016, section 252AB*

<b>Review application number</b>	RAP-18	
<b>Name</b>	Glen Baker	
<b>Panel</b>	Mr Kerry O'Brien AM (Chairperson) Mr Daryl Kays (Panel Member) Mr John McCoy OAM (Panel Member)	
<b>Code</b>	Thoroughbreds	
<b>Rule</b>	Australian Rules of Racing Local Rule 68(1) Further to the provisions of AR 181 if it is intended to withdraw a final acceptor from any race notice or withdrawal of the horse shall be given to the Racing Australia Service Centre not later than the time advertised in the approved program for the Race Meeting and thereafter a horse shall not be withdrawn except by permission of the Stewards.	
<b>Penalty Notice number</b>	PN8035	
<b>Appearances &amp; Representation</b>	Applicant	Self Represented
	Respondent	Paul Zimmerman
<b>Hearing Date</b>	30 May 2023	
<b>Decision Date</b>	30 May 2023	
<b>Decision</b> <i>(delivered ex tempore)</i>	Varied	
<b>Panel Penalty</b>	Reprimand	

## Reasons for Decision

- [1] Mr Glen Baker is the applicant in this matter and is a licensed trainer of Thoroughbred race horses.
- [2] On the 17th of May 2023, he was found guilty by stewards of an offence against LR 68(1) of the Australian Rules of Racing and was fined \$200.00.
- [3] The applicant had pleaded guilty to the charge but now seeks a review of the decision on the ground that the penalty imposed was excessive.

- [4] LR 68(1) is in these terms:

“Further to the provisions of AR 181 if it is intended to withdraw a final acceptor from any race notice of withdrawal of the horse shall be given to the Racing Australia Service Centre not later than the time advertised in the approved program for the Race Meeting and thereafter a horse shall not be withdrawn except by permission of the Stewards.”

- [5] The charge against the applicant arose from his failure to scratch by the prescribed time his horse Vancity in race four at Ipswich on the 17th of May 2023.
- [6] The applicant provided a document headed “Circumstances of the Offence” outlining why he claims that the penalty was excessive and should be reduced.
- [7] It is helpful I think to now make reference to a number of the circumstances within that document.
- [8] The applicant makes the following comments:

“My horse Vancity was the 4th emergency for the race in question.

At some time between 7.00am and 7.15am on race morning I went on to the RISA website and saw that 3 horses had been scratched from the race, being Cavaup, Diaco and Cairdeas.

Having seen this I - wrongly as it turned out - assumed that I would not get a run, and in the belief that I had until 7.45am to scratch my horse, I turned my attention to shoeing horses (I am a skilled farrier and attend to this task for my horses myself) with the view that I would check the scratchings listed on RISA prior to 7.45am.

My belief regarding the final scratching time was made in reliance on the information about the scratching deadlines published on the RISA website. Unfortunately, I encountered issues with the shoeing and was unable for reasons of animal welfare to access the RISA website again until 7.46am. When I did, I saw that 4 further horses had been withdrawn from the race, and that Vancity had gained a run.

At the same time, I checked the track conditions and saw that despite the fine weather the track had not been upgraded from the Heavy 10 that had been posted the evening before. I had hoped that it would, as my horse had raced 14 times on wet tracks for no wins and just one placing.

Immediately after seeing this, I attempted to contact RISA but was placed on hold for about a minute. After that time had elapsed, I hung up and rang straight back, and was able to speak to a RISA officer at 7.49am, at which time I notified that I wished to scratch my horse.”

- [9] The applicant has attached a copy of his phone records to the document and notes that:

"I have subsequently located the conditions of the race in the Race Magazine, commonly known in the racing industry as the Racing Calendar.

I discovered that notwithstanding the advice published on the RISA website, the final scratching time was 7.30am. I did not know this before as I relied on RISA advice.

Had I been in a position to discuss the matter with the Stewards I would have made application for Vancity to be scratched due to the state of the track and the horse's proven inability to handle soft and heavy going, and given the horse's wet track record but due to the urgency of the need to scratch to avoid any problems for the racing industry, Stewards and other participants, this opportunity was not available to me.

At no time was I ever advised that my horse had secured a run. I did not receive any phone calls, texts or emails to tell me that it had made the field. The only way I found out was by checking the RISA website.

None of this is said as an excuse for breaching the rule, but rather conveyed by way of explaining the mitigating circumstances related to the offence."

- [10] The applicant told the stewards that he believed he had until 7.45am to scratch his horse and the other matter he raised was that his horse was an emergency starter and he was waiting to see if the track conditions improved.
- [11] I have noted the applicant was found guilty by the stewards of the offence.
- [12] The recording of the stewards decision indicates the penalty was delivered in a summary manner stating that the applicant had been a trainer for 30 to 40 years, the meeting was mid-week metropolitan, and that he should have been aware of the scratching requirements.
- [13] Penalty Guidelines issued by the Queensland Racing Integrity Commission state that the purpose of a penalty under the rules is to maintain standards of integrity and animal care through the enforcement of the rules of racing, to provide general deterrence to the industry by ensuring that any penalty imposed is sufficient to discourage other participants from breaching the particular rule, and, finally, to provide specific deterrence to the individual. The Guidelines set out a number of factors which may be taken into account. Imposing a penalty involves a balance between the severity of the offence, the need for deterrence, both for the individual and the industry generally, and any mitigating factors. All situations need to be assessed according to their individual merits.
- [14] Considerations listed include the circumstances of the offence itself, the degree of culpability involved in the offending, whether there has been an early plea of guilty for the disciplinary record person involved and also the race status.
- [15] It is noted correctly by the stewards in this case that the race was a mid week Metropolitan meeting.
- [16] With that background, I come to some particular considerations that have emerged during the course of this morning's hearing. Firstly, there are a number of timeframes for scratchings that are referred to.
- AR181 provides that, subject to the provisions of Local Rules, notice of scratchings should be given at least 45 minutes before start time. LR 68 requires notice "not later than the time advertised in the approved program for the Race Meeting".

- The RISA website refers to two times, those being 7.30am and 7.45am and also mentions a potential for a courtesy phone call to trainers with emergency runners who have gained a start. The Panel accepts that no such call was made to the applicant.
- The Racing Queensland site refers to 8.30am as the relevant time.
- The Official Advertised Program, which was relied on by the stewards here, fixes the scratching time at 7.30am.

[17] No doubt that last mentioned time from the Advertised Program is the official time. However, it is apparent from these several documents that there is a potential for confusion and it is not at all surprising that a trainer may experience some degree of confusion.

[18] There is a simply no reason to doubt the applicants explanation as to his understanding of times.

[19] It is to be accepted that he was an experienced trainer and therefore should have known the proper scratching time. His ignorance in that regard does not afford him any defence, but it is a matter which bears upon the culpability of his conduct. This is not a case which involves any deliberate flouting of the rule, or any wilful blindness to the rule. In fact, the material demonstrates that the applicant did take some steps to comply with his understanding of the rule requirements.

[20] Against the background of the Penalty Guidelines referred to above, there are other factors of relevance.

- The applicant pleaded guilty without hesitation.
- The scratching of this horse did not result in any other horse losing its placing in the race.
- The applicants good record, which includes no history of similar offending.

[21] AR 283 sets out the range of penalties that might be imposed for a breach of the Rules. Although the Guidelines provide for this offence starting point of a \$200.00 fine, that is not to say that a much lesser penalty cannot be imposed. So much is clear from the wording of AR 283.

[22] A number of so called comparative penalties have been placed before the Panel. These indicate a penalty range of between \$100.00 and \$300.00 for this offence. However, the details of those cases are not known and as the guidelines make clear, and as ordinary principles would make clear, each case must be assessed according to its own circumstances.

[23] A further factor of relevance here is the capacity of the applicant to pay the fine.

[24] There is before this Panel evidence to indicate his level of income. That was not available to the stewards but this Panel must make its own determination of the appropriate penalty.

[25] When fines are imposed it is incumbent upon the penalising authority to ensure that the recipient of the fine has indeed the capacity to pay that fine.

[26] There are significant mitigating factors here. Specific deterrence is not of great importance in the case of an applicant who has a good disciplinary record with no breaches of this particular rule. In the circumstances referred to above, the degree of culpability involved here is low. The applicant has a limited capacity to pay a pecuniary penalty. It is the Panel's view that an appropriate outcome in this case is that the applicant should be reprimanded with the penalty of the fine to be set aside.

[27] Pursuant to section 252AH of the *Racing Integrity Act* 2016, the Racing decision the subject of the application is varied with a reprimand being substituted for the penalty of a fine.

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