

DECISION

Racing Integrity Act 2016, section 252AB

Review application number	RAP-47	
Name	Jack Trainor	
Panel	Mr Kerry O'Brien AM (Chairperson) Mr Ken Waller (Panel Member) Mr John McCoy OAM (Panel Member)	
Code	Harness	
Rule	Australian Harness Rules of Racing 231(1)(e) A person shall not assault anyone employed, engaged or participating in the harness racing industry or otherwise having a connection with it.	
Penalty Notice number	PN-008706	
Appearances & Representation	Applicant	Mr J Murdoch KC
	Respondent	Mr M Copley KC, instructed by QRIC
Hearing Date	1 September 2023	
Decision Date	19 September 2023	
Decision	Pursuant to 252AH(1)(c) of the <i>Racing Integrity Act 2016</i> the racing decision in so far as it relates to penalty is set aside and a fine of \$5,000 is substituted for the penalty of three months disqualification.	

Reasons for Decision

- [1] The Applicant in this matter, Mr Jack Trainor, holds a Harness Racing Trainer and Driver licence with Harness Racing New South Wales.
- [2] On 22 August 2023, following an Inquiry conducted by Stewards into an incident which occurred in a bar at the Albion Park Raceway in the early hours of 23 July 2023, the Applicant was found guilty of an offence against Australian Harness Racing Rule (AHRR) 231(1)(e) and received a penalty of three months disqualification.
- [3] Pursuant to section 252AB of the *Racing Integrity Act 2016* he now seeks a review of those determinations as they relate both to guilt and to penalty.
- [4] AHRR 231(1)(e) is in the following terms:

A person shall not assault anyone employed, engaged or participating in the harness racing industry or otherwise having a connection with it.
- [5] The particulars of the charge against the Applicant allege that he assaulted one Adam Russo in 'The Creek' bar at the Albion Park Raceway on 23 July 2023.

Background to incident

- [6] The harness racing program at Albion Park on 22 July 2023 saw the running of the feature race 'Blacks A Fake' a notable grand circuit race on the Australian Harness Racing calendar. The winning horse, Swayzee, was part owned and trained by the Applicant's friend Jason Grimson. The winner had upset the short-priced Queensland based favourite, Leap To Fame, which finished second.
- [7] The Applicant and Grimson have their horses stabled at neighbouring barns at the premier harness racing track in New South Wales at Menangle. The Applicant was at Albion Park on 22 July 2023 in his capacity as a trainer/driver, since he had brought horses to Queensland to compete over the carnival. He had driven in the last race on the program and did not attend at the bar until he had completed his post-race commitments.
- [8] The final race of the program was run at 9:51pm and 'The Creek' bar remained open after that time. The Applicant and friends, including Grimson and another man Downey, were in the bar celebrating Swayzee's win and remained there until the early hours of Sunday 23 July 2023.
- [9] A group of persons in the bar were, according to the Applicant and his friends, making what have been termed 'scandalous comments' to the effect that the successful trainer of Swayzee, Jason Grimson, was a drug cheat.
- [10] The man Adam Russo referred to in the charge, had also been in attendance with a group of friends at the race day. By his own admission he had placed some bets and had consumed a good deal of alcohol.
- [11] At about 12:30am on Sunday morning Russo approached Downey who at the time, had the ceremonial rug presented to Swayzee as the winning horse in the feature race draped across his shoulders. Words were exchanged and an altercation developed between the two.
- [12] Various persons, not all of whom were identified, became involved in the scuffles which followed Downey hit Russo and Russo retaliated with punches

The Applicant's Involvement

- [13] A single Steward's Inquiry was held into the events of that Sunday morning and evidence was taken from four persons only – this Applicant, Grimson, Downey, and Russo. All four were present throughout the Inquiry which, in addition to the oral testimony of the four, included some CCTV footage taken within the bar.
- [14] On the hearing of this appeal, the Applicant has tended a further short video recording apparently taken from a mobile phone which, although it does not include his own involvement, appears to show the commencement of the incident.
- [15] All four men were subsequently charged with offences against AHRR 231(1)(e).
- [16] The evidence taken by the Stewards is set out in some greater detail in the decision of this Panel in Grimson -v- Queensland Racing Integrity Commission¹. The involvement of the Applicant however is perhaps best set out in his own evidence before the Stewards as follows²:

I was standing back just watching a bit of the argument unfold and then I do recall Mr Russo getting up and walking towards, closer and within range of Mr Downey, pointing his finger and when Mr Downey then open-hand slapped Mr Russo in the face. Then from what I can recall, Mr Russo put his drink down and started swinging punches in the direction of Mr Downey and sort of us.

- [17] Later, having viewed the CCTV footage, the Steward's identify a time during the incident when Grimson is seen to be restraining Russo, as he continues to throw punches toward Downey at which point the Applicant "introduced (himself) into this altercation and punched Russo".
- [18] The Applicant responded³:

Yeah, I grabbed Mr Russo a couple of split seconds after Mr Grimson, [restraining], but the only thing that triggered me – I had plenty of opportunities to have just openly punched Mr Russo, but it wasn't until Mr Russo threw a punch at Mr Grimson when he was trying to walk away that that's when I intervened and threw the one punch. You go back to the start when Mr Grimson grabs him...

I'm just standing there restraining him, then he throws that shot on Mr Grimson and you can see that that clearly agitates me because Mr Grimson was actually getting pulled away from him when he thrown that strike upwards at Mr Grimson and that's obviously what set me off. It felt like the fighting was still happening right in front of me and that's when I've thrown one punch there, and now I've been grabbed. All I was doing to start off was restraining with Mr Grimson until I seen the shot come up and it's just a natural reaction.

Was it the right thing to do? Probably not, but it's a natural reaction when your mate's just getting punched right in front of you when he's getting pulled away...

- [19] Again, when describing the punch he delivered to Russo, the Applicant said⁴:

It was a one controlled punch and that's what's triggered me, just a natural reaction to that when you see your mate getting punched from the side like that to join in, whether it's good behaviour, not the

¹ RAP-48 19 September 2023

² Transcript page 8, lines 211-277

³ Transcript page 20, lines 563-568 and lines 576-586

⁴ Transcript page 22, lines 642-648

place or not, no, I don't agree it was either, but that's the only reason that I decided to, that I would've thrown a punch because I thought that my mate was getting attacked. I think it's clear it wasn't a scrambling situation, it was a fully-controlled holding situation until Mr Russo...

- [20] Later⁵ he reiterated his claim that he had thrown a "single punch" after witnessing Russo strike his friend Grimson.

The Charge

- [21] To make out an offence against AHRR 231(1)(e), the Respondent must establish not only that the Applicant assaulted Russo, but also that Russo was a person "employed, engaged or participating in the harness racing industry or otherwise having a connection with it".
- [22] Mr Murdoch KC who appears for the Applicant has argued that the Respondent was not someone who fell within this class of persons and, in any event, that the incident in the bar was so remote from harness racing as to remove it from the ambit of the Steward's powers.
- [23] Mr Copley KC for the Respondent had argued to the contrary in his submissions. His submission, in essence, is that in the circumstances Russo was "participating in" the harness racing industry, or at the very least was "otherwise" demonstrating that connection with it.
- [24] This identical issues was fully argued in Grimson -v- Queensland Racing Integrity Commission⁶ and counsel have adopted those same arguments for the purposes of this Application.
- [25] In Grimson, the Panel held that, in the circumstances that prevailed on this occasion, Russo was a person who fell within the ambit of AHRR 231. For the reasons outlined in the decision in Grimson, the Panel adopts the same conclusion in determining the present Application and is satisfied that, even if Russo was not participating, he was at least 'otherwise' evidencing a connection with the harness racing industry at the relevant time.

Penalty

- [26] As indicated above, the penalty imposed on the Applicant was one of three months disqualification. In determining that penalty, the Steward's remarks included the following references to the circumstances of the Applicant's involvement⁷:

We've considered, amongst other things, the blameworthiness of you and your culpability. In this particular incident, you could've walked away, that option was available to you. You did introduce yourself to that altercation and you did assault Mr Russo whilst he was being held.

The stewards have to determine the objective seriousness of the conduct and have regard to the facts and circumstances of the matter and then determine on those facts and circumstances what is the appropriate penalty. As I say, we've considered your blameworthiness in this altercation and we believe that the correct action to be taken is that your licence be disqualified for a period of three months

- [27] In his submission Counsel for the Respondent has made the fair observation in respect of those remarks that whatever restraint Russo was subject to, it did not prevent him from punching Grimson.

⁵ Transcript page 34 line 1001 and page 35, line 1013

⁶ RAP 48 19 September 2023

⁷ Transcript page 46, lines 1353-1363

However, the time which elapsed between Russo's punch and the Applicant's punch, as demonstrated in the CCTV footage was approximately 5 seconds and supports the conclusion that the Applicant's response was not entirely instinctive and that it did involve a considered decision.

- [28] The Queensland Harness Racing Penalty Guidelines (QHRPG) provide no starting penalty for an offense against AHRR 231. The guidelines are designed with the ideals of deterrence, both general and specific in mind⁸. Considerations of importance include the circumstances of the offense, including any mitigating or contributory factors, the degree of culpability and moral blameworthiness which attaches to the offender, and whether there has been an early plea of guilty.
- [29] With regard to these factors, the Applicant did enter an early plea of guilty before the Stewards. He was not legally represented at that time, and the fact that the legal propriety of the charge is now challenged at this hearing should not deprive him of that early acknowledgment of factual guilt.
- [30] Other factors of relevance here include the following:
- The Applicant is a licenced trainer/driver with a large number of horses in work and has stables which he rents from Harness Racing New South Wales
 - He has until this incident employed three full-time staff
 - His only source of income has been from harness racing
 - He has not previously breached AHRR 231 in any way
 - A disqualification will have a significant impact upon his business and potentially his future involvement in the industry and upon his future career.
- [31] The consequences of a disqualification order are significant⁹ and would affect rights recognised by the *Human Rights Act 2019*, notably the right to property (income earned pursuant to the licence) and the right to reputation.
- [32] In deciding whether those rights should be limited the penalty guidelines recognise that regard must be had to the matters listed in section 13(2) of the Act, notably whether there are other less restrictive and reasonably available ways to achieve the purpose sought to be achieved by the penalty.
- [33] Comparable penalty decisions to which the Panel has been referred include *Harness Racing Victoria -v- Hryhorec*¹⁰ where a four months disqualification order was imposed, and *Litzow -v- Harness Racing Queensland*¹¹ where the offender received a suspended sentence of three months suspension for an offence which involved pushing, and throwing a rug at another licensee. In other cases such as *Bakos -v- Radicker*¹² fines have been imposed where altercations have occurred between licensees.
- [34] This should be regarded as a serious incident. From its small beginnings it grew to become an incident in a public place associated closely with the harness racing industry, in which numerous others threw punches and became involved in scuffles. The report provided by the security company, Leading Edge Security notes that approximately 6 people were involved in throwing punches and pushing each other with another 20 to 30 people in the main area/dance floor being caught up in the altercation and starting pushing and becoming involved. The image of the industry is tarnished by such behaviour. By

⁸ QHRPG paragraph 3

⁹ AHRR page 16

¹⁰ Victorian Racing Tribunal 17 June 2020

¹¹ 2008 QRAT 31

¹² QRIC Steward's report 2 February 2021

his decision to become involved, even in a limited way, the Applicant contributed to that reputational damage.

- [35] The need for deterrence is important in considering penalty in this case. Ultimately however each case must be assessed according to its own circumstances. The numerous mitigating factors in the appellant's favour have been set out above. Penalties imposed by the Stewards indicate that they saw the Applicant's involvement, although serious, as rendering him the least culpable of the four who had been charged. That conclusion is consistent with the Panel's assessment.
- [36] In the Panel's view, the purposes of penalty can be appropriately met in this case by the imposition of an order of less severity than that of disqualification.
- [37] Pursuant to section 252AH(1)(c) of the *Racing Integrity Act 2016* the order of the Panel is that the Racing Decision that is the subject of this Application is set aside and a fine of \$5,000 is substituted for the penalty of three months disqualification.