

## DECISION

*Racing Integrity Act 2016, section 252AB*

<b>Review application number</b>	RAP-50	
<b>Name</b>	Adam Russo	
<b>Panel</b>	Mr Kerry O'Brien AM (Chairperson) Mr Ken Walker (Panel Member) Mr John McCoy OAM (Panel Member)	
<b>Code</b>	Harness	
<b>Rule</b>	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.	
<b>Penalty Notice number</b>	PN-008707	
<b>Appearances &amp; Representation</b>	Applicant	Mr C Cullen (Solicitor)
	Respondent	Mr M Copley KC instructed by Queensland Racing Integrity Commission
<b>Hearing Date</b>	13 September 2023	
<b>Decision Date</b>	22 September 2023	
<b>Decision</b>	Pursuant to 252AH(1)(c) of the <i>Racing Integrity Act 2016</i> the racing decision is set aside and a fine of \$2000 and an order pursuant to AHRR256(2)(e) that the Applicant be excluded from a racecourse as defined in the Rules for a period of six months is substituted for the penalty of six months warning off.	

## Case References

## Reasons for Decision

- [1] On 22 August 2023 the Applicant in this matter, Mr Adam Russo, was found guilty by Stewards of an offence against Australian Harness Racing Rule (AHRR) 231(1)(e). He had entered a plea of guilty to the charge and the penalty imposed was a warning off for a period of six months.
- [2] The penalty imposed by the Stewards falls within the meaning of “exclusion action” for the purposes of the *Racing Integrity Act 2016* and the Applicant now seeks a review of the decision pursuant to Section 252AB(1)(b) of that Act. The Applicant had originally sought a review of the determination of guilt notwithstanding his early plea of guilty. On the hearing before this Panel however, the Applicant has indicated through his legal representatives that his Application for Review is confined to the issue of penalty.
- [3] AHRR 231(1)(e) provides as follows:
- “A person shall not assault anyone employed, engaged, or participating in the harness racing industry or otherwise having a connection with it.”*

## Background

- [4] The harness racing program at Albion Park on the 22<sup>nd</sup> of July 2023 saw the running of the feature race ‘Blacks A Fake’, a notable grand circuit race in the Australian harness racing calendar. The winning horse was part owned and trained by Mr Jason Grimson, a licenced harness racing trainer from New South Wales. The winner had upset the short priced Queensland-based favourite which had finished second in the race. Following the meeting, Mr Grimson and several of his friends, including Mr Justin Downey, were celebrating their success in ‘The Creek’ bar at the Albion Park Centre.
- [5] The Applicant had been in attendance at the Raceway with a group of his friends. He had placed a number of bets and, by his own admission, had consumed a great deal of alcohol. He too had been present in ‘The Creek’ bar.
- [6] The charge against the Applicant arose out of an altercation which involved a number of people, not all of whom have been identified. The incident occurred shortly after midnight on the 23<sup>rd</sup> July 2023 in the vicinity of the dance floor of the bar area and the charge particularised against the Applicant was that he “did assault Justin Downey and Jason Grimson” at that location. The assaults as particularised are separated by a number of seconds, though they clearly form part of the one ongoing event. Though it could be argued that they constitute separate assaults, no point is taken in relation to any issue of duplicity and no prejudice to the Applicant is suggested or identified given his acknowledgment of guilt.
- [7] Grimson was employed in or engaged in or participating in the horse racing industry. Downey was engaged in or participating in or otherwise had a connection of nexus with the industry through his ownership of horses. Downey was not a licenced person, however, he had been involved with harness horses all his life and was racing a number of horses as at the date of the altercation<sup>1</sup>. Grimson, as noted, was a licenced trainer who had about 20 horses in work as at 23<sup>rd</sup> July 2023<sup>2</sup>.
- [8] The incident occurred on the grounds of the Albion Park paceway. For the purposes of AHRR 231(1)(e) Grimson was employed in or engaged in or participating in the harness racing industry. Downey was

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<sup>1</sup> Transcript page 36, line 1055-1063

<sup>2</sup> Transcript page 42, line 1223-1226

engaged in or participating in or otherwise had a connection or nexus with the industry through his ownership of horses.

## Evidence

- [9] A single Steward's Inquiry was held into the incident and evidence was taken from four persons only. The Applicant, Grimson, Downey, and Mr Jack Trainor, a licenced trainer/driver and friend of Grimson. All four were present throughout the inquiry as the evidence of each was given. In addition to oral evidence, the Stewards also had access to certain CCTV footage taken from within the bar area. The record of the testimonial evidence, as well as the CCTV footage is before this Panel.
- [10] Following the Steward's hearing, all four men were charged with offences against AHRR 231(1)(e). 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 Commission<sup>3</sup> and it is not necessary to repeat that evidence in detail here. A useful, and unchallenged, summary of the Applicant's involvement in the incident is however set out in the Respondent's Outline of Submissions as follows:

*What led up to the assault was the following. A woman approached Downey and made what he said were 'unsavoury' comments to him<sup>4</sup>. The applicant said 'what's with the flag around your neck?'<sup>5</sup>. However, the applicant claimed that another person joined Downey and got into his 'face' and said that he was getting smart. He denied that he was and claimed he was just asking a question<sup>6</sup>. However, Downey said that comments were made about Grimson being 'a cheat'<sup>7</sup> which comment was made by the applicant's female friend<sup>8</sup>. Downey told the applicant that if he did not get out of his face he would slap him<sup>9</sup>. According to Downey and Trainor Downey slapped the Applicant<sup>10</sup>. Trainor said the applicant then starting swinging punches in the direction of Downey or 'sort of us'<sup>11</sup>. Grimson's version was that during the night comments had been made to him or about him that he was a cheat<sup>12</sup>. Although he did not hear any discussion about the flag, he did notice Downey and the applicant in each other's faces<sup>13</sup>. He walked over and told them to stop, he went to order drinks and heard them talking about cheating. He heard Downey say he would slap the applicant and ended up doing so. He said the applicant struck Downey<sup>14</sup>*

*After watching the CCTV the Applicant conceded<sup>15</sup> that he had engaged in a discussion with Downey. He maintained that he only asked him about the flag he was wearing<sup>16</sup>. When asked why he walked so close to Downey the applicant replied that he probably should have let it go but when Downey said 'I'm going to smack you. I was curious as to why are you going to smack me. I'm asking you a question.'<sup>17</sup>*

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<sup>3</sup> RAP-48 19 September 2023

<sup>4</sup> Transcript page 6, line 159

<sup>5</sup> Transcript page 5, lines 119-120

<sup>6</sup> Transcript page 5, line 122-124

<sup>7</sup> Transcript page 6, line 162

<sup>8</sup> Transcript page 7, line 185

<sup>9</sup> Transcript page 6, lines 165-166

<sup>10</sup> Transcript page 6, line 166 and page 8, line 214

<sup>11</sup> Transcript page 8, lines 216-217

<sup>12</sup> Transcript page 10, lines 280-282

<sup>13</sup> Transcript page 10, lines 288-290

<sup>14</sup> Transcript page 11, lines 293-299

<sup>15</sup> Transcript page 15, line 427

<sup>16</sup> Transcript page 15, lines 428-440

<sup>17</sup> Transcript page 16, lines 455- 457

*The CCTV footage shows interaction between the applicant and Downey over about 45/50 seconds before 00:12:50. At 00:12:50 Downey struck the applicant to the right side of the applicant's face, using his left hand to do so. The footage is unclear about whether he used an open hand or a fist. Downey said that he struck with an open hand slap<sup>18</sup>.*

*The applicant admitted that after Downey struck him he punched Downey<sup>19</sup>. He said that Grimson restrained him by applying force to his throat so he punched in self-defence<sup>20</sup> (page 20, line 587 to page 21, line 605).*

## **Penalty**

- [11] As indicated above, the penalty imposed on the Applicant was one of six months warning off pursuant to AHRR 256(2)(d). The term "warned off" is defined as follows:

*"Warned Off" or "Warning Off" means a decision or penalty prohibiting a person from entering any racecourse or place under the control of a club or the Controlling Body and a person "warned off" shall be subject to the same prohibitions as a disqualified person mentioned in rule 259 sub rule (1).*

- [12] In imposing penalty, the Steward's comments included the following<sup>21</sup>:

*"You've pleaded guilty to the charge, you've shown remorse and we have adjudicated on your level of involvement in this assault and your blameworthiness.*

*The stewards have to determine the objective seriousness of the conduct and have regard to the facts and circumstances of the matter and to determine on those facts and circumstances what is an appropriate penalty. In this inquiry, we do believe that you had involvement, you had opportunity to remove yourself from that verbal altercation which occurred prior to the physical altercation. You didn't take that course of action and when it became a physical altercation, you were involved. We're of the view that a penalty of a warning off period of a period of six months should be applied to you."*

- [13] The Stewards went on to explain to the Applicant that he was now not permitted to attend upon the Brisbane Race Club. The Stewards were aware that the Applicant had been involved in the racing industry for some 20 years<sup>22</sup> and that he was employed by the Brisbane Racing Club<sup>23</sup>.
- [14] The Applicant was expressly informed that as a consequence of the warning off, he was not permitted to return to his place of work at the Brisbane Race Club<sup>24</sup>.
- [15] The Queensland Harness Racing Penalty Guidelines (QHRPG) provide no starting penalty for an offense against AHRR 231. AHRR 256 however makes it clear that a range of penalty options exist for offenses against the Rules.

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<sup>18</sup> Transcript page 18, line 505

<sup>19</sup> Transcript page 18, line 523

<sup>20</sup> Transcript page 20, line 587 to page 21, line 605

<sup>21</sup> Transcript page 44, line 1300 to page 45, line 1311

<sup>22</sup> Transcript page 39, line 1123-1133

<sup>23</sup> Transcript page one, line 17 to page two, line 19

<sup>24</sup> Transcript page 45, 1327-1330

[16] The penalty guidelines are said to have been designed with ideals of both specific and general deterrence in mind<sup>25</sup>. The authorities recognise that the purpose of imposing penalties in proceedings such as these is one of deterrence and not one of punishment<sup>26</sup>.

[17] Among the considerations relevant to penalty are the following –

- The circumstances of the offence, including any mitigating or contributing factors. Contributing factors are other matters relating to an incident which may have a bearing on penalty. Mitigating factors are factors or details about the offence intended to reduce the severity of penalty.
- The degree of culpability and the degree of personal or moral blameworthiness of the offender
- An early plea of guilty

[18] The Applicant is 37 years of age and has had a long association with the racing industry. He entered a plea of guilty to the charge at an early stage and has no prior history of offending in this way. As opposed to these matters, it is clear from all the evidence that it was the Applicant, in his intoxicated state, who was the real instigator of what transpired in the bar on that evening. A report from the security firm responsible for security on that night indicates that once the incident started approximately six people became involved, throwing punches and another 20-30 people in the main area of the dance floor became caught up in the altercation, pushing and otherwise becoming involved.

[19] As counsel for the Respondent has rightly submitted a severe penalty is necessary to deter persons from instigating and then participating in violent activities in front of members of the public at racecourses.

[20] As indicated the Applicant is employed by the Brisbane Racing Club where his work involves garden maintenance at the Eagle Farm and Doomben horse racing facilities.

[21] The Applicant maintains the penalty of a warning off is too severe in that it will have the consequence that he cannot attend his place of employment for the next six months. That was clearly the view of, and presumably the intention of, the Stewards when the penalty was imposed upon the Applicant. It is also the view taken by his employer, the Brisbane Racing Club who in an email communication with the Applicant on 11 September 2023, advised him as follows –

*As you are aware, it has been brought to the attention of the Brisbane Racing Club (BRC), that as a result of a Queensland Racing Integrity Commission (QRIC) inquiry, you are no longer permitted to attend any Queensland racetrack for a period of 6 months, with immediate effect.*

*This means you are unable to attend any BRC site to perform your duties as Tracks & Grounds Maintenance Attendant. As your position requires you to work from BRC sites, we consider the ruling of the QRIC makes it impossible for you to perform the duties of your position.*

[22] The consequences of a warning off under AHRR 256 are set out in Part 16 of the rules and in particular AHRR 259. The only mention in that rule of the thoroughbred industry occurs in sub-rule 1(k) which provides that a warned off person cannot associate with licenced persons connected with the thoroughbred industry. Pursuant AHRR 259(1)(d) a person who has been warned off cannot “enter a racecourse or any place under the control of a club or the Controlling Body”. The term ‘racecourse’ is

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<sup>25</sup> QHRPG paragraph 3

<sup>26</sup> Australian Building and Construction Commission -v- Pattinson [2022] 96ALJR 426 at [15]

defined in the dictionary to the rules in such a way as to confine that term to harness racing tracks. The term "club" is not defined in the rules or in the dictionary but Part one of the rules deals with clubs, and that Part makes it clear that the clubs the rules are concerned with are harness racing clubs. Thus, as counsel for the Respondent submits, a person who is warned off clearly cannot enter the racecourse at places such as Albion Park or Marburg or any other place under the control of either the Albion Park Harness Racing Club or the Marburg Harness Racing Club. Rule 259(1)(d) also prevents the warned off person from entering any place under the control of the Controlling Body. Consequently a warned off person could not enter the offices of Racing Queensland.

- [23] On this view of the rules, the penalty imposed on the Applicant pursuant to AHRR 256(2)(d) would not operate to prevent the Applicant from performing his paid employment at Eagle Farm or Doomben insofar as he is not associating with licenced persons connected with the thoroughbred racing industry.
- [24] The Panel notes that the Applicant, through his lawyer, has submitted that the course of his work often means that he will encounter persons from both harness and thoroughbred racing.
- [25] The Panel accepts that if the penalty of a warning off does operate to prevent the Applicant from performing his paid employment then that would constitute a form of double punishment or double penalty such as occurred in *Belford -v- the Queensland Harness Racing Board*<sup>27</sup>. In that case the Tribunal took the view that it had power to "vary" the conditions of the prohibition pursuant to AHRR 259(6) in order to overcome the problem of double penalty. In its present form however, the entitlement to vary, waiver or qualify the prohibition set out in the Rule attaches to the Controlling Body and is not something within the power of this Panel. The problem however could be overcome by having recourse to other penalty options available under AHRR256.
- [26] No order made by this Panel should have the consequence that the Applicant's ability to earn his livelihood should be lost. In the Panel's view the purposes of penalty in these proceedings can be achieved by considering other options available under AHRR 256(2). In the case of a non-licensee such as the Applicant the penalty options available are limited. Some options apply only in the case of licensees, others such as a reprimand or caution are unrealistic in the circumstances of this case. However, available options do include a fine<sup>28</sup> and/or exclusion from a racecourse<sup>29</sup> either for a period or permanently. The amount of any fine imposed on the Applicant must be tempered by apparent financial circumstances and the Panel should remain aware that the purpose of imposing a penalty in these proceedings is essentially one of deterrence and not one of punishment.
- [27] The term racecourse as defined in the rules, is limited to a place at which harness racing horses race or participates in events as well as any associated land and improvements. It clearly would not include the Applicant's present places of employment.
- [28] The decision of the Panel is to set aside the racing order made by the Stewards and substitute a fine in the amount of \$2000 and to further order pursuant to AHRR 256(2)(e) that the Applicant be excluded from entering a racecourse as defined under the Australian Harness Racing Rules for a period of six months.

[racingappealspanel.qld.gov.au](http://racingappealspanel.qld.gov.au)

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<sup>27</sup> *Belford -v- Queensland Harness Racing Board* 2004 QRAT 46

<sup>28</sup> AHRR 256(2)(a)

<sup>29</sup> AHRR 256(2)(e)

