Queensland Racing Appeals Panel

DECISION

Racing Integrity Act 2016, sections 252AH, 252BM

Review application number	RAP-142	
Name	Christopher Wearne	
Panel	Ms D Condon (Chairperson) Dr D MacGinley (Panel Member) Dr M Brooks (Panel Member)	
Code	Thoroughbreds	
Rule	Australian Rules of Racing 231(1)(a) *A person must not commit or commission an act of cruelty to a horse, or be in possession of any article or thing which, in the opinion of the Stewards, is capable of inflicting cruelty to a horse*	
Penalty Notice number	PN-011364	
Appearances & Representation	Applicant	K A McGree instructed by Clutch Legal
	Respondent	S O McLeod KC instructed by Queensland Racing Integrity Commission
Hearing Date	23 April 2025	
Decision Date	7 May 2025	
Decision	Pursuant to 252AH(1)(b) the Racing Decision is Varied	

Case References	*R v Knudson* [2021] QCA 267 *Thomas Smith v Queensland Racing Integrity Commission* RAP-137, 10 April 2025 *Johnson v Miller* (1937) 59 CLR 467 *Nathan Fazackerley v Queensland Racing Integrity Commission* RAP-133, 20 February 2025 *Meissner v The Queen* (1995) 184 CLR 132 *Briginshaw v Briginshaw & Anor* (1938) 60 CLR 336 *Desleigh Forster v Queensland Racing Integrity Commission* RAP-6, 3 May 2023 *Shane Graham v Queensland Racing Integrity Commission* RAP-26, 5 July 2023 *Appeal of Licensed Jockey Mr Serg Lisnyy*, Appeal Panel of Racing NSW, 9 June 2021 *Alan Donohoe v Queensland Racing Integrity Commission* RAP-28, 2 August 2023 *Australia Building Construction Commissioner v Pattinson* [2022] 96 ALJR 426 *Appeal of Licensed Trainer Mr Mark Schmetzer*, Racing NSW Appeal Panel, 6 April 2022 *Mitch Hutchings*, Racing Appeals Tribunal NSW, 6 March 2023

Reasons for Decision

[1] The Applicant in this matter, Mr Christopher Wearne, is a licensed track rider.

[2] On the 31 March 2025, Stewards conducted an inquiry into the Applicant's alleged striking of a thoroughbred, Menari Magic, seven times in the head with a wooden twitch and lead rope at the stables of Mr Paul Butterworth at Hendra in September 2021. At that time the Applicant was the foreman and a stable hand of the relevant stable. Menari Magic was then a two year old filly.

[3] Following the hearing, the Applicant was charged with an offence pursuant to the Australian Thoroughbred Rules of Racing 231(1)(a), which relevantly provides:

> "*Care and welfare of horses*
>
> *(1) A person must not:*
>
> *(a) Commit or commission an act of cruelty to a horse, or be in possession of any article or thing which, in the opinion of the Stewards, is capable of inflicting cruelty to a horse; .."*

[4] The Applicant was charged under AR231(1)(a) with committing acts of cruelty to a horse, the charge detailing AR 2 which provides "*cruelty includes any act or omission as a consequence of which a horse is mistreated*".[1]

[5] The charge was particularised as follows:[2]

> *"...you, licensed stable employee Chris Wearne, did commit acts of cruelty to Registered racehorse MENARI MAGIC at the stables of Licensed trainer Paul Butterworth located at 42 Hamilton Ave HENDRA in or around September 2021.*
>
> 1. *You are a licensed person with the Queensland Racing Integrity Commission.*
> 2. *Whilst present at the stable of Paul Butterworth at 42 Hamilton Avenue Hendra you struck registered race horse Menari Magic with a wooden twitch in the vicinity of the head on two (2) occasions.*
> 3. *Whilst present at the stable of Paul Butterworth at 42 Hamilton Avenue Hendra you struck Menari Magic with a lead rope in the vicinity of the head on five (5) occasions.*
> 4. *Such conduct detailed above resulted in Menari Magic displaying aversive flight behaviour."*

[6] The Applicant entered a plea of guilty and Stewards imposed a disqualification of his licence for 16 months.

[7] Pursuant to section 252AB of the *Racing Integrity Act 2016* the Applicant now seeks a review of the Steward's decision. On behalf of the Applicant it is submitted:[3]

A. leave is sought of the Panel to set aside his plea of guilty before the Stewards;

B. that he did not breach the Rule because his actions did not constitute an act of cruelty and the horse was not mistreated; and

C. the penalty of 16 months disqualification was excessive.

[1] PN-011364 and Transcript of Stewards' Inquiry of 31 March 2025 ('Transcript'), lines 563-566

[2] PN-011364 and Transcript lines 571-587

[3] Application for Review Attachment lodged 3 April 2025

Applicant's Submissions

[8] Counsel for the Applicant, Ms McGree, expanded upon the above grounds by way of written and oral submissions before the Panel.

[9] She submits that on a consideration of the elements of the charged alleged, the charge was insufficiently particularised such that the Applicant's plea was not a true admission of guilt because he did not appreciate the nature of the charge;[4] and in the alternate, such that the Respondent has failed to discharge the onus of proof.

[10] Central is Ms McGree's submission is that a mental component is an essential element of an AR 231(1)(a) charge, namely "*involving moral turpitude as regards the pain or distress so caused*".[5] She relies on this Panel's recent decision in *Smith* RAP-137[6] as authority for the proposition that a degree of moral blameworthiness is required in proof of a cruelty charge.

[11] In the charge alleged against the Applicant being limited to identifying only the acts of striking Menari Magic and the consequences thereof, Ms McGree submits that the Applicant was not informed of the true legal nature of the charge, absent an essential factual ingredient thereof.[7] In the Respondent's failure to particularise the Applicant's mental state or moral blameworthiness, Ms McGree submits that:

(a) the Applicant's plea was not really attributable to a genuine consciousness of guilt and as such, leave should be granted to set aside his plea on the basis a miscarriage of justice has occurred; and

(b) the Respondent has failed to prove an essential element of the charge and accordingly he did not breach the Rule.

[12] In relation to the submission that leave should be granted to set aside the plea, Ms McGree refers to this Panel's decision in *Fazackerley* RAP-133[8] which set out the principles to apply in such a case, as referred in *Meissner v The Queen*.[9] Ms McGree further submits that in circumstances where the Applicant was unrepresented before the Stewards, he failed to appreciate the seriousness of the charge until after he entered his plea of guilt, when the prospect of disqualification of his licence for two years was raised. Compounding the Steward's failure to disclose an essential element, it is submitted on behalf of the Applicant that these circumstances give rise to the Applicant's case falling squarely within one of the three well recognised categories described in *Meissner*, in which a plea of guilty should be set aside where a failure to do so would result in a miscarriage of justice.

[13] On the alternate no case submission, Ms McGree further advances that the absence of any allegation of, or veterinary evidence regarding injury to the horse, points to a finding that the Stewards failed to discharge their burden of proving mistreatment,[10] which was particularised as connected to his strikes on Menari Magic causing 'aversive flight behaviour'.[11]

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[4] Applicant's Outline of Argument (15 April 2025) at paragraphs 18 citing *R v Knudson* [2021] QCA 267 at [43]
[5] Applicant's Outline, paragraphs 15-16
[6] *Smith* RAP-137 (10 April 2025) at [5] and [57].
[7] Applicant's Outline, paragraph 21, *Johnson v Miller* (1937) 59 CLR 467 at 489
[8] *Fazackerley* RAP-133 (20 February 2025) at [4], [6] and [10]
[9] *Meissner v The Queen* (1995) 184 CLR 132, at 141
[10] The Applicant submits the seriousness of a finding of cruelty necessitates a high standard of proof in their Outline at paragraph 24, having regard to *Briginshaw v Briginshaw & Anor* (1938) 60 CLR 336 and *Forster* RAP-6 (3 May 2023) at [48]
[11] Applicant's Outline, paragraph 25

Respondent's Submissions

[14] The Respondent opposes the application for leave to set aside the guilty plea and the bases on which the application is made.

[15] In refuting the proposition that proof of a mental element or moral turpitude is an essential element of a charge under AR 231(1)(a) Mr McLeod KC, for the Respondent, relies on the decision of the Appeal Panel of Racing New South Wales in *Lisnyy*:[12]

> *"It is of course not necessary to establish intent in order to find a person has engaged in an act of cruelty in breach of AR 231(1)(a), but often such offending will involve either an intent to harm, or at least a wilful blindness or recklessness to causing harm."*

[16] Mr McLeod submits that the particulars of the charge were clearly outlined by the Stewards and were adequate.[13] He further points to many of the Applicant's statements and admissions throughout the Stewards' Inquiry which demonstrate he understood the charge he was facing and the seriousness of it. These statements related to the Applicant's recall of events, his acknowledgement of his repeated acts of striking Menari Magic and a number of times before the Stewards, acknowledging his culpability and the gravity of this conduct, including in stating that:[14]

> "*..there's no excuse for that*"[15] and "*there's no excuse at all for what I did*"[16]
>
> "*I wasn't mucking around*"[17] and "*I didn't miss it.*"[18]

[17] Mr McLeod further contends that although unrepresented before the Stewards, the Applicant was afforded the opportunity to consider matters before entering his plea to the charge[19] and that he was given every opportunity to give his explanation of events and to seek an adjournment.

[18] In these respects, the Respondent advances there is no proper basis to set aside the plea of guilt, in that the charge was properly particularised and understood by the Applicant, demonstrated by his ready admissions throughout the Stewards' Inquiry. Mr McLeod submits no unfairness bore on him in how the charge was alleged or the Inquiry proceeded such as to amount to a miscarriage of justice.

[19] In addressing the no case submission, Mr McLeod highlighted his submissions concerning proof of the charge as not requiring a mental element in light of *Lisnyy*. Mr McLeod relied on the video footage as demonstrating Menari Magic's aversive flight behaviour when repeatedly struck by the Applicant and that conduct clearly amounted to mistreatment as alleged; and that the presence or absence of physical injury to the horse is not determinative of proof of this aspect of the charge.

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[12] *Appeal of Licensed Jockey Mr Serg Lisnyy*, Appeal Panel of Racing NSW, 9 June 2021 at [22]
[13] Transcript, lines 554-587 see also Respondent's Outline of Argument (22 April 2025) paragraph 19
[14] Respondent's Outline, paragraphs 7 and 8
[15] Transcript, lines 296-297
[16] Ibid, line 322
[17] Ibid, line 472
[18] Ibid, line 475
[19] Respondent's Outline, paragraph 9 and Transcript, lines 597-603

Discussion

[20] The Panel accepts the Respondent's submission that *Lisnyy* is authority for the proposition that it is not necessary to establish a mental element, such as intention, to prove a charge under AR 231(1)(a), however that such offending will often involve intent, wilful blindness or recklessness as to harm caused.[20]

[21] The Panel is of the view that decision in *Smith* RAP-137[21] is consistent with the principle outlined in *Lisnyy* in stating at paragraph [57]:

> *"Whereas Rules like AR (2)31 refer to specific situations in relation to the welfare of animals, particularly cruelty, which would import the notion of moral turpitude."*

[22] The Panel rejects the Applicant's submission that this paragraph in *Smith* is authority that a mental element of moral turpitude is an essential element of a breach of AR 231(1)(a). Firstly, the Panel in *Smith* refers to a range of offences directed to the care and welfare of animals provided for under AR 231. By use of the words "*would import the notion of*", at its highest, *Smith* endorses the position outlined in *Lisnyy* in that blameworthiness of some degree is often attendant in offending under AR 231(1)(a). This is not the same as a requisite state of mind constituting an element of the charge, proof of which is essential to the commission of the offence of cruelty. Suitable caution in any case should be applied to this obiter in *Smith*, a case focused to a charge of misconduct under AR 228(b).

[23] There is nothing in the plain reading of the charge before us nor in authorities submitted which gives rise to an apprehension that proof of a mental state or moral blameworthiness is a pre-requisite to a finding of cruelty under AR 231(1)(a).[22] The Panel considers the elements of the relevant offence as alleged here are in their terms self-evident:

1. a person
2. commits
3. an act of cruelty
4. to a horse.

[24] That being so, the Panel accepts the Respondent's submission that the particulars of the charge were properly laid out, containing all the essential factual ingredients necessary to ground the charge. This is clear from the audio of the Steward's Inquiry when the charge was alleged to the Applicant[23] and these same particulars were replicated in the penalty notice subsequently issued to him[24] as extracted in paragraphs 4 and 5 above.

[25] The Applicant was properly apprised of the allegations founding the charge and the legal nature of the offence. He made consistent admissions throughout the Inquiry to his culpable conduct, specifically admitting to his actions in striking Menari Magic seven times with a lead rope and wooden twitch.[25] These formed the particulars of the charge to which he entered his plea. There is nothing in the

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[20] *Lisnyy*, 9 June 2021 at [22]
[21] RAP-137 Smith
[22] By contrast, intention is an element of the crime of Serious Animal Cruelty under section 242(1) *Criminal Code Act 1899* (Qld) punishable by a maximum 7 years imprisonment.
[23] Transcript, lines 557-587
[24] PN-011364
[25] Transcript, lines 214-218, 228, 238, 242, 253-255 and 267-272

circumstance to support a finding that his plea was made other than with a full understanding of the nature of the charge and with a genuine consciousness of guilt.

[26] The Panel further accepts that there was nothing in the conduct of the Stewards' Inquiry which would amount to an unfairness on the Applicant. It does not follow that being unrepresented before an inquiry means that some prejudice to an Applicant automatically flows. We accept the Respondent's contention that the Applicant was given every opportunity by the Stewards to consider the charge alleged and the matters put to him in support thereof[26] and to consider if he wished to take time to consider his plea.[27] He was extended every opportunity view and comment on the video footage, to state his version of events including relating to mitigating factors and to make corresponding submissions on his behalf.

[27] Absent some form of duress or other such conduct as contemplated by the High Court in *Meissner*, the Applicant has not successfully demonstrated that a failure to allow the application would constitute a miscarriage of justice.[28]

[28] The application for leave to set aside the Applicant's plea of guilt is accordingly dismissed.

[29] With that finding it is unnecessary for the Panel to consider the no case submission. Noting the submissions of the parties on the related allegation of mistreatment, the Panel observes the inclusive framing of the definition for cruelty in AR 2, highlighted below. This means that a charge involving cruelty may be proved other than on an allegation of an act or omission causing mistreatment (although mistreatment is alleged in the present case).

AR 2: *"cruelty **includes** any act or omission as a consequence of which a horse is mistreated."*

[30] For example, a finding of cruelty may be sustained under the Rules in a case where there is demonstrable evidence (such as veterinary evidence) of pain inflicted on a horse, either with or without resultant injury. Whilst not binding with respect to the interpretation of AR 231(1)(a), this is consistent with conduct that may amount to being cruel to an animal as reflected under the general law in Queensland.[29]

Penalty

Retrospective Application of the Thoroughbred Penalty Guidelines

[31] In disqualifying the Applicant's licence the Stewards had reference to the Queensland Racing Integrity Commission's (QRIC) Thoroughbred Racing Penalty Guidelines which, *inter alia*, provides a starting point for consideration of penalties for certain nominated breaches of the Racing Rules. The Penalty Guidelines nominate a two-year disqualification as a starting point for a cruelty charge.[30] Stewards relied on this as a starting point from which they then applied discounts for the Applicant's guilty plea, his record and the offending being historical, to arrive at a 16-month disqualification.[31]

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[26] The Applicant was for example asked by the Stewards if he had any questions regarding the particulars, where he confirmed his understanding of them - Transcript, lines 589-591

[27] Transcript, lines 597-601

[28] *Fazackerley* RAP-133 at [6]

[29] See for example section 18(2) *Animal Care and Protection Act 2001* (Qld)

[30] Part 4 of the Penalty Guidelines

[31] Transcript, lines 758-766 and 791-798

[32] Ms McGree for the Applicant submits that the Stewards were not entitled to rely on the Penalty Guidelines or the starting point therein as a basis for determining penalty, as being effective from 1 October 2023, they were not in effect at the time of the relevant offending.[32] She submits the introduction of the Penalty Guidelines effected a system of change imposing more onerous penalties and accordingly reliance on those by the Stewards amounted to a detriment to the Applicant. Ms McGree further submits that none of the comparative penalties relied on in the case support a starting point of two years' disqualification;[33] and that case law on the retrospective application of legislative provisions which interfere with existing rights, finds some application.[34]

[33] In response, Mr McLeod for the Respondent refers to the discussion of this Panel in *Graham* RAP-26[35] regarding the retrospective application of the Harness Racing Penalty Guidelines, as authority that the Stewards were entitled to rely on the Penalty Guidelines in this case.[36] He relies on the submission similarly advanced in that case that the Penalty Guidelines codify a system of penalties already in place[37] (in this case as relevant to Thoroughbred racing).

[34] Guidance to which the Panel can have regard is found under 'Purposes' in the Penalty Guidelines itself, which speak to their introduction to provide transparency on decision-making relating to breaches of the Rules and providing:[38]

> *"The Penalty Guidelines have been drafted with careful consideration of penalties previously imposed by Commission stewards and stewards in other jurisdictions for the same or similar rule breaches in similar circumstances and human rights which may be affected by the imposition of those penalties."*

[35] The decision in *Graham* speaks to the implementation of the Harness Penalty Guidelines with respect to a system of penalties for whip offences. The finding of the Panel that the Guidelines did not effect a change in that system of penalties for whip offences and accordingly reference to them was not inappropriate[39] is confined to its own facts concerning whip offences under the Harness Guidelines in our view.

[36] In relation to the Applicant's submission about retrospectivity, the Panel otherwise notes the analogy referred to in *Graham*, that section 20C(3) of the *Acts Interpretation Act 1954* (Qld) relevantly provides that "*if an Act increases the maximum or minimum penalty, or the penalty, for an offence, the increase applies only to an offence committed after the Act commences*".

[37] Whilst the present consideration is not on all fours with this analogy, applied to this case in its simplest terms, the Thoroughbred Penalty Guidelines impose a starting point for a cruelty offence where there was no such guidance before their implementation. The Panel can infer from the above referred extract in the Guidelines that some level of consideration was applied to previous penalties for cruelty offences by the by QRIC Stewards in arriving at the starting point nominated for breaches of that Rule.[40] The Panel cannot be satisfied however that the Guidelines imposed more onerous penalties for

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[32] Applicant's Outline, paragraphs 13-14
[33] Ibid, paragraph 36
[34] Applicant's Reply submissions (22 April 2025), paragraphs 13-14
[35] *Graham* RAP-26 (5 July 2023) at [100]-[107]
[36] Respondent's Outline, paragraphs 20-21 and 23
[37] *Graham* RAP-26 at [104]
[38] Part 3 of the Penalty Guidelines
[39] *Graham* RAP-26 at [107]
[40] This is the first Rule nominated at Part 4

cruelty offences than those that existed before the Guideline as submitted by the Applicant; nor that they went so far as to codify a system of penalties already in place, as the Respondent advances.

[38] As the Applicant acknowledges[41] it is not the role of the Panel to find error on behalf of the Stewards, the Panel must form its own view on penalty having regard to the applicable law and all the relevant circumstances. It also is noted that it has been previously articulated that the Penalty Guidelines are not binding,[42] a position also conceded by Applicant by way of its status they describe as a policy.[43]

[39] Conscious of general principles averse to retrospective application of penalties and absent a clear statement within the Guidelines endorsing such application, the Panel is of the view that a cautious approach to the application of the Guidelines is appropriate in this case where the offending pre-dates implementation of the Guidelines. In particular, we do not give weight to the starting point for a cruelty breach set out therein in determining the appropriate penalty.

[40] That said, the Penalty Guidelines reflect well-established sentencing principles which are relevant for the Panel to have regard in considering penalty.[44] These include a penalty that achieves both general and specific deterrence, that has regard to the nature and seriousness of the offence, the degree of culpability of the offender (including degree of blameworthiness) and any mitigating factors. All situations need to be assessed according to their individual merits having regard to all the circumstances. Other matters relevant to take into account include the Applicant's personal circumstances, their cooperation with investigative authorities, an early plea of guilt and their disciplinary record.

[41] It is well established before this Panel that in the imposition of civil penalties, the relevant sentencing principles are laid out by the High Court as being confined to the encouragement of compliance i.e. specific and general deterrence, rather than notions of retribution, denunciation and rehabilitation.[45]

Nature of Offence and Comparatives

[42] There is no dispute that a cruelty charge is a most serious offence of those enunciated under the Rules of Racing. In the Queensland context, protection of the welfare of animals involved in racing is central to the objects of the *Racing Integrity Act 2016* (the Act), also in ensuring integrity and public confidence in the sport, section 3(1) provides:

> *"**3 Main purposes of Act and their achievement***
>
> *(1) The main purposes of this Act are—*
>
> *(a) To maintain public confidence in the racing of animals in Queensland for which betting is lawful;*
>
> *(b) To ensure the integrity of all persons involved with racing or betting under this Act or the Racing Act; and*
>
> *(c) To safeguard the welfare of all animals involved in racing under this Act or the Racing Act."*

[41] Applicant's Outline, paragraph 33
[42] *Donohoe* RAP-28 (2 August 2023) at [70]
[43] Applicant's Reply submissions, paragraph 12
[44] *Donohoe* RAP-28 at [70]
[45] *Australia Building Construction Commissioner v Pattinson* [2022] 96 ALJR 426 per Kiefel CJ. Gageler, Keane, Gordon, Steward and Gleeson JJ. at paragraphs [9], [10], [14], [15], [38], [39] and [42]

[43] Accordingly, any penalty for beach of AR 231(1)(a) must reflect this seriousness and be:

(a) adequate in general deterrence so as to discourage other participants from engaging in similar conduct as well as

(b) a sufficient specific deterrent to reinforce to the Applicant that being cruel to an animal is unacceptable on welfare grounds and as protective to the industry, in addition to deterring them from engaging in such conduct in future.

[44] Whilst the Panel does not place weight on the starting point set out in the Penalty Guidelines in this case as a matter of fairness, by its implementation in 2023 the regulator has clearly sent a message to industry reinforcing the serious regard in which such offending is held in this State. Where the Rules do not otherwise provide penalties for breaches of the various offences outlined therein,[46] to the extent the Penalty Guidelines do so is important guidance for all industry participants.

[45] A number of cases have been put forward by the parties to assist considering penalty in this matter. For the Respondent in summary:

[46] The case of *Mark Schmetzer*[47] involved breaches of AR 231(1)(a) and AR 231(1)(b) by a trainer concerning multiple acts of cruelty in February 2022. This involved repeatedly striking the horse, Ghost Hunter, to the head and rump with a poly pipe and attempting to pull the horse into a training pool with a lead chain rope with excessive force, causing swelling, abrasions and excessive flexion of the neck. The conduct was captured on CCTV over a seven-minute period. His licence was disqualified for 10 months on each charge to be served concurrently – 20 months in total. His appeal against this penalty was dismissed.

[47] In the case of *Serg Lisnyy*,[48] Jockey Lisnyy was found to be in breach of three offences relating to the use of spurs, one under AR 231(1)(a) for using particular spurs with excessive force on the horse, Tarsus, in 2021 which resulted in injuries to its offside flank. The Appeal Panel found that this was an exceptional case where a suspension was appropriate rather than a disqualification, finding it was an act of carelessness rather than intention, wilful blindness or gross recklessness.[49] They substituted a six-month disqualification for a five-month suspension of his licence.

[48] The case of *Mitch Hutchings*[50] involved two breaches of the Harness Rule of Racing 213(a) of using a device to inflict suffering on a horse. The facts disclose Mr Hutchings was not a licenced person at the time of the offending, but a farrier who shod horses as a hobby. Whilst shoeing a horse tied to a fence, he struck it with a hammer twice on the flank, the blows shielded somewhat by a winter rug worn by the horse. One charge was brought in respect of each of the two strikes to the horse. Relevantly, due to the passage of time to detection of the offence, there was no evidence as to whether the horse was examined, so resultant injury to the horse was unknown.[51] The Racing Appeals Tribunal of New South Wales dismissed his appeal disqualifying his (then) B Grade driver's licence for 18 months on each charge imposed concurrently – 36 months in total.

[49] The Applicant relies on further comparative penalties which they submit demonstrate a range:

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[46] By way, for example, of a starting point; or a maximum penalty as seen in regulatory statutes

[47] *Appeal of Licensed Trainer Mr Mark Schmetzer*, Racing NSW Appeal Panel, 6 April 2022

[48] *Appeal of Licensed Jockey Mr Serg Lisnyy*, 9 June 2021

[49] Ibid at [24] and [26]

[50] *Mitch Hutchings*, Racing Appeals Tribunal NSW, 6 March 2023

[51] Ibid at [19]

[50] First, that of *Thomas Smith:*[52] As referred to above, Smith was a trainer charged with one breach of misconduct under AR 228(b). The circumstances related to the treatment of the yearling, Better Storm, in a training pool in July 2024 involving striking the horse on the rump with plastic pipe, one punch to the jaw, hosing it and persistent rough handling with a stallion chain. Noting that Mr Smith was not charged with the more serious offence of animal cruelty and the significant impact a suspension would have on him and those he employs,[53] the Panel varied the penalty imposing a six-month suspension of his trainer's licence, wholly suspended for 12 months provided he did not breach any Rule within Part 9 of the Rules. They also imposed a $5,000 fine.

[51] Secondly, that of *Tim Cook:*[54] This is also a misconduct breach under AR 228(b) relating to a jockey who struck the horse in the muzzle with the back of his hand in August 2023 whilst preparing to race. Acknowledging his 30 years of exemplary conduct in the industry, Stewards imposed a $2,000 fine, half of which was suspended for two years with no further similar breaches. The Applicant concedes this case is at the lower end of offending and less severe than cases where implements were used. Based on the following discussion of the offending conduct in the present matter, the Panel does not consider this case is of comparative value.

The Offending Conduct

[52] There is no dispute between the parties concerning the Applicant's seven acts of striking Menari Magic in the face with a lead rope and wooden twitch, as subject of the charge. What is in dispute is his culpability. Ms McGree contends the Applicant acted out of frustration after a considerable period of time (some 45 minutes) of trying to tend to the horse's mane in preparation for racing, during which he asserts he was struck on the arm by the horse, causing a cut and "*nearly breaking it*".[55] She submits his lashing out was unintentional as to causing harm to the horse, explained in part at the time that he was experiencing personal difficulties and characterises his conduct as a lapse in judgement.[56]

[53] Mr McLeod for the Respondent submits that even if he was frustrated, the Applicant's conduct demonstrates repeated strikes on Menari Magic with considerable force. He submits that even if there was not deliberate intent, the Applicant acted with wilful blindness or recklessness as to causing harm. He contends that the Applicant's admissions to Stewards about hitting horses previously, and comments about how things were done back in the day "old school"[57] were telling to rebut any assertion that this was some mere one-off lapse in judgement, also demonstrating a lack of insight to his offending.[58]

[54] The Panel has had regard to all the material before the Stewards, this includes a Steward's interview with the witness Ms Piggot[59] and the video footage taken by her. On viewing that footage, it is difficult for the Panel to accept the assertion the Applicant actions were a lapse in judgment which followed a considerable period of time trying to manage the horse in the lead up to the offending acts.

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[52] *Smith* RAP-137
[53] Ibid at [71]-[72]
[54] Stewards' decision – Tim Cook, 25 September 2023
[55] Transcript, lines 303, 415, 441-442. He later states to the Stewards that he was bitten prior, at line 496.
[56] Applicant's Outline, paragraphs 47-52
[57] Transcript, lines 322-323
[58] Respondent's Outline, paragraphs 18 and 25
[59] Electronically Recorded Interview – Candice Piggott and Interview Transcript (QRIC documents 11 & 12)

[55] Firstly, we note his earlier evidence before the Stewards indicating the Applicant spent some 10 to 15 minutes attempting to manage Menari Magic prior to the offending conduct.[60] His version of events later in the Steward's Inquiry enlarged that time to 45 minutes.[61] Ms Piggot's evidence is that he was "*shaping up to the horse*" straight away upon arriving, having been called in by the trainer after he had already finished for the day.[62] The Applicant told stewards that he just wanted to get it done and get out of there.[63] Where he was otherwise forthright with the Stewards regarding his conduct, on a sensible view of the evidence we do not accept that the Applicant spent a considerable timeframe (such as 45 minutes as contended) trying to manage the horse prior to his actions subject of the charge.

[56] While the Panel acknowledges the video footage does not document all of his actions with Menari Magic, the Panel considers this footage of the Applicant's conduct speaks for itself.[64] He is shown to raise his arm back behind him and strike Menari Magic with considerable force to the face on each of the seven occasions, either with the wooden twitch or lead rope. The horse is seen to rear up and away on more than one occasion in response. Contentions that the horse was displaying similar behaviour prior to being struck by the Applicant,[65] for example, when attempts were made to pull its mane as is evident in the footage, is of little significance. The horse is clearly distressed in the face of the actions of the Applicant in striking it.

[57] Moreover, the Applicant's behaviour is accompanied by verbal abuse and threats to the horse. We consider this an aggravating feature. From the second video when dealing with Menari Magic, the Applicant is heard to say:[66]

> *"Guess what, round two cunt"* and
>
> *"Get up you fucking rat."*

[58] In the third video the Applicant is further heard to say, including whilst levying the blows to the filly:[67]

> *"You should know fucking better"* (pointing at Menari Magic)
>
> *"You think that hurt?"*
>
> *"What about this cunt," "Get up"* and
>
> *"Fucking loosen you right up you fucking pig."*

[59] The Applicant's conduct in striking Menari Magic as documented in the videos is abhorrent. It is forceful, repeated and accompanied by aggressive posturing and language to the filly.

[60] The Panel further considers the following admissions before the Stewards starkly reveal his state of mind at the time:[68]

> *"Chris Wearne: …I wasn't mucking around, but it could have been worse, if that's what you mean?*

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[60] Transcript, lines 109 and 301
[61] Ibid, lines 355
[62] Interview Transcript with Candice Piggott, pages 1-3 (QRIC document 12)
[63] Transcript, lines 318-321 and 340
[64] Exhibits 6, 10 & 12 – Video footage (QRIC documents 9, 13 & 15)
[65] Applicant's Reply submissions, paragraph 7
[66] Exhibit 10 – Video footage (QRIC document 13)
[67] Exhibit 6 – Video footage (QRIC document 9)
[68] Transcript, lines 472-482

Shane Larkins: I'm glad you weren't worse.

Chris Wearne: Oh yeah, me too. I didn't miss it, but…

Shane Larkins: It appears to me, and I want your comment on it, that there's a lot of body weight in the swings, with both the lead rope and the twitch?

Chris Wearne: Yes there was.

Shane Larkins: You meant every bit of it…

Chris Wearne: I did at the time, yeah.

Shane Larkins: …when you lashed out.

Chris Wearne: I did yeah."

[61] The Panel is of the view a considerable degree of blameworthiness and culpability is attributable in the Applicant's offending. In the Applicant's own words, "*There's no excuse at all for what I did*".[69]

Other Considerations on Penalty

[62] Ms McGree submits that the Applicant faces financial hardship without income from his involvement in racing.[70] It is understood that he now lives in Rockhampton and has other employment.[71]

[63] As mitigating factors in his favour, the Panel has regard to the Applicant's co-operation, his candid admissions and acknowledgment of his wrongdoing before the Stewards.[72] He has 20 years involvement in the industry in various capacities as a licenced person.[73]

[64] Consideration of his prior conduct is less clear. Whilst he has no prior offending in his disciplinary record for cruelty or welfare offences,[74] his admissions as to previous conduct of hitting horses is relevant.[75] Ms McGree for the Applicant submits that those statements do not amount to admissions of cruelty. At the same time in light thereof, she concedes that an absence of recorded breaches since the relevant offending (in September 2021) can be put, at its highest, that he has not come to the attention of the authorities.

[65] Notwithstanding his lack of a similar record, the evidence of his prior conduct in hitting horses is relevant particularly to any penalty operating as a specific deterrent to the Applicant.

[66] As to the comparative penalties, we consider *Schmetzer* and *Hutchings* provide most guidance. Whilst not a cruelty charge, *Hutchings* is of very a similar character in using a device to inflict suffering and is one which demonstrates repeated strikes to a horse. We note that the Racing Appeals Tribunal of New South Wales in that case determined that a starting point of two years disqualification was adequate to reflect the gravity of that offending.[76]

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[69] Transcript, line 322
[70] Respondent's Outline, paragraph 48
[71] Transcript, lines 14 and 671
[72] Ibid, lines 96-97, 296-297, 342-344 and 358-359
[73] Respondent's Outline, paragraph 48
[74] Disciplinary History – Christopher Wearne (QRIC document 20)
[75] Ibid, lines 289-292 and 643-644
[76] *Mitch Hutchings* at [71]

[67] Where *Smith* represents some similar features to the conduct in the present case, the Applicant concedes misconduct is a lesser charge.[77] As outlined above, a cruelty charge is of the most serious of offences under the Rules, directed to safeguarding the welfare of animals as central to the Act. Considerations on the appropriate penalty should be approached through that lens, acknowledging there are differing considerations in imposing penalty for other offences like misconduct, including a lower standard of proof.[78]

[68] There is much made by way of submission before the Panel on *Lisnyy*, particularly as concerning a starting point for the appropriate penalty. That is largely a distraction to the key point enunciated in that case, being that an offence of cruelty will, except in exceptional circumstances, attract a penalty of disqualification of a substantial period.[79] The Panel accepts this proposition. We are further satisfied that the imposition of the suspension there was exceptional and confined to the circumstances of the finding of carelessness in that case. As outlined above, the circumstances of the offending in the present case is distinguishable.

[69] As stated, each matter must be considered on its own merits and no two circumstances are the same. This matter discloses seven separate acts of striking a horse, Menari Magic, with force to the face with implements and with the attendant aggravating behaviour as outlined above. Both general and specific deterrence are key factors in imposing penalty here. As is the serious nature of the charge, the Applicant's significant culpability for the conduct and by his own admission, his propensity at other times prior to this offending to engage in similar ill-treatment of horses. The Panel is of the view that a suspension as suggested on his behalf, is thoroughly inadequate to achieve the purposes of imposing penalty in such a serious case of cruelty.

[70] In proceeding to this review asserting he is not guilty of the offence to which he entered a plea before the Stewards (which they took into account) we are of the view he is no longer entitled to the benefit of an early plea.

[71] In light of all these factors and the applicable law the Panel considers the imposition of a substantial disqualification is warranted and consider the order is a reasonable and justifiable limitation on the Applicant's human rights.[80]

Order

[72] In accordance with section 252AH(1)(b) of the *Racing Integrity Act 2016*, the order of the Panel is that the racing decision the subject of this Application is varied and a penalty of 18 months disqualification of the Applicant's licence is imposed.

[77] The Panel in *Smith* RAP-137 at [5] and [71] noted in some aspect a cruelty charge may have been open, however this was not alleged by the Stewards. The Applicant in that case was a trainer.
[78] *Smith* RAP-137 at [5]
[79] *Lisnyy* at [13], [20], [23] and [26]
[80] *Human Rights Act 2019* (Qld) sections 13 and 24(2)