

APPEAL PANEL OF RACING NEW SOUTH WALES

APPEAL OF LICENSED JOCKEY MR JACK MARTIN

Appeal Panel: **Mr R. Beasley SC (Principal Member); Mrs S. Skeggs; Mr P. Losh**

Appearances: **Racing New South Wales: Ms K. Campbell, Racing NSW Legal Counsel**

Appellant: Mr P. O'Sullivan, Solicitor

Date of Hearing and Orders: 28 March 2023 (resumed hearing)

Date of Reasons: 29 March 2023

Rule involved Rule 228(a) – Conduct prejudicial to Racing

REASONS FOR DECISION

The Panel

Charge 4 -AR 228(a) – Breach appeal

1. On 6 December 2022, Racing New South Wales Stewards charged licensed Jockey Jack Martin (**the Appellant**) with four breaches of the Australian Rules of Racing (**Rules**).
2. **Charge 4** related to an alleged breach of AR228(a). That rule is in the following terms:

AR228 Conduct detrimental to the interests of racing

A person must not engage in:

- (a) conduct prejudicial to the image, interest, integrity, or welfare of racing, whether or not that conduct takes place within a racecourse or elsewhere.
3. The particulars of this charge were as follows:

1. [The Appellant] is a licensed jockey with Racing NSW.
2. On 8 September 2022, he participated in an interview with Stewards from Racing NSW and gave evidence that he provided professional punter, Mr Jacob Hoffman, with tips for thoroughbred horses, some of which he was riding, and received sums of money from Jacob Hoffman for doing so, as set out below...

Chairman: Tell me about your association with Hoffman in terms of getting slings from him in recent times? When was the last time you got a sling from him in cash? You said about six months ago?

J Martin: Yeah, maybe.

Chairman: And how much was that?

J Martin: Would have been, oh, I don't know. A thousand, maybe. I'm not sure. As I said, it's all sporadics coming in because he would give me little bits here or there if one of, like, if we thought the horse would be winning, he backed the horse. Then he'd give me a sling because, you know, obviously it's paid out.

Chairman: Because you've ridden a winner that he backed and he's given you a sling for it?

J Martin: Yeah.

3. His conduct in providing a professional punter, Mr Jacob Hoffman, with tips for thoroughbred horses, some of which he was riding, and receiving sums of money from Jacob Hoffman for doing so, is prejudicial to the image, interest, integrity, or welfare of Racing.
4. The Appellant pleaded not guilty to the breach of this Rule, but was found guilty at a hearing conducted by Stewards on 18 January 2023. A 2-month disqualification was

imposed (together with other penalties for other breaches of the Rules not related to this appeal).

5. The Appellant has appealed against both the finding of breach of the rule, and the severity of the penalty imposed.
6. When this appeal was first heard on 27 February 2023, an issue arose as to whether an element of breach of AR228(a) – the “public knowledge” element – had been established by the time of charge. In written reasons dated 14 March 2023, the Panel found it had been.
7. At the hearing on 28 March 2023, the Appellant raised another reason as to why he should not be found to have breached the rule. Mr O’Sullivan, who again appeared for the Appellant, submitted that what might look like statements and concessions consistent with admission of the particulars of breach should be considered in the following context:
 - (a) The Appellant was “confused” when interviewed by the Stewards on 8 September 2022.
 - (b) The occasion of being interrogated by a Panel of Stewards in essence intimidated and overwhelmed him.
 - (c) He was tired if not exhausted at the time of interview.
 - (d) He made concessions he should not have, in the confused, tired and anxious state referred to.
8. For her part, Ms Campbell for Racing NSW relied on the admissions made by the Appellant to the Stewards on 8 September 2022. She produced a helpful “aide memoire” setting out various excerpts of evidence given by the Appellant when interviewed by Stewards, and at a subsequent Inquiry. Not all of those excerpts need to set out here, suffice to say that there are aspects of the Appellant’s evidence where, viewed in context, it can be seen that he is not necessarily definitively admitting the central allegation that he gave tips to Mr Hoffman on thoroughbred horse races for reward. He says, for example, that he did give tips to Mr Hoffman, but for sports other than horse racing. Some of those tips ended up in “multis” that Mr Hoffman bet, which

included “legs” that did involve horse racing (although the Appellant maintains that he did not tip any horses for these legs of the multis).

9. Aside from the evidence that is particularised in the charge, also on 8 September 2022 there was this exchange between the then Chairman of Stewards, and the Appellant:

Chairman: Because you’ve ridden a winner that he backed and he’s given you a sling for it?

Martin: Yeah.

Chairman: All right.

Martin: Or a couple of times I think a horse would win and I’d let him know and he’d back it, you know.

Chairman: So you’d let him know that you think the horse would be a good chance of winning –

Martin: Yeah.

Chairman: And he’d back it?

Martin: Or he’d ask, yeah.

.....

Chairman: Isn’t that tipping to him?

Martin: I guess so, yep.

10. We accept that the Appellant may have been concerned when interviewed by the Stewards. We accept confusion is possible. Being as generous as we can though, the above is a pretty clear admission from the Appellant that he tipped horses to Mr Hoffman, and was paid for this. The admission is not even in relation to a “leading” question from the Chairman of Stewards. The Appellant has volunteered the admissions.

11. We are comfortably satisfied that Particular 2 of Charge 4 is made out – that is, the Appellant tipped horses to Hoffman for reward. There was no submission made that such conduct is not sufficiently “blameworthy” and prejudicial to constitute a breach of the rule. Accordingly, all elements of the breach are made out, and the appeal in relation to the finding of breach of AR228(a) must be dismissed.

Severity appeal

12. The penalty imposed was a 2-month disqualification. Mr O'Sullivan submits that this penalty should be set aside, and a 2-month suspension of the Appellant's licence to ride in races imposed instead. He has asked us to have regard to the following:
 - (a) The Appellant's youth (he is 27 years old).
 - (b) His prior good record.
 - (c) The totality of the penalty with the penalties for Charges 1 and 2.
 - (d) No horse, race or precise sums of money have been identified in the charge.
 - (e) The Appellant has secured employment at the Canberra Turf Club that he will not be able to take up if he is disqualified.

13. We take these matters into account. The Panel also notes that it has recently imposed penalties for breaches of AR228(a) on Mr Tommy Berry and Mr Zaid Miller (see *The Appeals of Berry and Miller*, 28/3/23). We also note the penalty imposed on Mr Hoffman for his dealings with licensed jockey Ms Nisbett. The penalties imposed on these persons demonstrate that there is scope for a reduction in penalty here. Further, an aggravating factor in Berry was that appellant's status as a well-known jockey. The appellant here is not currently as well known.

14. While the 2-month disqualification imposed was not inappropriate, taking all matters into account we are of the view that Mr O'Sullivan's submission that the nature of the penalty should be changed to suspension should be accepted.

15. The Panel makes the following orders:
 - (a) Appeal against finding of breach of AR228(a) relating to Charge 4 dismissed.
 - (b) Finding of breach of AR228(a) confirmed.
 - (c) Appeal in relation to severity of penalty allowed.
 - (d) In lieu of a 2-month disqualification, the appellant's licence to ride in races is suspended for 2 months.
 - (e) A disqualification imposed for Charge 2 (see our previous Reasons dated 14/3/23) expired on 22 March 2023. The Appellant's suspension in relation to Charge 4 should be taken to have commenced on 23 March 2023. At the expiration of that

suspension, his suspension of 6 weeks for the breach relating to Charge 1 should commence.

(f) Half of Appeal Deposit to be refunded.