

## APPEAL PANEL OF RACING NEW SOUTH WALES

### APPEAL OF LICENSED STABLEHAND MR RICHARD BOWEN

### APPEAL OF LICENSED STABLEHAND MR CARLOS ANTONIO

Appeal Panel: **Mr R. Beasley SC, Principal Member; Ms S. Skeggs; Mr J. Murphy**

Appearances: **Ms K. Campbell, Legal Counsel, Racing NSW  
Mr W. Pasterfield, Appellant Bowen  
Mr P. O'Sullivan, Appellant Antonio**

Date of Hearing and Orders: 2 June 2023

Date of Reasons: 5 June 2023

## REASONS FOR DECISION OF THE PANEL

### Introduction

1. Following a Stewards' Inquiry into a physical altercation that took place at about 7.00am on 17 February 2023 on Racecourse Road, Muswellbrook, licensed stablehand Mr Richard Bowen (**Bowen**), and licensed stablehand and track rider Mr Carlos Antonio (**Antonio**), were on 29 March 2023 charged by the Stewards with a breach of AR228(b) relating to alleged improper conduct.
2. The improper conduct alleged related to an incident in which Antonio pushed Bowen, resulting in Bowen punching Antonio. A scuffle then ensued. Antonio lost two front teeth as a result of the incident.
3. Both Appellants pleaded guilty to engaging in improper conduct. Having taken into account their early guilty pleas, their good disciplinary records, and various subjective factors, the Stewards imposed a penalty of a 3-month suspension on both Appellants, having reduced this from a 6-month base suspension.
4. The Appellants have appealed to the Panel against the severity of the penalties imposed upon them. Bowen was represented by Mr W. Pasterfield, solicitor.

Antonio was represented by Mr P. O'Sullivan, solicitor. Racing NSW was represented by legal counsel, Ms K. Campbell.

5. At the Appeal Hearing, an Appeal Book containing the transcript of the Stewards' Inquiry and various Exhibits was tendered. Film of the incident was also tendered, which was taken by Mrs Jan Bowen, Bowen's mother. A series of character references were tendered on behalf of Antonio.

## **Facts**

6. There are no facts of controversy in relation to this incident. The most relevant are as follows:
  - (a) Bowen, who is now 58 years of age, works as a stablehand for his mother, who is a licensed trainer. Mrs Bowen is now in her early 80s.
  - (b) Antonio works as a stablehand and track-rider for his wife Natasha Hall-Antonio, who is also a licensed trainer. Antonio is 44 years of age, and has been involved in racing for his entire adult life, including his life in Brazil before he moved to Australia.
  - (c) It is clear from the material tendered before the Panel that there has been some general hostility between the Bowens and the Antonios for some time prior to this incident. At least some of the cause of that seems to be the noise made by Antonio's vehicle, and whether it "spooks" or disturbs horses being trained at or near the Muswellbrook Jockey Club. It is unnecessary to outline all of this evidence, or attempt to resolve it.
  - (d) On the morning that the incident occurred, Bowen rang Antonio to complain about his car noise. Not a great deal can be made from the description of this conversation save to say that Bowen agrees that during the course of it he said to Antonio, "it's a wonder you don't get a smack in the mouth".
  - (e) Antonio appears to have become aggrieved at what was said to him in the telephone call, and when driving past or near Bowen's stables later that

morning (on a public road) he stopped his car, got out, and approached Bowen.

- (f) Antonio says he felt that Bowen got “in his face”, and that he felt intimidated by him. There is no doubt that Bowen is bigger than Antonio, but it was Antonio who approached Bowen. It can clearly be seen on the film that Antonio pushes Bowen forcefully in the chest. It can equally clearly be seen that Bowen then punches Antonio with his left fist. There was a scuffle on the ground before the men were separated by another licensed person. Antonio then left.

### **Submissions**

- 7. Ms Campbell submitted that acts of violence, as a matter of obviousness, place Racing in a bad light. They cannot be condoned. She referred the Panel to a number of prior determinations in relation to breaches of AR228(b) involving violence. She placed particular reliance on the *Appeal of Jeremy Smith* (3 November 2016). She referred to other determinations of the Panel involving violence, almost all of which have resulted in the imposition of disqualifications.
- 8. Ms Campbell submitted that both Appellants had engaged in provocative acts, leading to the punch being thrown. The punch occurred at a workplace, and on a public road. Based on the prior decisions referred to, Ms Campbell submitted that the Stewards had shown leniency in imposing only 3-month suspensions.
- 9. The Panel accepts Ms Campbell’s submissions.

### ***Appellants’ Submissions***

- 10. Both Mr Pasterfield and Mr O’Sullivan properly conceded that their clients acted improperly. They acknowledged that violence was involved, and that that is a serious matter. Both of them, however, made these general submissions:
  - (a) Bowen and Antonio have good records. They have had long involvements in Racing without offending under the Rules.

- (b) They are both remorseful.
- (c) The conduct is highly unlikely to be repeated. That submission was not just based on their prior records, but on the fact that the Muswellbrook Turf Club has now directed that Antonio take a different route to the racecourse with horses from his wife's stables that does not involve him having to drive past the Bowen stables.
- (d) Both Appellants have made good contributions to their local communities. Bowen has been a long-term volunteer assisting troubled youth through the PCYC. The six references tendered on behalf of Antonio show him to be a well-liked and responsible person who is respected by his community, including by employees of the Turf Club.

### **Resolution**

11. The Panel finds that there was provocation on both sides. Bowen's phone call to Antonio that morning was not in every sense helpful. The push by Antonio was ill-advised, and set the scene for what then happened. The punch thrown by Bowen was dangerous: it is well known that punches to the head region can lead to tragic consequences. In this case, Antonio lost his two front teeth, which whilst not a life-threatening injury, is a serious one. We accept that both Appellants are remorseful, that they have been otherwise of good character, and that an incident like this is highly unlikely to happen again, noting that the steps taken by the Turf Club have already greatly minimised that risk.
12. As has been said many times, penalties imposed for breach of the Rules contain no aspect of punishment. They are to protect the image and reputation of the sport. Whilst a fight on a public road near a racecourse is a bad look for Racing, the damage done to the sport by this particular incident is probably minimal. Some of the Reasons for Decision shown to us also involved a greater degree of violence.
13. We have taken into account that any suspension of the Appellants' licences will have severe financial consequences for them, and be a great impediment to the training operations run by Mrs Jan Bowen, and Mrs Hall-Antonio.

14. The ultimate submission made to the Panel by both Mr Pasterfield and Mr O'Sullivan was that the Panel should fully suspend any suspension of the Appellants' licences. While we do not consider that to be appropriate, we do consider it is appropriate to suspend part of the Appellants' suspensions.
15. In our view the penalty of a 3-month suspension imposed by the Stewards was appropriate, and if anything, at least arguably on the lenient side. However, considering all of the circumstances involved in this unfortunate incident, including all the personal circumstances of the Appellants, we have reached the conclusion that whilst we agree with the 3 month suspension that was imposed by the Stewards, we would suspend 2 months of that suspension under AR283(5) for a period of 12 months, provided the Appellants do not breach the Rules of Racing during that period.
16. The orders the Panel makes are therefore as follows:

**Bowen Appeal:**

- (1) Appeal against severity of penalty upheld.
- (2) Penalty of a 3-month suspension of the Appellant's licence is confirmed. However, 2 months of that suspension is itself suspended under AR283(5) for a period of 12 months, provided the Appellant does not breach the Rules of Racing during that period. Pursuant to AR238(7), the Appellant's non-suspended part of his suspension is to commence on 9 June 2023, and expires on 9 July 2023, on which day he may resume his duties.
- (3) Appeal deposit to be refunded.

**Antonio Appeal:**

- (1) Appeal against severity of penalty upheld.
- (2) Penalty of a 3-month suspension of the Appellant's licence is confirmed. However, 2 months of that suspension is itself suspended under AR283(5) for a period of 12 months, provided the Appellant does not breach the Rules of

Racing during that period. Pursuant to AR238(7), the Appellant's non-suspended part of his suspension is to commence on 6 June 2023, and expires on 6 July 2023, on which day he may resume his duties.

- (3) Appeal deposit to be refunded.