APPEAL PANEL OF RACING NEW SOUTH WALES

THE APPEAL OF LICENSED TRAINER MR JOHN McLACHLAN

Appeal Panel:	**Mr R. Beasley SC – Principal Member; Mr J Murphy; Ms S Skeggs**
Appearances:	**Mr M Van Gestel, Chairman of Stewards for Racing NSW**
	Mr P O'Sullivan, Solicitor, for the Appellant
Date of Hearing:	**7 October 2021**
Date of Reasons and Orders:	**7 October 2021**

REASONS FOR DECISION

Mr R Beasley SC, Principal Member (for the Panel)

Introduction

1. On 16 September 2021, following an inquiry which commenced on 25 August 2021, Racing NSW Stewards charged licensed trainer Mr John McLachlan ("the appellant") with a breach of AR 229(1)(a) of the Australian Rules of Racing. That rule provides that *"a person must not (a) engage in any dishonest, corrupt, fraudulent, improper or dishonourable action or practice in connection with racing".*

2. The particulars of the alleged breach of the rule, as outlined in a Stewards Report dated 16 September 2021, were as follows (where "he" is a reference to the appellant):

    1. He is a licensed trainer with Racing NSW.
    2. Pursuant to LR78, he is at all times responsible for the administration and conduct of his stable and for the care, control and supervision of the horses in his stable.
    3. At all relevant times in the lead up to Saturday 31st July 2021, he was the trainer of the racehorse Aidydoodee.

4. He rode Aidydoodee on the morning of Monday 26th July and became aware that it was lame and/or had a gait abnormality. Consequently, he contacted veterinarian Dr Adrian Owen to inspect the horse.
5. On Tuesday 27th July 2021, prior to obtaining the veterinary opinion of Dr A. Owen, he had licensed stablehand Ms. Alicia Morris complete pace work on Aidydoodee. After such pace work, Ms. Morris advised that Aidydoodee was lame and/or had a gait abnormality.
6. On Tuesday 27th July 2021, Dr Adrian Owen conducted a preliminary analysis of Aidydoodee and advised that a further lameness examination was required to ascertain the source of the lameness and/or gait abnormality.
7. On Thursday 29th July 2021, he rode Aidydoodee pace work and observed that the horse was still lame and/or had a gait abnormality.
8. On Friday 30th July 2021, he had licensed stablehand Mr. Scott Thurlow complete slow work on Aidydoodee. He failed to investigate with Mr. Thurlow if the horse was still showing symptoms of lameness and/or a gait abnormality.
9. On Saturday 31st July 2021, he had Ms. Morris ride Aidydoodee in a jump out at Taree racecourse. During such jump out, Aidydoodee suffered a catastrophic fracture to the offside humerus and fell resulting in Ms. Morris being dislodged. Aidydoodee was subsequently euthanised and Ms. Morris sustained a fractured nose, a fractured collarbone, and a concussion.
10. It was an improper action to enter and start Aidydoodee in a jump out at Taree racecourse on Saturday 31st July 2021 when he had knowledge that Aidydoodee had a lameness and/or a gait abnormality since Monday 26th July 2021 which required a veterinary assessment to identify the cause of the lameness and/or gait abnormality.
11. Further, and in the alternative, it was an improper action to enter and start Aidydoodee in a jump out at Taree racecourse on Saturday 31st July 2021 when he had knowledge that Aidydoodee had a lameness and/or a gait abnormality since Monday 26th July 2021 which required proper veterinary assessment, particularly where a detailed examination had been recommended by a permitted veterinarian, to identify the cause of the

lameness and/or gait abnormality, as doing fast-work in the nature of a jump-out while a horse is lame or has a gait abnormality increases the risk of catastrophic injury, including fracture, and/or exacerbation of the underlying injury causing the lameness and/or gait abnormality.

3. The appellant pleaded not guilty to the charge, but was found to have breached the rule by the Stewards, who imposed a penalty of a 12-month disqualification. The appellant has appealed to the Panel, initially against both the finding of breach of the rule, and the severity of the penalty imposed upon him. However, at the commencement of the appeal hearing, the appellant's legal representative, Mr P O'Sullivan, indicated that the appellant now wished to plead guilty to breach of the rule, and maintain his appeal only in relation to severity of penalty. Leave was granted for the appellant to withdraw his appeal in relation to breach, and a plea of guilty was entered for breach of AR229(1)(a). Specifically, Mr O'Sullivan said that his client accepted that he had engaged in misconduct within the meaning of the rule in that:

   (a) he should have had the horse more thoroughly examined by a vet after riding it on Thursday 29 July, and before having him jump out on 31 July; and

   (b) he should have spoken to Mr Thurlow after he rode the horse on Friday 30 July to get his view on whether it was lame or otherwise exhibiting an abnormal gate, again before the horse jumped out on 31 July.

4. Also at the appeal hearing, an appeal book containing the exhibits from the Stewards' Inquiry were tendered, and Mr Van Gestel, representing the Stewards, called evidence from Dr T Koenig, the Chief Veterinarian for Racing NSW. Mr O'Sullivan called the appellant to give some oral evidence, and also tendered five references from people, most involved in racing, who attested to the appellant's good character, his skill with horses, and his care for them.

Facts

5. Few of the facts are disputed. Where there was some dispute, the Panel has resolved that dispute as indicated below:

(a) The appellant has been a trainer since 2003. He currently has about seven horses in his care. However, he also is an assistant trainer for Mr R Stitt, who trains about fifteen horses at the moment. The appellant is 59 years of age, and his sole source of income is through training horses. He has a relevantly unblemished record.

(b) The racehorse Aidyoodee was a 4 year old stallion, who had not raced. He had been in the care of the appellant since about May or early June 2021. He was, the appellant said, a "difficult horse", and was going to be gelded.

(c) The appellant rode the horse on Monday 26 July. He thought the horse was "short in his action" but not in his opinion "lame": T2 L101. However, it can be noted that the appellant's evidence as to what constitutes lameness differs from how the Panel would define that term based on our own knowledge and experience, but primarily on the expert evidence of Dr Koenig outlined below. The appellant's view of lameness is somewhat unconventional. He considers it to involve a horse seemingly unable to bare weight on a leg, and having to "hop". That might be one example of lameness, but would more likely be a description of symptoms associated with extreme injury or serious disease.

(d) On Tuesday 27 July Ms. Morris rode the horse. She told the appellant that the horse on a couple of occasions during his work "didn't feel quite right": T4 170-180. She did not describe this as lameness.

(e) Because of the feel from the horse on the Monday, and before Ms Morris rode the horse on the Tuesday, the appellant contacted Dr Adrian Owen, a veterinarian, to inspect the horse. The horse was very briefly ("cursory examination" is the way Dr Owen put it) examined by Dr Owen, but only to check for shin soreness, and to examine a lump on the horse's left leg, which he thought was of no significance. The briefness of the examination can probably in part be put down to it occurring during the middle of trackwork. Dr Owen advised the appellant that in order to determine what might be causing the horse to be moving in the manner described by the appellant on the Monday and by Ms. Morris on the Tuesday, a full lameness examination would be needed. Dr Owen suggested this as there was to him no

immediately obvious cause for "the lameness described", and that the horse was not shin sore: T7 L356. That examination was never sought by the appellant.

(f) There was perhaps a tentative suggestion from the appellant that Dr Owen had told him just to keep working the horse. Dr Owen said he gave no such advice, and the Panel thinks it is most unlikely that he did.

(g) The appellant again rode the horse on Thursday 29 July. The horse was more "normal" than on the Monday, but still "a little bit short in his action": T8 L 399.

(h) On Friday 30 July the horse was ridden in work by Mr Scott Thurlow, an experienced track rider. He thought the horse was "scratchy" or "shuffley" in his action, and he was "very reluctant to work the horse". The horse "was not striding out as well as a horse should do": Interview with Mr Thurlow, 4 August 2021, Ex. 2 L109-110. Mr Thurlow's observations can be seen as another "red flag" of something being perhaps seriously amiss with the horse, or at least as to some underlying condition of real concern. He relayed his views to someone at the appellant's stables, but the appellant himself was not told, and did not contact Mr Thurlow to ask for his observations.

(i) On Saturday 31 July the horse was placed in a jump out. Near a crossing, while traveling at no more than three quarter pace, the horse suffered a catastrophic injury: a comminuted fracture of the right humerus bone (the bone between the shoulder and the elbow). The horse was euthanised shortly after. Ms. Morris, who was riding the horse, fell after the horse suffered the injury. She broke a collarbone, her nose, and suffered a concussion.

Expert evidence

6. Dr Koenig's evidence can be summarized to these points:
   (a) Lameness is a broad term, and encompasses any asymmetry in gait of a horse.
   (b) The symptoms described for this horse – being scratchy, short in action, not stretching out, being not quite right – are symptoms a vet would associate with lameness.
   (c) A number of diagnostic practices and tools could have been deployed to seek to ascertain the cause of the horse's lameness. First, a thorough examination of the

horse walking, viewed from various angles. This might suffice, certainly at least to determine that the horse was lame. Secondly, nerve blocks might be used, which could help identify a specific spot where a horse was injured. Beyond this, X-rays and bone scans are tools that could more precisely narrow a specific diagnosis, like a stress reaction or fracture.

(d) The kind of injury suffered by the horse here – a complete fracture of the humerus – is almost invariably associated with a pre-existing pathology such as a stress reaction or stress fracture in that bone.

(e) It was not possible to definitively say what caused the injury to the horse. However, it was far more probable than not that the symptoms the horse was exhibiting, which are properly described as lameness, were associated with an underlying pathology to the right humerus which broke during the jump out. There are other possibilities, but this is the likelihood, a view Dr Koenig expressed that was based on his own training and experience, and from a review of relevant medical literature.

Submissions

7. Mr Van Gestel was quick to concede that there was utility in the appellant's change of plea. Outside of this, he submitted that the serious nature of the offending under the rule justified a base penalty of a 12-month disqualification. That was so because of these matters and considerations:

   (a) The horse was indisputably lame at least from Monday 26 July. Rather than being jumped out on the Saturday following, it should have been thoroughly inspected by a vet. This was improper conduct, in breach of the rule.

   (b) This breach of the rule involves not just a welfare issue, but a safety issue. A horse suffered a catastrophic injury and had to be euthanised following a jump out, when instead it should have been under veterinary care. A rider suffered serious injuries. The damage done to the image of racing by both matters is obvious.

   (c) The good record, the good character and the lack of intent or appreciation of risk by the appellant from his conduct are acknowledged, but are not the primary matters for which penalties are imposed under the rules. Similarly, while a disqualification will seriously impact the appellant, that is a matter common to almost all disqualifications.

8. Mr O'Sullivan accepted the conduct was improper, and that a disqualification of some kind was inevitable. However, he placed emphasis on these matters:
   (a) The appellant had pleaded guilty as soon as he had the benefit of counsel from an experienced legal representative. He should gain the benefit of a 20% discount that was at least mentioned by Mr Van Gestel as a possible mitigating percentage in response to the change of plea.
   (b) Further discount should be applied for the fact that the appellant was not wholly indifferent or grossly negligent for the horse's welfare. He had appropriately contacted Dr Owen on the Monday, who had, albeit briefly, examined the horse on Tuesday.
   (c) Finally, the appellant's character references speak to themselves – the dedication to training, and to the care and wellbeing of horses, and the appellant's general good character spoken to in the references warrant further reduction in penalty.

Resolution

9. The Panel accepts that the appellant is a good horse person, who cares about the health and well-being of horses that come within his care. We accept he in no way intended to expose Aidydoodee to the risk of injury, much less catastrophic injury. We accept he did not intend to place Ms. Morris in jeopardy. We accept he at least took some steps to have the horse examined by a vet, and that he is remorseful for the loss of the horse, and for the injuries suffered by Ms. Morris. We are also fully aware that any disqualification of a licensed person invariably has at least a financial impact upon them. We accept that will be relatively severe for the appellant given racing is how he makes a living, and that the events that have led to this appeal, and any disqualification imposed, will have an impact on his mental well-being.

10. None of the above matters however make what occurred here other than a profoundly serious breach of AR229(1)(a). There is no rational finding open to the Panel on the evidence other than to find that Aidydoodee was lame at least from Monday 26 July. It was obviously lame. It obviously required not just a "cursory" veterinary examination, but a thorough one in order that a diagnosis be made of the horse's abnormal or asymmetrical gate – a problem well highlighted by the colloquial terms used to describe its action such a "scratchy", "short," "not quite right" etc. Further veterinary examination of this horse was obviously required before it should have

been entered into the jump out it was on 31 July. In light of these matters, it can be seen that the appellant was well advised to change his plea.

11. By not having the horse thoroughly examined, even though the appellant may not have intended it, both horse and rider were placed at risk. That risk unfortunately materialized – the horse fractured its leg; the rider suffered significant injuries. The risk materialized in the worst possible way for the horse. As for Ms. Morris, while her injuries are significant, there is some aspect of luck involved that a tragedy was avoided. Whatever damage could be said to be done to the image and "social license" of racing from what did occur, the damage done to racing could have been calamitous should Ms. Morris's outcome have been worse. Racing already comes with sufficient inherent dangers without needing those dangers magnified in the manner they were here. Further, there is no rational finding open to the Panel than one that reflects the expert evidence before us – the cause of the horse's leg fracture here cannot be definitively proven, but was far more likely than not to be directly related to the lameness it had shown at least since Monday 26 July. That is the inescapable likelihood based on the evidence of Dr Koenig.

12. The evidence before the Panel is that the appellant is a good person, and a good and caring horse person. He does not cease to be so because of the breach of the rule here. His conduct bore no intent to harm, and certainly no malice. It was however careless and "improper" within the meaning of the rule, as is reflected by his plea of guilty. Taking all matters into account, but in particular the need for penalties to be protective of the sport, we do not accept the submission that the penalty imposed by the Stewards in this matter should be reduced, other than to reflect that a plea of guilty has now been made. We therefore will discount the 12-month disqualification imposed by the Stewards by 20% to reflect the change in plea, but would otherwise dismiss the penalty appeal.

13. The Panel's orders are as follows:

    1. Leave granted to the appellant to withdraw his appeal against the finding of breach of AR229(1)(a).
    2. Leave granted to the appellant to enter a plea of guilty to breach of AR229(1)(a).
    3. Finding of breach of AR229(1)(a) confirmed.

4. Base penalty of a 12-month disqualification confirmed, with that penalty reduced by 20% to reflect the appellant's plea of guilty, with the severity of penalty appeal otherwise dismissed.
5. In lieu of a 12-month disqualification, the appellant is disqualified for 9 months and two weeks. The stay is dissolved, and that disqualification commences today, 7 October 2021, and expires on 21 July 2022.
6. Appeal deposit forfeited.