

RACING NEW SOUTH WALES APPEAL PANEL

IN THE MATTER OF THE APPEAL OF ANTHONY NEWING

Appeal Panel: **Mr R Beasley SC – Principal Member**
 Mr R Clugston
 Mrs J Foley

Appearances: **Racing NSW: Mr T Moxon**

Appellant: Mr W Pasterfield

Date of Hearing and **21 February 2020**

Orders:

Date of Reasons: **22 February 2020**

REASONS FOR DECISION

Introduction

1. This Appeal is by licensed trainer Anthony Newing (“the appellant”), against the penalty imposed on him after he pleaded guilty to a breach of AR 228(b) of The Australian Rules of Racing on 21 October 2019.
2. AR 228(b) provides that “a person must not engage in misconduct, improper conduct or unseemly behaviour”. The particulars of the charge brought against the appellant by the Stewards were that:

“...licenced trainer Mr Tony Newing did engage in improper conduct on the morning of Monday 18 February 2019 on Faunce Street, Gosford in that you:

1. *Did approach a vehicle occupied by Mr Creed Gradwell and Mr George Wasson and close the driver’s side door which struck Mr Gradwell on the right cheek causing an injury, namely, a fractured maxilla.*
2. *Did then open the driver’s side door and grabbed Mr Gradwell on his upper chest/neck region.”*

3. Evidence tendered at the Stewards' Inquiry, and on this appeal, establishes that the appellant pleaded guilty to assault occasioning actual bodily harm on Mr Gradwell at the Gosford Local Court on 23 August 2019. He was convicted, and the sentence imposed was an 18-month community corrections order. Following his plea at the Gosford Court, at a resumed inquiry on 21 October 2019, the appellant pleaded guilty to the breach of AR 228(b) outlined above. The penalty imposed on the appellant was a suspension of his licence to train for a period of three-months. He has since been on a stay pending this appeal.
4. At the appeal hearing, Racing NSW was represented by Mr T Moxon. The appellant was represented with leave by Mr W Pasterfield, his solicitor.

Facts

5. The facts are not in dispute. That was not always the case. At the initial inquiry into this matter conducted by Stewards on 28 February 2019, allegations were made by both Mr Gradwell and Mr Wasson (a witness to the relevant incident) that the appellant had punched Mr Gradwell on multiple occasions. Statements were provided to the Stewards to that effect. However, these allegations did not form part of the facts agreed between the police, Mr Gradwell and the appellant that were presented to the Magistrate at the Gosford Court on 23 August last year: see exhibit 7. What was agreed in summary was that Mr Gradwell and Mr Wasson, in the course of their duties for their employer Gateshead Traffic Solutions:
 - (a) drove on Faunce Street near Gosford Racecourse at about 6.10am on 18 February 2019;
 - (b) the vehicle they were travelling in had various roadwork signs in its back tray that were banging together and making noise;
 - (c) the vehicle passed persons leading horses into trackwork;
 - (d) one of those persons was Stacey Newing, the appellant's wife;
 - (e) the banging of the signs startled a horse being led by Mrs Newing;
 - (f) an argument took place between Mrs Newing and Mr Gradwell, during which she accused him of driving too fast;
 - (g) the appellant witnessed part of the argument;

- (h) he then threw a coffee cup at the vehicle;
- (i) the vehicle stopped, and the appellant attempted to take the keys from it;
- (j) the appellant slammed the door of the car shut that Mr Gradwell had opened, which caused the door to strike Mr Gradwell, injuring his cheek;
- (k) the appellant opened the door, and grabbed and shook Mr Gradwell by the chest/neck;
- (l) the injury suffered by Mr Gradwell was a minimally displaced fracture of the maxilla.

6. It would appear that on the basis of these agreed facts before the Gosford Court the Stewards amended the particulars of the charge brought against the appellant (which had previously asserted that he punched Mr Gradwell) to the particulars outlined in [2] above. The Panel of course then approaches this matter on the basis that:

- (a) the appellant assaulted Mr Gradwell, and broke a bone in his nose; and
- (b) the injury was the result of the reckless act of slamming the door on Mr Gradwell's head, but no punching was involved.

7. Mr Pasterfield called the appellant to give oral evidence, during which he spoke of some personal circumstances, but also further explained his actions on the morning of 18 February 2020. His evidence was that:

- (a) his wife on that morning was leading two horses into the track;
- (b) he heard his wife yelling at the driver of the vehicle to slow down;
- (c) she had fallen over because of the horses becoming unsettled;
- (d) he threw the coffee cup at the vehicle and it stopped. This was a spur of the moment action;
- (e) he slammed the door shut on Mr Gradwell because he wanted to stop him getting out. He grabbed the keys because he did not want Mr Gradwell to drive off without knowing what had happened;
- (f) he was concerned about his wife.

8. While we accept these matters, it seems safe to draw the inference that the appellant lost a degree of control because of witnessing his wife on the ground, and was angry when he threw the coffee cup and slammed the door.
9. The appellant also told the Panel he is thirty-five years old, and has worked in the racing industry since he was sixteen. He has held a trainer's licence since 2006. He has no other source of income. He employs or engages five people, one in a full-time capacity. His wife works in the business. He usually has 12 to 14 horses, and up to 9 in work. He has 8 horses from a Syndication firm. A suspension of three months, he said, will be devastating, as he will likely lose horses, and have no income. He has two school age children to support. He has received some counselling since the incident with Mr Gradwell, and has from time to time over the years suffered from anxiety, and taken medication for it.

Resolution

10. The Panel takes all the appellant's personal circumstances into account, but while relevant, they are of less relevance than they might be in a Court. The main purpose of the imposition of penalties for breaches of the rules of racing is to protect and uphold the image of the industry and the sport. In almost every case where a trainer has their licence suspended or disqualified, they suffer serious financial hardship.
11. Of most importance to the Panel's consideration in this matter are the facts relating to the incident in which Mr Gradwell was injured, and any relevant prior penalties imposed on persons for similar offending. The latter is important as consistency and parity in the imposition of penalties is something the Panel should seek to achieve.
12. Both Mr Moxon and Mr Pasterfield drew the Panel's attention to several relevant prior appeals and determinations by Stewards. These were:
 - *The Appeal of Rodney Bailey* (Racing Appeal Tribunal (RAT), 22/8/11)
 - *The Appeal of Jeremy Smith* (Racing Appeal Panel (RAP), 3/11/16)

- *The Appeal of Elizabeth Hasler* (RAP, 31/8/18)
- Stewards determination of penalty in Moffat (18/1/19)
- Stewards determination in Dunn (28/10/19)

13. While the Panel has considered all the above, the most relevant are the decisions of the RAT and the RAP.

14. *Bailey* was an appeal in which the appellant, a licenced trainer, was found (by the RAT, Kavanagh J) to have punched another man several times in the toilets of the Wyong Racecourse. Alcohol was involved. The victim sustained extensive bruising, swelling and lacerations. Mr Bailey was convicted of assault in the Wyong Local Court, although it seems that conviction was quashed on appeal. Mr Bailey was found guilty by the RAT of improper conduct. His licence was suspended for three months, but that suspension was suspended for six months under a good behaviour bond.

15. In *Smith*, the appellant, also a licenced trainer, drove his car in pursuit of the car of another licenced trainer, Mr Dwyer. This followed Mr Dwyer sounding his horn at Mr Smith when Smith was leading a horse. Mr Smith admitted the car chase, and to punching Mr Dwyer several times in the head on a public road, in front of members of the public. He dragged Mr Dwyer out of the car, and they wrestled in the street. Mr Dwyer was injured, although his injuries were not long term injuries.

16. In *Hasler*, the appellant was a licenced stable-hand. She also performed clerical duties for a trainer at Randwick. On 13 March 2018, outside the Doncaster Hotel in Kensington, Ms Hasler assaulted another woman by punching her twice in the face. The victim suffered a broken nose, a hairline fracture of the cheekbone, and a broken tooth. She later required surgery to repair her nose. Ms Hasler was convicted of assault occasioning actual bodily harm in the Waverley Local Court, and sentenced to 250 hours of community service. The Stewards disqualified her for six months. On appeal, that penalty was altered to a 12-month suspension, but 8 months of that suspension was itself suspended on condition of good behaviour, and not breaching the rules of racing for a period

of 12-months. She was allowed to continue performing clerical duties at Randwick during the course of her suspension.

17. As discussed above, consistency in sentencing is important. We agree with Mr Pasterfield that there is a significant point of distinction between the gravity of the circumstances in *Bailey, Hasler* and *Smith*, and those in the present appeal. In this appeal, we must accept that intent was not a factor, at least in relation to the injury suffered by Mr Gradwell. The appellant of course intentionally slammed the door, and was reckless in so doing, but he did not intend to cause injury. Further, we must accept that the appellant did not strike or punch Mr Gradwell. Rather, he grabbed him. Further, we accept the appellant acted impulsively, and that what motivated him – undoubtedly foolishly, and by no means of excuse – was concern about what had happened to his wife, and whether Mr Gradwell was to blame in some way, particularly in relation to the speed he was driving at.

18. Each of *Bailey, Hasler* and *Smith* involved more serious assaults than that in this appeal, where the intent of each appellant was to strike someone else deliberately, and by means of multiple blows or punches. The injuries occasioned by Ms Hasler on the victim of her assault were far more serious than that suffered by Mr Gradwell, a matter that no doubt ended up being reflected in the sentence imposed on her, which was a lengthy community service order.

19. Our analysis of these prior appeals is that the penalty imposed on the appellant is more severe than it should be. That is not to say the breach of the rule here is not serious. The appellant behaved recklessly, and another person was injured as a result. His conduct is improper, as he accepts, and warrants a penalty. Ultimately, we take the view that a three-month suspension is appropriate, but that this penalty should be itself suspended.

The Panel makes the following orders:

1. Appeal against severity of penalty allowed.

2. Penalty of a three-month suspension of the appellant's licence confirmed. That suspension commences on Saturday, 22 February 2020. However, pursuant to AR 283(5), the operation of that suspension is suspended for a period of three months commencing tomorrow, provided the appellant does not breach the rules of racing during that period.

3. Appeal deposit to be refunded.