

RACING APPEAL PANEL OF NSW

APPEAL OF LICENSED TRAINER CLINT LUNDHOLM

Panel: Mr R Beasley SC (Principal Member); Ms J Foley; Mr J Nicholson

Appearances: Mr Marc Van Gestel for the Stewards
Mr Paul O'Sullivan for Mr Lundholm

Date of Hearing: 7 August 2020

Date of Reasons: 7 August 2020

REASONS FOR DECISION

1. On 9 July 2020, licensed trainer Mr. Clint Lundholm pleaded guilty to two breaches of the Australian Rules of Racing (**Rules**) as follows:

Charge 1: AR 232.

A person must not:

- (i) give any evidence at an interview, investigation, inquiry, hearing and/or Appeal which is false or misleading.

Charge 2: AR 251(1): A person must not, without the written permission of the Stewards, have in his or her possession:

- (a) on a racecourse where a race meeting is being conducted; or
- (b) in any motor vehicle, horse float or other mode of transport used for the purpose of transporting a horse/s to and/or from a race meeting any prohibited substance or a syringe, needle, naso-gastric tube or other instrument that could be used:
 - (i) to administer a prohibited substance to a horse; or
 - (ii) to produce a prohibited substance in a horse.

2. In relation to the charge under AR 251(1), Mr. Lundholm was penalised by way of a fine in the sum of \$500. In relation to Charge 1, his licence to train was disqualified for a period of 4 months. In determining the penalty, the Stewards considered the

starting point was a six-month disqualification. They then discounted that penalty because of Mr. Lundholm's plea, and then rounded it down further by taking into account some of his subjective circumstances. It is in relation to this penalty that the Appellant appeals to the Panel, challenging its severity. He was represented with leave by Mr. Paul O'Sullivan, solicitor. The Stewards were represented by the Chairman of Stewards, Mr. Marc Van Gestel.

3. The underlying facts are not in dispute. The Appellant, who is based in Dubbo, brought three of his horses to race at Rosehill on Saturday 30 May this year. Prior to two of his horses starting in race 2, a senior investigator for Racing NSW (Ms. J Johnson) found some tubes of BCAA paste (in the form of oral syringes) in the float used by the Appellant. She notified the Stewards, as it is in breach of the Rules to bring oral syringes to a race meeting, and to give a race day administration.
4. The Appellant was called to the Stewards' room for an inquiry as to what had been found in the float. During the course of being questioned, the Appellant denied knowing the oral syringes of paste were in the float when he came to the races. He denied administering the paste to his horses. He denied using the paste the day before. Later on in the race day (following race 4), the Appellant admitted he had not previously been truthful, and said he had administered the paste at about 3pm the day before (which is not an offence).
5. In support of the 4-month disqualification imposed, Mr. Van Gestel has referred the Panel to numerous penalties imposed on licensed persons for breach of AR232(i), as well as decisions of the Panel in *Callow* (9 May 2017), *Poidevin* (20 July 2018), and the Tribunal's decision in *Poidevin* (3 April 2019).
6. In *Callow*, the Panel held that penalties for breaches of the Rules are to be determined in the context of the subject matter, scope and purpose of the *Thoroughbred Racing Act 1996*, with particular regard to the functions of Racing NSW which include "the promotion, strategic development, and welfare of the horseracing industry in the State and the protection of the public interest as it relates to the horseracing industry": s.13(1)(c).

7. Quoting from *Law Society of NSW v Foreman* (1994) 34 NSWLR 408, it was also held in *Callow* that deterrence was an important factor to consider in professional disciplinary matters – at least in the sense that deterring offending conduct is an aspect of protecting the public.
8. Whether deterrence actually serves any useful purpose in the criminal law, or in professional disciplinary proceedings is the subject of some debate amongst criminologists, academics, and others. However, this Panel accepts what is said in *Callow*. The protection of the integrity of the sport is always the most significant matter to consider in determining penalty for breaches of the Rules.
9. *Poidevin* involved a licensed trainer lying to Stewards (on multiple occasions, and one month apart) about injecting his horses with hemoplex and other substances when he was not permitted to do so. The starting point for penalty was found to be a 12-month disqualification.
10. In his submissions, Mr. O’Sullivan correctly points out that the offending was more serious in *Poidevin* than in this Appeal. Mr. Poidevin not only lied on more than one occasion, but his first lie was on 7 April 2018, and he lied again to Stewards on 8 May, before latter admitting to telling untruths. Mr. O’Sullivan also asked the Panel to note that Mr. Poidevin’s conduct was more damaging to the integrity of the sport. At least one horse of Mr. Poidevin’s ran in a race where it should not have, given the administration to it of substances when they were not permitted to be administered.
11. Mr. O’Sullivan also drew to the Panel’s attention the recent Appeal of Blaike McDougall, who lied to Stewards – for a very brief time – in relation to ownership of racing boots. A full suspension of 6 weeks was reduced on Appeal to a suspension from riding of one month. He also raised the circumstances of a licensed trainer who was recently fined for misleading Stewards as to his whereabouts in relation to COVID-19 protocols.
12. The circumstances of this Appeal are very unfortunate. The Panel accepts that the Appellant is a young trainer (albeit with 15 years’ experience in the industry), who is a person of good character, who has made a very silly and poor decision when asked

by Stewards about the oral syringes found in the float on 30 May. We also accept he panicked during the inquiry. We accept he is genuinely remorseful and contrite. He has substantial insight into why he should not have lied. He told the truth only a few hours later, on the same day. As with all disqualifications, we accept that it will have a very severe financial impact on the Appellant, who has a young family, and large bills to meet. It will also impact on his employees.

13. Nevertheless, we accept the submission of Mr. Van Gestel that although the offending here is not as serious as in *Poidevin*, the untruths were told in circumstances where Stewards were inquiring into a matter of real seriousness -whether horses had been given race day administrations.

14. It perhaps need not be repeated, but will be, that when licensed trainers lie to Stewards it is a real attack on the integrity of the sport. It is an obvious hinderance to those charged with upholding that integrity.

15. Having considered all the matters, we have reached the same view as the Stewards – that is, a penalty of a 6 months disqualification is the appropriate starting point. After reduction for plea, and taking into account all other factors, we consider that a 4-month disqualification is warranted, and consistent with penalties imposed in relevant prior appeals.

16. The Panel makes the following orders:

1. Appeal against severity of penalty dismissed.
2. For the breach of AR 232(i), the penalty of a 4-month disqualification is confirmed. Applying AR 283(7) and (8), that disqualification commences on 14 August 2020 (but the appellant is not to start a horse in a race between now and 14 August), and expires on 14 December 2020, on which day the Appellant may reapply for his licence.
3. Appeal deposit forfeited.