

RACING APPEAL PANEL OF NSW

APPEAL OF LICENSED TRAINER LAURA MCCULLUM

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

Appearances: Mr Marc Van Gestel for the Stewards
Mr D Connors of Counsel for the appellant

Date of Hearing: 20 August 2020

Date of Reasons: 20 August 2020

Outcome: Appeal dismissed. 4 month disqualification confirmed.

REASONS FOR DECISION

Mr R Beasley SC (with the agreement of the other panel members):

1. On 24 July 2020, licensed trainer Ms. Laura McCullum (the appellant) pleaded guilty to a breach of AR 232(i) of the Australian Rules of Racing (**Rules**), which is in the following terms:

AR 232.

A person must not:

- (i) give any evidence at an interview, investigation, inquiry, hearing and/or Appeal which is false or misleading.
2. The particulars of the charge were that *“licensed trainer Laura McCullum, did provide evidence to Stewards during a telephone interview on Monday 22 June 2020 in respect to [her] attendance at Wodonga trackwork in knowledge that such evidence was false.”*
3. The Stewards were of the view that the appropriate base penalty for the appellant’s breach of the Rule was a disqualification of 6 months. Having taken into account her

guilty plea, and personal circumstances, the ultimate penalty imposed was a disqualification of 4 months. The appellant appeals against the severity of the penalty imposed upon her. She was represented on appeal by Mr. D Connors of Counsel. The Stewards were represented by Mr. Marc Van Gestel, the Chairman of Stewards.

4. There is some uncontroversial context about the phone call made by the Stewards, and none of the relevant facts in this matter are in dispute. The relevant matters are as follows:

(a) As a result of the Covid-19 pandemic, Racing Authorities, including Racing NSW, have introduced various protocols. On 3 June 2020, Racing NSW published some protocols which applied to the appellant. For “Interstate & International Essential Personnel”, the following protocol applied:

“...Effective 18 May 2020 interstate Essential Personnel may attend a racecourse or licensed premises once they complete a period of 14-days isolation/quarantine in NSW away from a racecourse or licensed premises.”

(b) These protocols have been introduced to protect the industry from a Covid-19 event that might have very serious ramifications for it, including shutting it down.

(c) The appellant had ridden at Wodonga in Victoria on 22 June. On the same day she rode at Albury in NSW. She needed to self-isolate for 14 days. For reasons I will come to, she did not want to do this, so lied to the Stewards about riding at the Wodonga track.

(d) The following day, when Stewards made a further inquiry, during which the appellant told the truth, as she did at the Inquiry of 24 July, when she pleaded guilty.

5. For the appellant, Mr. Connors asked the Panel to consider these matters which he said would support the Panel imposing a lesser penalty on the appellant:

(a) The appellant has only recently been licensed to train (in June this year), but has been involved in racing for 14 years, with no serious blemishes on her record. She should therefore be considered a person of good character, and her offending here as conduct out of character. We accept that submission.

- (b) The appellant lied because she felt she could not afford to self-isolate for 14 days. She was moving her business to NSW, and could not afford this amount of time out of work. This would be a great strain on her financial circumstances. Likewise, a disqualification will also be a great burden upon her financially, and upon her family. She has young children (7years, and 19 months), one of which has special needs. She employs two people, including her husband. She has 7 horses in work, which will obviously need to find a new trainer if there is a disqualification.
- (c) The offending here should be seen as less serious than that in the Panel's recent decision of *Lundholm* (7 August), where for breach of the same rule the appellant was disqualified for 4 months). In *Lundholm*, the appellant lied to Stewards in circumstances where they were investigating the serious matter of a possible race day administration. He then told the truth only a couple of hours later.
- (d) The appellant has recently had back surgery, was on strong pain medication when she breached the rule, and this may have had an impact.
6. For the Stewards, Mr. Van Gestel submitted that the context in which the appellant lied was that she was intending to not follow the Covid protocol: T 3 L130-140 and T9 L445-450. He describes this as an aggravating factor, but otherwise says the offending here could not rationally be distinguished from that of Mr. Lundholm.
7. The Panel has taken into account all of Mr. Connors submissions. We accept that the appellant has shown she has been a person of good character within the industry, and has made a silly mistake and poor decision here. We accept that her financial and family circumstances were the motivation to lie to the Stewards. Those circumstances are tough and real. We are sympathetic to all participants in this industry (not to mention others) that are being affected by the Pandemic. We take into account her guilty plea, and contrition. Based on her prior record, offending of this kind is unlikely to occur again.
8. Penalising for breaches of professional conduct rules does not involve an identical approach to sentencing in a court for a breach of the criminal law. The Rules of Racing are, at their core, designed to protect the racing industry. The principal purpose of the penalty provisions in the rules is the protection of the reputation and

image of the racing industry, and to demonstrate to the racing public and wider community that those in authority will uphold the integrity of the sport.

9. We are sympathetic to the appellant's personal circumstances. This is not an ideal way for her to start her career as a trainer. However, there is no escaping the fact that lying to Stewards is a serious offence. It undermines their capacity to protect the sport. The lie here was in the context of very important protocols set in place to protect the sport from the worst consequences of the current pandemic. We cannot see how we can distinguish the offending here from that of Mr. Lundholm in terms of objective seriousness. In the circumstances, we too consider a four months disqualification is appropriate. The appeal must be dismissed.

10. 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 27 August 2020 (but the appellant is not to start a horse in a race between now and 27 August), and expires on 27 December 2020, on which day the Appellant may reapply for her license.
3. Appeal deposit forfeited.