RACING NEW SOUTH WALES APPEAL PANEL

IN THE MATTER OF THE APPEAL OF LICENSED TRAINER MR MARK SCHMETZER

Appeal Panel:	**Mr R. Beasley SC, Presiding Member; Mrs J. Foley, Mr C. Tuck**
Appearances:	**Racing New South Wales: Mr S. Railton, Deputy Chairman of Stewards**
	Appellant: Mr P. O'Sullivan, Solicitor
Date of Hearing:	**Written Submissions**
Date of Reasons:	**25 February 2022**

REASONS FOR DECISION ON PENALTY

Mr R Beasley SC, for the Panel

Introduction

1. On 7 June 2021, licensed trainer Mr Mark Schmetzer (the Appellant) was found by the Stewards to have engaged in "improper conduct" in breach of the Australian Rules of Racing. The relevant rule is AR228(b) which provides as follows:

   "A person must not engage in:

   (b) misconduct, improper conduct or unseemly behaviour."

2. The particulars of the charge that the Appellant was found guilty of were as follows:

   "*…whilst involved in a heated argument with his sister, Mrs Tammy Boyd* [at his stables in Scone on 10 May 2021] *he did:*

   (a) forcibly grab her by the right arm which caused an injury in the form of bruising to that area of her arm, and

   (b) on at least one occasion, forcibly grab and pull at her clothing in the upper chest area."

3. After finding the Appellant in breach of the rule, the Stewards imposed a fine of $4,000, and suspended the Appellant's licence for a period of 3 months. However, under AR283(5) the 3-month period of suspension of the Appellant's licence was fully suspended on the basis that he does not offend the conduct rules for a period of 2 years.

4. The Appellant appealed to the Panel in relation to the finding of breach based on particular (a) of the charge above, but accepted that he had engaged in the conduct particularised in (b), and that this was a breach of AR 228(b) in that it was "improper conduct". The appellant also appealed against the severity of the penalty imposed upon him.

5. Following a hearing on 4 February 2022, the Panel found that the conduct particularised in (a) of the charge had not been established. This was decided on the burden of proof – the Panel was not comfortably satisfied that the appellant had engaged in the conduct as alleged: see *Appeal of Mark Schmetzer* (8/2/22).

6. Following the appeal in relation to breach of the Rule, the Panel made orders for the parties to lodge written submissions on the Penalty appeal. Written submissions were received from Mr Railton for the Stewards, and Mr O'Sullivan for the appellant.

7. Mr Railton's submissions contain a summary of the purpose of imposing penalties under the Rules, which all members of the Panel accept. In the Stewards' view, in light of the finding as to particular (a) of the charge, the appropriate penalty is a suspension of 2 months, and a fine of $3000. Further, the suspension should itself be suspended for 2 years pursuant to AR 283(5).

8. For the appellant, Mr O'Sullivan submitted that a penalty of a $2000 fine was appropriate, and said that the following matters were of significance in relation to that contention:

    (a) There was no longer any finding of causing a bruise to Mrs Boyd.
    (b) The offending conduct took place at a time of great stress.
    (c) Mrs Boyd was at the appellant's stables without his consent.

Resolution

9. The appellant pleaded guilty to breach of AR 228(b) based on particular (b) of the charge. This involved him grabbing his sister by the front of her top, and swinging her about a metre to a metre and a half toward the exit of his stable barn. That is clearly "improper conduct" in breach of the Rules. It risked injury to Mrs Boyd, and should not have occurred. While there is no justification for this conduct that would cause it not to be breach of the rule, all members of the Panel accept it occurred at a time of family stress (for the appellant and Mrs Boyd) that is outlined briefly in our reasons on breach. Further, while not excusing the appellant's conduct, at the time it occurred his sister was in effect trespassing on his property. She had been asked by him to leave before the conduct occurred.

10. Taking into account all relevant circumstances, including the need to protect the sport, I am of the view that a suspension – even itself suspended – is no longer warranted. I consider that an appropriate message would be sent to the community that racing does not tolerate the kind of conduct particularised in (b) of the charge if the appellant is fined rather than suspended. In my view, a suspension is too severe a penalty, and does not adequately reflect the intense family emotions that were occurring at the time, or the appellant's request for his sister to leave his property. Had any injury been sustained (such as particularised in (a) of the charge), or had the conduct persisted for a longer time, I would have taken a different view. A penalty for the conduct that the appellant has pleaded guilty to is warranted in order to act as a deterrent and protect the sport, but in my view an appropriate penalty is a fine of $2000. Mrs Foley also agrees that a fine of $2000 is the appropriate penalty here.

11. Mr Tuck is of the view that the proven conduct particularised in (b) of the charge still warrants a suspension of one month, although he would have suspended this suspension for a period of 2 years under AR 283(5). He also would have imposed a $2000 fine.

12. The orders of the Panel then are as follows (orders 1 to 5 and 7 unanimous, order 6 by majority):

1. Appeal in relation to particular (a) of the Charge allowed.
2. Finding of breach of AR 228(b) based on particular (a) of the charge set aside.
3. Finding of breach of AR 228(b) of "improper conduct" based on particular (b) of the charge confirmed.
4. Suspension of the appellant's licence for 3 months (suspended under AR 283(5)) set aside.
5. Fine of $4000 set aside.
6. In lieu of 4 and 5 above, the appellant is fined the sum of $2000.
7. Appeal deposit to be refunded.