

RACING NEW SOUTH WALES APPEAL PANEL

THE APPEAL OF LICENSED TRAINER MARK SCHMETZER AND LICENSED STABLEHAND ANTHONY WHITFIELD

Appeal Panel:	Mr R. Beasley SC, Principal Member; Mrs J. Foley; Mr C. Tuck
Appearances:	Mr M. Van Gestel, Chairman of Stewards, for the Stewards Mr P. O’Sullivan, Solicitor, for Mr Schmetzer Mr W. Pasterfield, Solicitor, for Mr Whitfield
Date of Hearing and Orders:	2 March 2022
Date of Reasons:	4 March 2022
Rules involved:	AR228(b) – Improper conduct: physical fight

REASONS FOR DECISION

Mr R Beasley SC, for the Panel

Introduction

1. On 15 November 2021, Racing New South Wales Investigators Mr Jarrod Roger and Mr Daniel Hadley commenced an investigation into a physical fight that had taken place at the Scone Racecourse earlier that morning between Licensed Trainer Mr Mark Schmetzer and Licensed Stablehand Mr Anthony Whitfield (the Appellants). Mr Roger and Mr Hadley interviewed a number of people who had witnessed the fight. They obtained CCTV footage, and took photographs of an injury sustained by Mr Whitfield to his left eyebrow during the course of the fight. All of these materials form part of a Brief of Evidence prepared for the purposes of a Stewards’ Inquiry into the fight which was conducted on 7 December 2021.
2. At that Inquiry, both Mr Schmetzer and Mr Whitfield were charged with engaging in “improper conduct” in breach of AR228(b). The particulars of the charge brought against Mr Schmetzer were as follows:

“1. He is a licensed trainer with Racing NSW.

2. *At or about 8.15am on Monday 15 November 2021, in the vicinity of the horse swimming pool at the Scone Racecourse, whilst riding the racehorse Royal Exit trained by Mr Schmetzer, he did dismount from Royal Exit and engage in a physical altercation with Licensed Stablehand Mr Tony Whitfield.*
3. *During such altercation he did strike Mr Whitfield in the vicinity of the head with a closed fist and pushed Mr Whitfield resulting in Mr Whitfield falling to the ground and whilst on the ground he did continue to physically assault Mr Whitfield by striking him with a closed fist in the vicinity of the head on several occasions.*
4. *Whilst engaging in the physical altercation with Mr Whitfield, he failed to adequately restrain, secure or have proper regard for Royal Exit, resulting in Royal Exit becoming fractious and unrestrained and cantering riderless on the Scone Racecourse. Such occurrence having the potential to cause serious injury to Royal Exit and other horses, or persons located on Scone Racecourse at the relevant time.*
5. *As a result of the actions in striking and pushing Mr Whitfield during the physical altercation, the horse Mr Whitfield was leading, namely Divine Sinner, became fractious and unrestrained on the Scone Racecourse. Such occurrence having the potential to cause serious injury to Divine Sinner and other horses, or persons located on the Scone Racecourse at the relevant time.”*

3. The particulars of the charge brought against Mr Whitfield were as follows:

- “1. *He is a licensed stablehand with Racing NSW.*
2. *At or around 8.15am on Monday 15 November 2021, in the vicinity of the horse swimming pool at the Scone Racecourse, whilst riding the racehorse Divine Sinner, he did direct verbal insults towards Licensed Trainer Mr Mark Schmetzer and soon after did then dismount from Divine Sinner and engage in a physical altercation with Mr Schmetzer.*
3. *Whilst engaging in the physical altercation with Mr Schmetzer, he failed to adequately restrain, secure or have proper regard for Divine Sinner, resulting in Divine Sinner becoming fractious and unrestrained and becoming riderless on the Scone Racecourse. Such occurrence having the potential to cause serious injury to Divine Sinner and other horses, or persons located on Scone Racecourse at the relevant time.”*

4. At the Stewards' Inquiry, Mr Schmetzer pleaded guilty to the charge. After hearing submissions, the Stewards penalised him by disqualifying him for a period of four and a half months (reduced from six on account of his early guilty plea).
5. Mr Whitfield pleaded not guilty. After considering the matter, the Stewards found him in breach of the rule, and penalised him by a disqualification of 6 months.
6. Both Appellants have appealed against the severity of the penalty imposed upon them. There was no appeal, however, against the finding of breach of the rule made against Mr Whitfield, who change his plea from guilty to not guilty.
7. At the appeal hearing, the Stewards were represented by Mr Marc Van Gestel, the Chairman of Stewards. Mr Schmetzer was represented by Mr P. O'Sullivan, solicitor, and Mr Whitfield was represented by Mr W. Pasterfield, solicitor. No oral evidence was called. Instead, an Appeal Book, containing a transcript of the Stewards' Inquiry, and the Brief of Evidence tendered at that Inquiry, was tendered. The exhibits from the Stewards' Inquiry retained their number. The Panel was also shown some photographs of the injury sustained by Mr Whitfield in the fight, and CCTV footage of the fight.

Facts

8. None of the factual matters particularised in the charges were in dispute. The most significant facts were these:
 - (a) Mr Whitfield was riding his horse in a group of three other riders from the stable he works for (Cameron Crockett Racing). They were riding four abreast.
 - (b) The witness statements and the film then show that Mr Schmetzer was riding his horse in the opposite direction. As Mr Schmetzer passed the group of four, his horse appears to be slightly inconvenienced or become slightly fractious. It would appear that there is a local racecourse protocol (not a rule of racing)

that riders should only ride two abreast, not four abreast. Mr Schmetzer shouted out something to this effect.

- (c) Having passed his group, Mr Whitfield yelled out to Mr Schmetzer “come back here you fucking hero,” or words to that effect.
 - (d) The film then shows that Mr Schmetzer chose to turn his horse around and ride it slowly back in the direction that Mr Whitfield and the three other riders had been riding. The film also shows that by this time Mr Whitfield had alighted from his horse and was walking it back in the direction that Mr Schmetzer was coming from.
 - (e) When he reached Mr Whitfield, Mr Schmetzer got off his horse.
9. There is almost no doubt that strong words were being exchanged between the Appellants at this stage, but the evidence is scant on what they were. Nevertheless, it is clear from the footage, and admitted by Mr Whitfield, that he made physical contact with Mr Schmetzer first. Mr Schmetzer says Mr Whitfield punched him, albeit softly. Mr Schmetzer suffered no form of injury. Mr Whitfield asserts that he reached out to grab Mr Schmetzer on the vest. It is difficult to discern from the film footage whether Mr Whitfield sought to grab or punch Mr Schmetzer, although it would appear slightly more likely that he was seeking to grab Mr Schmetzer. In any event, both Appellants agree that Mr Whitfield made contact with Mr Schmetzer first.
10. Following this, the film shows what is particularised in the charges brought against the Appellants. The fight is one-sided. Mr Schmetzer lands a number of punches to Mr Whitfield’s head both while he is standing, and then when Mr Whitfield was on the ground.
11. In the course of the fight, both Appellants let go of their horses’ reins. Mr Schmetzer probably did this in order to hit Mr Whitfield. Mr Whitfield probably did so involuntarily in the course of being punched by Mr Schmetzer. Both horses leave the area of the fight, but were fortunately able to be caught and restrained by others in due course without suffering or causing any injury.

12. Both of the Appellants are experienced horse people. Mr Schmetzer is 41 years of age and has been a licensed person for all of his adult life. He leases his stables at Scone, and trains about twenty horses. He has one full-time employee.
13. Mr Whitfield is 52 years of age and has worked his entire adult life in the racing industry. He has been employed by Cameron Crockett Racing since March 2021, but has worked for many other stables in other States over the last thirty or so years.

Submissions

Mr Van Gestel

14. Mr Van Gestel did not have to convince the Panel that what occurred between the Appellants was an extremely nasty and violent incident. His submission that it paints Racing in a bad light and is damaging to its image is also accepted by all members of the Panel. This was a fist fight involving punches to someone's head that took place in what is a workplace. In addition to being damaging to Racing, it was an incident that would have been distressing to those persons that witnessed it.
15. While the fight was bad enough, Mr Van Gestel emphasised what he submitted was a significant aggravating factor in this matter – both men were in the care of horses. In Mr Schmetzer's case, he had the care of a horse that he was training and that was partly owned by others. Mr Whitfield had the care of a horse from the Crockett stables. As a result of the fight, both of those horses broke free. That had the potential to lead to injury to the horses or to others.
16. Mr Van Gestel relied on a number of prior decisions of the Panel in support of his submission that only a disqualification of the length imposed by the Stewards was the appropriate penalty for both appellants. The first decision Mr Van Gestel placed particular reliance on was *The Appeal of Jeremy Smith* (3 November 2016). The circumstances of *Smith* were that Smith was leading a horse near his stables at Broadmeadow near the Newcastle Racecourse. A Mr Dwyer, another trainer, was driving his horse float near Mr Smith. Mr Dwyer sounded his car horn a couple of times, something that clearly enraged Mr Smith. Mr Smith got in his car and drove his vehicle out onto a public street and pulled his vehicle in front of Mr Dwyer's to

stop him. He pulled Mr Dwyer from his car and punched him a number of times in the head. Fortunately, Mr Dwyer did not sustain significant injuries. The Stewards disqualified Mr Smith for 4 months, which was reduced to a 3-month disqualification on appeal.

17. Mr Van Gestel also relied on *The Appeal of Elizabeth Hasler* (31 August 2018). Ms Hasler, a licensed stablehand, was drinking at the Doncaster Hotel in Kensington after the race meeting held at Randwick on 13 March 2018. In what appears to have been an unprovoked attack, Ms Hasler punched another stablehand in the head a couple of times. That stablehand received serious injuries, including a broken nose, a hairline fracture of the cheekbone and a broken tooth. Ms Hasler was disqualified by the Stewards for a period of 6 months. On appeal, the Panel (Mr Hale SC; Ms J. Madson; Mrs S. Skeggs) set aside the 6-month disqualification and in lieu suspended the appellant for a period of 12 months during which period she was permitted to perform clerical duties at her place of employment at Randwick Racecourse. Eight months of her suspension was itself suspended on the basis that the Appellant be of good behaviour.
18. Beyond these two decisions, Mr Van Gestel drew to the attention of the Panel a series of other breaches of AR228(b) involving violence that have invariably resulted in the imposition of a disqualification.
19. As to the individual circumstances for each Appellant, Mr Van Gestel first acknowledged that any disqualification would have a severe financial impact on both of them. Mr Schmetzer would have to shut down his stables, which is his only source of income. Mr Whitfield would not be able to work in the industry that has been his only employer for his entire adult life. Nevertheless, Mr Van Gestel maintained that only a penalty in the nature of a disqualification was appropriate for the reasons set out above.
20. In relation to Mr Schmetzer, he said the areas of aggravation were the number of times Mr Schmetzer punched Mr Whitfield in the head. This, Mr Van Gestel submitted, was utterly inconsistent with Mr Schmetzer's claim of self-defence that was made at the Stewards' Inquiry, but was not pressed by Mr O'Sullivan on appeal.

He said that Mr Schmetzer had lost control, and drew to the Panel's attention that part of Mr Schmetzer's answer to a question from Mr Hadley when interviewed on 15 November 2021 where in response to Mr Hadley suggesting that matters had gone "probably past self-defence", Mr Schmetzer said "*well I was taught never to do a half job*" (Ex 3, line 100).

21. As for Mr Whitfield, Mr Van Gestel said that he was the initiator of the fight. It was his provocative comment that caused Mr Schmetzer to come back towards him, and he then engaged in further provocation by seeking to grab by Mr Schmetzer by the vest and thereby initiating physical contact.

Mr Pasterfield for Mr Whitfield

22. In support of his submission that his client should be suspended rather than disqualified, Mr Pasterfield drew to the Panel's attention its reasons for the decision in *The Appeal of Anthony Newing* (22 February 2020).
23. *Newing* involved an assault by the appellant on an employee of Gateshead Traffic Solutions. That employee was driving a car near the Gosford Racecourse which contained various roadwork signs. Those signs were making a banging noise which disturbed the horses that the car passed, including a horse being led by Mr Newing's wife. Mrs Newing complained to the employee that he was driving too quickly, and an argument ensued. The appellant witnessed that argument. It clearly made him lose his cool. He threw a cup of coffee at the vehicle and attempted to take the keys out of it. He shook the employee by the chest or neck. He then slammed the car door that he had opened. Without intending to do this, door slammed into the side of the employee's face, who suffered a displaced fracture of the maxilla. The Stewards imposed a penalty of a 3-month suspension of Mr Newing's licence. That suspension was confirmed on appeal, although the Panel suspended the operation of that suspension pursuant to AR283(5).
24. Mr Pasterfield said Mr Whitfield's conduct should be seen by the Panel to be no more serious than the conduct of Mr Newing. He accepted that Mr Whitfield had "mouthed off" to Mr Schmetzer, and that he had been provocative in initiating physical contact. Mr Pasterfield accepted that the incident may not have occurred but for Mr

Whitfield's provocative conduct. However, he otherwise engaged in no further physical violence (the fight was very one-sided) and had only let go of his horse because he couldn't maintain hold of the reins while he was being punched. Mr Pasterfield further emphasised his client's good character, there being no blemishes on his record after a long time in the industry. A disqualification would have obvious consequences for Mr Whitfield's employment, which in turn would have obvious severe financial consequences.

25. Mr Pasterfield finally submitted that although Mr Whitfield had only very recently changed his plea from guilty to not guilty, he should still get full discount (usually 25%) for his not guilty plea. He referred to those parts of the transcript of the Stewards' Inquiry where Mr Whitfield appeared confused as to whether or not to plead guilty, and admitted that he was both guilty and not guilty. As discussed below, the Panel accepts that at the Stewards' Inquiry Mr Whitfield confused himself and appeared to plead not guilty only because he did not think he had in any way deliberately let go of the reins of the horse, but rather had been forced to in the course of being punched by Mr Schmetzer. The Panel accepts this, and considers that there is utility in Mr Whitfield's change of plea.

Mr O'Sullivan for Mr Schmetzer

26. Mr O'Sullivan first made submissions concerning the appeals of *Hasler* and *Smith* referred to above. In his submission, both Ms Hasler and Mr Smith engaged in more serious conduct than Mr Schmetzer. He described Ms Hasler's conduct as being unprovoked, and violence that produced a significant injury that required surgery. As for *Smith*, he submitted that the conduct of driving out of a racecourse and stopping Mr Dwyer in his car, dragging him out of the car and punching him as being more serious than the conduct of Mr Schmetzer.
27. Whilst not seeking to maintain any suggestion of self-defence, nor excusing his client's conduct, Mr O'Sullivan asked the Panel to accept that his client had been provoked twice by Mr Whitfield before the fight started – once from oral abuse, and the second time by either the attempt to grab Mr Schmetzer's vest or the soft punch. Thereafter, Mr O'Sullivan accepted that his client's actions were disproportionate to

what had happened, and he further accepted that the punches landed by Mr Schmetzer had the potential to cause more serious injury than they did.

28. While again not offered as an excuse, Mr O’Sullivan submitted that his client’s actions could in part be explained by ongoing tension between Mr Schmetzer’s stables and people within the Crockett stables that has been brewing for some time. This would appear to relate to some of the circumstances concerning Mr Schmetzer’s recent appeal to the Panel in an unrelated matter (*The Appeal of Schmetzer*, 25 February 2022, which involved an incident between Mr Schmetzer and his sister). Not a great deal of evidence was referred to in support of this, but it was at least alluded to in the Stewards’ Inquiry.
29. Like Mr Pasterfield, Mr O’Sullivan also relied on the Panel’s decision in *Newing* as the basis for the submission that his client should be suspended rather than disqualified.

Resolution

Mr Schmetzer

30. The Panel accepts that Mr Whitfield provoked Mr Schmetzer. This happened verbally first, and then physically. We also accept the submission made by Mr O’Sullivan that the incident here should be seen to some degree in the context of tension between Mr Schmetzer’s stables and people within the Crockett stables. That is no excuse of course, but provides some explanation for an incident from which it can be inferred that Mr Schmetzer and Mr Whitfield are not great friends.
31. Even accepting the provocation however, Mr Schmetzer’s conduct can only be described as a violent assault on Mr Whitfield. Mr Whitfield’s comments, and even his grab for Mr Schmetzer’s vest, did not warrant the attack that then ensued. Mr Schmetzer punched Mr Whitfield in the head several times, both while Mr Whitfield was standing, and then on the ground. It was Mr Schmetzer’s punches that caused him to lose hold of his horse, and Mr Whitfield to lose hold of his.
32. There are two ways in which this incident could have potentially been even worse. One, there was the real potential for Mr Schmetzer to inflict more serious injuries on

Mr Whitfield than a laceration to his left eyebrow. Further, there was the real potential of the horses being injured or causing injury. All of this conduct may have taken place outdoors near a racecourse, but that place is nevertheless a workplace. The incident occurred in front of other licensed persons. It is conduct that all members of the Panel agree warrants a disqualification.

33. The Panel has considered the submissions made in relation to the Panel's decisions in *Hasler* and *Smith*. We do not consider that there is much to distinguish between the facts in those two appeals and this one. All involve serious acts of violence that should not have occurred. Those appeals, and the two appeals being considered here, involve an overarching similarity: violence disproportionate to actual or perceived provocation. They involve actual injuries being sustained, and the potential for much greater injury.
34. While both Appellants have placed understandable reliance on the Panel's decision in *Newing*, three things can be noted about that appeal:
 - (i) Mr Newing lost his temper because he perceived a danger to his wife and his wife's horse.
 - (ii) Whilst he caused an injury, Mr Newing did not do so deliberately. Rather, he was negligent or reckless in the manner that he shut the door. That is quite different to deliberately throwing punches in the manner that Mr Schmetzer did where he must have known they would either inflict injury or pain.
 - (iii) *Newing* did not involve the aggravating factor of a lack of regard in the handling of horses as a consequence of the violence.
35. In reaching the decision that a disqualification is the only appropriate penalty here, the Panel is of course aware that any disqualification will have serious ramifications for Mr Schmetzer. Training horses is his livelihood. He has obligations as a lessee in relation to his stables. There is an employee who will no doubt be impacted. We have also considered Mr Schmetzer's long involvement in racing, and his good record (we have not placed a great deal of weight on Mr Schmetzer's recent appeal, which

involved vastly different factual circumstances to this appeal). However, as has been noted in other appeals, the purpose of imposing penalties under the Rules is to protect the image of the sport. It is to send the message that the sport will not tolerate the kind of violent conduct that occurred here between the Appellants, which is conduct that is obviously damaging to the image of the sport. A penalty is also to serve the purpose of having a deterrent effect as also explained in prior decisions of the Panel.

36. In conclusion, each member of the Panel is comfortably satisfied that a disqualification is the only appropriate penalty for Mr Schmetzer's conduct. However, having considered all of the appeal decisions referred to us, and all of the subjective matters relating to Mr Schmetzer, we consider that the appropriate base penalty here is a 4-month disqualification. Applying a discount for Mr Schmetzer's early plea, we impose a 3-month disqualification.

Mr Whitfield

37. The Panel has not been able to reach a unanimous decision on Mr Whitfield's appeal. Much of what has been set out above, including the purpose for imposing penalties for breaches of the Rules of Racing, obviously applies to Mr Whitfield, as does the analysis of the prior decisions of the Panel referred to. Because he was the party that provoked the incident – both verbally and then physically – both Mrs Foley and Mr Tuck are of the view that a disqualification is also the appropriate nature of penalty for Mr Whitfield. It is that provocative conduct, occurring at the time where Mr Whitfield had responsibility for a horse, that in Mr Tuck and Mrs Foley's view raise Mr Whitfield's conduct to a level of seriousness analogous to that of *Smith* and *Hasler*.
38. For the reasons expressed above, they consider *Newing* distinguishable, and further note that in *Newing* the appellant's appeal came to the Panel with the Stewards having imposed a suspension rather than a disqualification. They note also that *Newing* did not involve the aggravating factor of a safety issue involving the handling of horses. For those reasons, they agree with the Stewards that a disqualification is appropriate for Mr Whitfield too.

39. I would have imposed a suspension on Mr Whitfield instead of a disqualification. I acknowledge that he was the provocateur, and that the incident would not have occurred without that provocation, but I consider that the level of violence that he engaged in was considerably less than Mr Schmetzer, and considerably less than the appellants in *Hasler* and *Smith*.
40. While the Panel disagrees as to nature of penalty, we all agree that the penalty to be imposed on Mr Whitfield – which must be a disqualification by reason of the majority view – should be reduced from 6 months. We agree that Mr Whitfield expressed a desire to plead guilty at the Stewards' Inquiry, or admitted that he was guilty in part, but then confused himself out of actually pleading guilty to the charge. We consider that there is utility in his change of plea and his penalty should be discounted because of it. Mrs Foley and Mrs Tuck are of the view that a 3-month disqualification is an appropriate base penalty for Mr Whitfield. To this they would give full discount for Mr Whitfield's guilty plea. Having regard to his unblemished record for over 30 years, Mrs Foley and Mr Tuck also considered it is appropriate to round down Mr Whitfield's disqualification to 2 months.
41. The Panel's orders are as follows:

Mark Schmetzer:

- (1) Appeal against severity of penalty allowed.
- (2) In lieu of a four-and-a-half-month disqualification, the Appellant is disqualified for a period of three months. That disqualification commences on 2 March 2022 and expires on 2 June 2022 on which day the Appellant may reapply for his licence. Pursuant to AR263(7), the period of disqualification is deferred for 7 days to allow the appellant to care for and make arrangements for his horses, however, he must not start a horse in a race or barrier trial during this period.
- (3) Appeal deposit to be refunded.

Mr Whitfield:

- (1) Appeal against severity of penalty allowed.
- (2) In lieu of a six-month disqualification, the Appellant is disqualified for two months. That disqualification commences on 2 March 2022 and expires on 2 May 2022, on which day the Appellant may reapply for his licence.
- (3) Appeal deposit to be refunded.