

APPEAL PANEL OF RACING NEW SOUTH WALES

APPEAL OF LICENSED JOCKEY MR TROY SEE

Appeal Panel: **Mr R. Beasley SC (Principal Member); Mr J. Murphy; Ms S. Skeggs**

Appearances: **Racing NSW: Ms K. Campbell, Legal Counsel for Racing NSW**
Appellant: Mr W. Pasterfield, Solicitor

Date of Hearing and Orders: 11 April 2023

Date of Reasons: 17 April 2023

Rules involved: AR 232(c)(i) – Refusing to obey a direction of the Stewards
AR 232(c)(ii) – Hindering Stewards in carrying out their duties

REASONS FOR DECISION ON PENALTY

Mr R Beasley SC, for the Panel

Introduction

1. On 3 February 2023, licensed jockey Mr Troy See (the Appellant) was found to have breached three rules of the Australian Rules of Racing concerning his conduct at the Murwillumbah race meeting held on Saturday, 21 January 2023.
2. Charge 1 related to a breach of AR218(4)(b), the details of which were that the Appellant had his mobile phone in the jockeys' room at the race meeting of 21 January 2023. He pleaded guilty to this charge and was fined the sum of \$500.
3. Charge 2 related to a breach of AR232(c)(i) concerning Mr See's refusal to obey a direction of the Stewards. The relevant particulars for this breach were as follows:
 3. During the course of this race meeting Racing NSW investigator Mr Matthew Johnson located a mobile phone in [the Appellant's] possession in the jockeys' room at the ... racecourse. He participated in an inquiry with Stewards from Racing NSW in connection to an investigation in this matter.

4. During the investigation Stewards used their powers pursuant to AR22(d) and took possession of his mobile phone. He was advised by Stewards that the phone would be retained for examination. The phone was returned to him to write down the contact details he would require while the phone was being examined.
5. After writing down the contact details he left the Stewards room with the phone in his possession. Stipendiary Steward Ms Tara Vanderstok requested that he return to the inquiry room.
6. He refused to do so and continued to walk away from Ms Vanderstok with the phone in his possession. Ms Vanderstok directed that he return the phone to her, which he refused.

4. Charge 3 concerned a breach of AR232(c)(ii) relating to the Appellant hindering Stewards in exercising their powers and carrying out their duties. The relevant particulars of this charge were as follows:

3 and 4: See above for Charge 2.

5. After writing down his contact details he left the Stewards room with the phone in his possession. He walked into the car park and hid under the cabin of a truck. On seeing Racing NSW Officials Investigator Mr Matthew Johnson and Stipendiary Steward Ben Watling he walked away from where he was hiding and walked between other trucks. He was stopped by Mr Johnson and Mr Watling. Mr Johnson said words to the effect of "Do you understand that you've failed to comply with a direction from a Steward and that you're now going to be stood down from racing until you comply with that direction".

He said words to the effect of "That's fine. Stand me down. I'm not complying".

Mr Johnson said words to the effect of "Tara would like you to come to the Stewards room. She wants to hold an inquiry about you not complying with direction today."

He said words to the effect of "I'm not gonna do that. I'm leaving".

6. He walked away from both Mr Johnson and Mr Watling where he entered a car with two people in it and left the racecourse with the mobile phone still in his possession.

7. The conduct as described in particulars 5-6 amounts to hindering Stewards in exercising their powers and carrying out their duties.
5. The Appellant pleaded guilty to the breaches alleged in Charges 2 and 3. For Charge 2, the Stewards determined that an 18-month disqualification as a base was appropriate, reduced to 13 months and 2 weeks because of the Appellant's guilty plea and subjective circumstances. For Charge 3 a base penalty of 30 months' disqualification was considered appropriate, reduced to 22 months and 2 weeks' disqualification give the Appellant's plea and personal circumstances. The Stewards determined that the penalties for Charges 2 and 3 should be served concurrently, meaning that the total disqualification imposed on the Appellant was 22 months and 2 weeks.
6. The Appellant has appealed to the Panel against the severity of the penalty imposed upon him. He was represented at the appeal hearing by Mr Wayne Pasterfield, solicitor. Racing NSW was represented by Ms Kate Campbell, Legal Counsel for Racing NSW. An Appeal Book containing relevant exhibits from the Stewards' Inquiry, various statements and the transcript from that inquiry was tendered in evidence as Exhibit A. The Appellant did not give oral evidence.

Further Factual Findings

7. The Appellant did for a short period of time provide the Stewards with his phone when requested. He gave them his passcode, and they could see that there were a number of betting "apps" on the phone. The Appellant maintains that he has not had any bets or interests in bets on thoroughbred races at any time.
8. During the inquiry on 21 January 2023, the Chair of the Stewards Panel informed the Appellant that it was not possible for her to arrange to have the phone forensically examined on the day. It would have to be sent off and could be out of his possession for several days: T15 L675-677 (21.1.23).
9. The Appellant was told by the investigator Mr Johnson that the entire contents of his phone could be imaged. He was told that deleted material could be accessed. The appellant expressed a concern about "private stuff" on his phone. Mr Johnson assured

the Appellant that “no one is going to be interested in that at all”: T18 L792. The Chair of the Stewards Panel also assured the Appellant, in relation to private and confidential non-racing material or photos on his phone, that “none of the messages, images or anything will be shared or anything like that”: T18 L805-806.

10. It would appear that the Appellant was not reassured by what Mr Johnson and the Chair said to him. He then told them that he needed to use the phone for various matters and said:

“I’m happy to let you guys take possession of it for today, but not for the next week because I’ve got stuff I’ve got to pay and like I can only do that on my phone and my car is in – is in impound now and I got to get it back. I – the only way I can get it back is through my phone.”
(T19 L846-850)

11. It was at that point that the Appellant seemed to make up his mind that he would not obey the Stewards directions, and would keep his phone. He left the jockeys’ room, attempted to hide (unsuccessfully), and then left the racecourse in circumstances where he was being requested by racing authorities to return to the Stewards room for further inquiry, and to return his phone to them.

Submissions

Appellant

12. The submissions made by Mr Pasterfield on the Appellant’s behalf can be summarised as follows:
 - (a) Ordinarily the Appellant kept his phone in a car, not the jockeys’ room. Unfortunately, on the relevant date he got a lift from one jockey but was going to be driven home by another jockey, and hence he left his phone in a bag in the jockeys’ room. He thought this was okay as long as the phone was switched off.
 - (b) This is not a case of a jockey entirely refusing to obey proper directions from the Stewards. He did hand over the phone, albeit for a short time, provided the

Stewards with his passcode, and they were able to see and take screen shots of the betting apps.

- (c) The Appellant had genuine privacy concerns concerning confidential material on his phone unrelated to racing.
- (d) The Appellant also uses his phone to pay all of his bills and to engage in (although it was not entirely clear) what the Panel assumes to be cryptocurrency trading.
- (e) As to the subjective circumstances of the Appellant, he is 34 years of age and his entire working life has been as a jockey. He generally resides in Singapore and is the sole breadwinner for his family. He has a one year old and 5-year-old child, and also financially cares for his mother-in-law. His approximately 2 years in Australia have not been particularly financially rewarding. A long disqualification will be a financial disaster for him. It will compromise his children's education, jeopardise his home ownership, and be "destructive" of his family life.
- (f) Finally, Mr Pasterfield submitted that the total penalty imposed on the Appellant was inconsistent with both the 2-year mandatory minimum penalty imposed on a jockey for having a bet in a thoroughbred race pursuant to AR115(1)(e), and disproportionate to the penalty imposed on licensed jockey Tommy Berry in the Panel's recent decision involving Mr Berry receiving consideration from a punter he had tipped horses to which was not authorised by the Stewards involving breach of AR115(1)(c):see *The Appeal of Tommy Berry*, RAP, 28 March 2023.

Racing NSW

13. Ms Campbell conceded that the Appellant was extremely remorseful, and would suffer significant financial hardship from the disqualification imposed by the Stewards. She said this had been taken into account when the Appellant was penalised. She otherwise made the following submissions that can be summarised as follows:

- (a) The totality of the Appellant's conduct particularised in Charges 2 and 3 raises doubt over his integrity generally. She accepts that the Appellant has not been charged with and cannot be penalised here for matter relating to betting activity, but his ultimate refusal to allow his phone to be examined and his conduct in basically "bolting" from the racecourse with the phone, despite racing authorities' requests for him to return, do raise genuine suspicions concerning what might have been found on the Appellant's phone had he allowed it to be properly examined.
- (b) Licensed persons should expect a strong penalty response from Stewards in circumstances where they refuse to obey their proper instructions or hinder their inquiries. Any penalty imposed must protect racing by serving as a real deterrent against such conduct.
- (c) The Appellant's conduct in refusing to return his phone and then attempting to hide from Stewards before leaving the racecourse against their instructions was aggravating enough. However, at the race meeting of 21 January there were only two Stewards on duty, and it was only luck that there was also a Racing NSW investigator. The Appellant's behaviour not only hampered the Stewards inquiry into his possession of a mobile phone in the jockeys' room, it hampered them in their work conducting a race meeting.

Resolution

14. The Panel accepts the submissions made by Ms Campbell. The Appellant of course cannot be penalised for any form of suspicion, or in relation to matters he was not charged with. However, licensed persons who refuse to cooperate with proper instructions and requests by the Stewards, or who hinder their investigations, can expect that absent what would have to be quite unusual or exceptional circumstances, it is almost inevitable that they will be disqualified. They can expect that it will almost be inevitable that they will be disqualified for a considerable period of time. Racing would be chaos if licensed persons refused to cooperate with proper requests and instructions of racing authorities. Penalties imposed for breaches of AR232(c)(i)

and (ii) will be of a kind that protects the sport by acting as a proper deterrent to such conduct.

15. The Appellant was penalised with a \$500 fine for having possession of his phone in the jockeys' room in breach of AR218(4)(b). That is where this matter might have ended had he cooperated with Stewards.
16. For breach of AR232(c)(i) involving his refusal to obey the direction of Stewards, the Stewards imposed a 13-month 2-week disqualification (having determined a base penalty of an 18-month disqualification). The breach of the rule is objectively serious. It could not have been made plainer to the Appellant that his phone was required, and the presence of betting apps was all the more reason for an examination of the phone. In all the circumstances, we consider the penalty imposed by the Stewards to be an appropriate period of disqualification, and would dismiss the appeal against the penalty imposed for this breach. We do not consider the mandatory penalty for a breach of AR115(1)(e) to be of relevance, or the decision in *Berry*. Mr Berry did cooperate with the Stewards. He was charged with and penalised for totally different conduct to the conduct the subject of the charges in this appeal.
17. The Stewards determined that for the breach of AR232(c)(ii) concerning hindering them in the exercise of their powers in carrying out their duties, a 30-month base disqualification was appropriate reduced to 22 months and 2 weeks on account of the Appellant's plea and his personal circumstances.
18. The Panel agrees that a rational case can be made that the conduct concerning the breach of Charge 3 is more serious than the conduct involving breach of Charge 2. The Appellant's attempt to hide might be seen to have almost a comical element to it, but that is hardly a mitigating factor. However, the Panel sees all the particulars to Charges 2 and 3 as really the one course of conduct where the Appellant reached a point where he made up his mind that he would ultimately not allow his phone to be examined, that he would not obey the Stewards, and that he would leave the racecourse. We consider that the penalty to be imposed for the breach of AR232(c)(ii) should not be significantly in excess to any penalty imposed for the breach of AR232(c)(i). We have then had regard to what we consider should be the

total penalty imposed on the Appellant for the entirety of his conduct. As stated above, Charges 2 and 3, although involving different rules, really involve the same course of conduct stemming from the Appellant's decision that he would keep his phone, not allow it to be examined, and leave the racecourse in order to avoid the Stewards. We therefore consider that the penalty for Charge 3 should also be a 13-month 2-week disqualification, to be served concurrently with the penalty involved for Charge 2.

19. The Panel's orders are as follows:

- (1) Penalty of a fine in the sum of \$500 for breach of AR218(4)(b) is confirmed.
- (2) Appeal in relation to severity of penalty for breach of AR232(c)(i) is dismissed.
- (3) Penalty of a disqualification of 13 months and 2 weeks for breach of AR232(c)(i) is confirmed.
- (4) Appeal in relation to severity of penalty imposed for breach of AR232(c)(ii) is upheld.
- (5) In lieu of a disqualification of 22 months and 2 weeks, a penalty of 13 months and 2 weeks is imposed for breach of AR232(c)(ii), such disqualification to be served concurrently with the disqualification imposed for breach of AR232(c)(i).
- (6) Half of the appeal deposit to be refunded.