

## **APPEAL PANEL OF RACING NEW SOUTH WALES**

### **THE APPEAL OF APPRENTICE JOCKEY TOMMY SHERRY**

Appeal Panel: **Mr. R Beasley SC – Principal Member; Mrs. J Foley; Mr J Rouse**

Appearances: **Mr. M Van Gestel for the Stewards**  
**Mr. W Pasterfield for the Appellant**

Date of Hearing and orders: **11 October 2021**

Date of Reasons: **14 October 2021**

### **REASONS FOR DECISION ON PENALTY**

**Mr. R Beasley SC, for the Panel**

#### **Introduction**

1. On 23 September 2021, apprentice jockey Mr T Sherry (“the appellant”) pleaded guilty to a breach of AR 228 for engaging in conduct prejudicial to the interests of racing. He also pleaded guilty to a breach of AR233 for breaching a policy of Racing NSW.
2. The breaches relate to the appellant failing to follow protocols developed by Racing NSW, and rules of NSW Health, relating to the Covid-19 pandemic. While at trackwork on 14 September 2021, Mr Sherry felt cold like symptoms which are also consistent with those that can be associated with the disease caused by the Covid-19 virus. He was advised by his Master to get a Covid test. He did this, but returned to trackwork on 15 September before being made aware of the result of his Covid test. His test returned a “positive” result. His conduct was clearly in breach of Racing NSW protocols requiring him not to attend trackwork when relevantly symptomatic, and in breach of both the protocol and NSW Health rules in not isolating until the result of his Covid Test was known.
3. The Stewards imposed a penalty of a 4-month suspension on the appellant’s permit to ride in races. He has appealed to the Panel against the severity of this penalty. He was

represented by Mr. W Pasterfield, solicitor. The Chairman of Stewards, Mr M Van Gestel, appeared for the Stewards. No oral evidence was given at the appeal hearing, but an appeal book with the transcript of the Stewards' Inquiry was tendered, and the exhibits from that inquiry formed the exhibits on appeal.

### **Resolution**

4. The Panel did not have to resolve any factual dispute in this appeal. The Stewards, and in turn the Panel, accept that Mr Sherry was not aware of the relevant Racing NSW policy or the NSW Health rule he breached. He accepts he should have been. The evidence before the Panel was that the Stewards and other racing authorities have made all reasonable endeavours to ensure participants are aware of Racing NSW's Covid policies. It is surprising they escaped the appellant's attention.
5. No person contracted Covid as a result of the appellant's actions, although the stable of his Master was considerably inconvenienced – they were closed for 5 days, horses were withdrawn from races (impacting owners as well), and employees had to be tested.
6. It is not however merely the actual impacts of the appellant's conduct that make his actions serious breaches of the rules. The potential for far greater impact is obvious. It is not an exaggeration to say that the potential impacts could have been catastrophic for racing: see *The Appeal of John Sharah*, RAP, 2/9/21 at [15].
7. The Panel notes that for a similar breach, the appellant in *Sharah* was penalised by Stewards with a 9-month suspension. His appeal against the severity of that penalty was dismissed. Arguably, Mr Sharah's conduct caused more disruption to racing. Further, there are some important subjective matters to the appellant that regard must be had to in determining penalty in this appeal.
8. The appellant is a very young man. He lives a long way from his immediate family, who reside in Ireland. A full suspension would have left him very isolated, which is why the Stewards opted for a suspension of his permit to ride. Any suspension will cover some significant feature race meetings. The appellant is also genuinely contrite, and understands he has made a bad error, albeit one he did not know he was making.

9. While the Panel is of the view that nothing less than a penalty of a 4-month suspension of the appellant's permit to ride is necessary as a measure to protect the industry and to have a proper deterrent effect, because the Panel feels that the appellant has already learnt a lesson from his actions, and bearing in mind his youth, inexperience, and the lack of deceit in his actions, we consider we should suspend half of the suspension imposed, under AR283(5), on terms that the appellant not breach the relevant rules in relation to any policy of Racing NSW concerning Covid-19.
10. The Panel makes the following orders:
  1. Appeal in relation to severity of penalty allowed in part.
  2. Penalty of a 4-month suspension of the appellant's permit to ride confirmed, save that pursuant to AR283(5) 2 months of that suspension is suspended for a period of 2 years provided the appellant does not breach AR228(a) or AR233 in relation to any Racing NSW policy or protocol concerning Covid-19. Should the appellant commit such a breach of the Rules, the suspension will be revoked, and the suspended part of the appellant's penalty will be added to any further penalty imposed. The appellant's suspension commenced on 15 September 2021, and the suspension of that penalty commences on 15 November 2021, on which day he may resume riding in races.
  3. Appeal deposit to be refunded.