APPEAL NO. 848

RACING PENALTIES APPEAL TRIBUNAL DETERMINATION

APPELLANT:	**MR MITCHELL JOHN PATEMAN**
APPLICATION NO:	**21/3371**
PANEL:	**MS K FARLEY SC (CHAIRPERSON)**
DATE OF HEARING:	**15 SEPTEMBER 2021**
DATE OF DETERMINATION:	**12 OCTOBER 2021**

IN THE MATTER OF an appeal by MITCHELL JOHN PATEMAN against a determination made by Racing and Wagering Western Australia Stewards of Thoroughbred Racing imposing a suspension of four weeks for a breach of the Australian Rule 229(1)(a) of the Australian Rules of Racing.

Mr Thomas Percy QC and Mr Jack Young of Barry Nilsson Lawyers represented Mr Pateman

Mr Ron Davies QC represented the Racing and Wagering Western Australia ("RWWA") Stewards of Thoroughbred Racing

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1. On Sunday 15th August 2021, the Appellant had five riding engagements at Kalgoorlie Boulder Racing Club. In particular, he was engaged to ride THERE'S A CHANCE in Race 5, at the Relph Electrical Contractors Handicap over 1760 metres.

2. THERE'S A CHANCE won that race.

3. The Appellant has in recent months been struggling with his weight. In the six weeks before the race he had ridden at as low as 56.5 kilos however by embargo placed on him by the Stewards had only been able to accept rides at 58 kilos or higher.

4. In the days prior to the race in question the Appellant required to "waste" several kilograms to achieve the desired weight.

5. The Appellant weighed out before race five at 58.5 kilos. He then had a drink. (about half a bottle of water or Powerade).

6. After winning the race, the Appellant became concerned that he would weigh in heavy. On being greeted by Trainer/Strapper Mr Carapellotti in the mounting yard he handed his girth and surcingle to Mr Carapellotti and weighed in without those items.

7. The items should have been the subject of the weigh in.

8. On 16th August 2021, investigators received video footage of the Appellant riding, dismounting and unsaddling THERE'S A CHANCE and handing or passing some riding equipments to Mr Nicholas Carapellotti prior to weighing in at the scales area.

9. On 17th August 2021, the Appellant was interviewed by Stewards Mr Vickers and Senior Investigator Mr Paul Criddle at a stable complex in Casuarina. He admitted handing the gear to Mr Carapellotti and having viewed the video, stated that he "believed it wasn't a good look".

10. Having received Mr Criddle's Report, Stewards held an inquiry on 24th August 2021.

11. Following that inquiry, the Stewards found that there was a charge to answer for both the Appellant and Mr Carapellotti pursuant to AR 229(1)(a), in that a " person must not engage in any dishonest, corrupt, fraudulent improper or dishonourable action or practice in connection with racing".

12. The Appellant was charged by way of engaging in "an improper action by removing or handing his girth and surcingle to trainer Nick Carapellotti in an endeavour to avoid weighing in excess of.5 of a kilo." (T p21).

13. Mr Carapellotti was charged that he engaged in an improper action in that he took possession of the girth and surcingle from (the Appellant) with the knowledge that such gear is required to be included in the weighing in process (T p31) (AR 229(1)(a)).

14. Both the Appellant and Mr Carapellotti pleaded guilty to the charges. Mr Carapellotti was fined $2,000.

GROUNDS OF APPEAL

15. The Appellant lodged a notice of appeal on 26th August 2021 relying on five grounds of appeal. At the hearing on 15 September 2021, Senior Counsel for the Appellant advised that ground five of the appeal would not be pursued. That ground claimed that the penalty imposed on the Appellant lacked parity having regard to the penalty imposed upon Carapellotti.

16. In any event, I'm of the view that that ground had no reasonable prospect of success on the basis that Mr Carapellotti actions were different to and less serious than those of the Appellant. Evidence before the Stewards clearly showed Mr Carapellotti as somewhat taken aback when handed the girth and surcingle by the Appellant. There was no evidence of collusion or agreement between them. It was the Appellants sole decision to hand over the gear.

17. Grounds 1 and 2 allege explicit error by the Stewards in that they-

    1. failed to adequately consider the options of a fine or failed to impose a fine

    2. failed to adequately consider or make any detailed inquiry into the financial impact of imposing a suspension

18. Grounds 3 and 4 complain that the penalty imposed was manifestly excessive-

    1. having regard to all the circumstances of the case and specifically that the Appellants actions had no bearing on the race results (ground 3) and

    2. having regard to the penalties imposed in similar cases

19. Ground 1 of this appeal must fail. Commencing at page 21 of the transcript was a lengthy discussion between the Appellant and the Stewards as to the penalty. The Appellant clearly advocated for a fine. At page 27 of the transcript. Mr Lewis outlines the penalty provisions as go(ing) from reprimands, fines suspensions and it all depends on the circumstances". the Appellant (T p28) claims that a substantial fine would be a "huge deterrent" to him.

20. It was clear to the Stewards that the Appellant was concerned as to the effect of a suspension on his future as a rider. The Appellant had struggled with his weight for some time and was understandably concerned that if he was suspended and unable to race then he may struggle to again achieve a viable riding weight.

21. The Stewards were aware of and there is no evidence that they did not consider the imposition of a fine. In their decision as to penalty (T p34) it is clear that they considered the Appellant's actions too serious to be dealt with by way of fine.

22. That the Stewards considered and discounted a fine is also demonstrated by the fact that Mr Carapellotti whose actions were found to be less serious than the Appellant's, received a fine, albeit a substantial one.

23. Ground 2 must also fail. Whilst the Stewards were not provided with detail as to the Appellant's gross weekly income, and outgoings, they certainly were aware that the Appellant is a leading rider in WA and earns a substantial amount as a professional jockey. Specific comment was made (T p34) of the Stewards being "aware of the implications of such a penalty.... and the number of race meetings you will forfeit."

24. Turning to the question of whether the Stewards imposed a penalty which was manifestly excessive, in imposing a four week suspension, the Stewards stated (T p34, 35) that they had taken into account the following matters-

    - the guilty plea
    - the Appellant's contrition or remorse
    - the Appellants candid evidence
    - the Appellants personal circumstances including his weight issues
    - the Appellant's financial position
    - a 10 year clear riding record

- that although there was some forethought of his actions the Appellant did panic and overreact making an irrational decision in the end
- that the attempt to deceive by manipulating his weight had caused a negative impact on the image of racing and may impact on the re handicapping of THERE'S A CHANCE

25. Whilst the actions of the Appellant had no impact on the race result and the Stewards did not specifically comment on this fact, They were obviously aware that this was not an aggravating feature of the Appellants actions. Had it been so, it would have been likely that the Appellant would have committed another, more serious breach of the rules of racing.

26. I am not therefore of the view that there is merit in ground 3 of this appeal insofar as it refers to the lack of impact on race result.

27. In relation to ground 4 of the appeal there was some discussion during the course of the inquiry, both before and after the Stewards handed down their decision on penalty, as to other case comparators both in WA and in other Australian jurisdictions (T p21-27, p 35-37).

28. At the hearing of the Appeal, Senior Counsel for the Appellant referred to a number of cases also. Senior Counsel for the Stewards submitted that cases from NSW and Victoria were of little assistance and that the only question for the Tribunal was whether the Stewards could be said to have imposed a penalty so far outside the proper range of penalties as to be in error.

29. In the case of Shane Andrew Beard v RWWA Stewards of Greyhound Racing (Appeal No 536), Tribunal Member Patrick Hogan stated that -

"whilst I accept that consistency in penalty Australia wide might be a desirable object, I am not persuaded that it is necessarily so. Further, even if it were, I am on the opinion that nothing has been demonstrated to indicate that the Western Australia approach is not the one to be followed."

30. Whilst I concur with this view, where there are few if any WA precedents in relation to penalty for similar breaches, it is sometimes useful to have regard to penalties imposed in other jurisdictions when considering whether a penalty imposed is so far out of the range of penalties to be expected as to manifest error.

31. The Appellant submitted at the inquiry that the two previous penalties that he relied upon were fines imposed on William White and Steve Ryan.

32. In Victoria, Samuel Payne was suspended for eight weeks (6 of which were suspended) but charges of misconduct and of giving false and misleading evidence. In this case, the latter charge did not apply, and Mr Payne was not charged in any event under AR229 but under AR228 (1) (b).

33. In NSW James Ormond was suspended for four weeks for manipulating his weight by leaning against the scales digital display after having won a race and his explanation that he was exhausted after the race was not accepted. Mr Ormond unsuccessfully appealed both conviction and penalty (2020).

34. Again in NSW Taylor Lovelock-Wiggins was suspended for three weeks for deliberately attempting to weigh out without irons to make weight (2011).

35. In South Wales Robert Agnew was suspended for two weeks for attempting to discard a piece of foam packing in an effort to manipulate his true weight at scale. He too was a first offender, and his actions were impulsive opposed to premeditated (2015).

36. Rick McMahon also in New South Wales was suspended for two weeks by attempting to manipulate his weight by placing part of his saddle and/or packing on the scales digital display.

37. In written submissions the Appellant referred to two previous WA cases of Jordan Turner (where the offending it is said was similar) which resulted in a $ 500 fine and Robert Markou where fine was also imposed but for different conduct. Neither of these matters were the subject of comment in the inquiry.

38. The Stewards of course had a broad range of penalties open to them pursuant to AR283 including disqualification, suspension, reprimands and fines. Stewards regularly exercise discretion in relation to the imposition of any of these options.

39. In this matter, the salient matters relevant to the penalty to be imposed were the Appellants plea, his remorse and the candid nature of his evidence, his clear record and his personal circumstances. Against this was the serious nature of the offence which involved an element of dishonesty, the potential for actions of this nature to negatively impact on the image of racing and the negative impact on the thoroughbred involved and its connections.

40. In relation to the deceptive nature of the Appellants conduct, the Stewards found that he had "some forethought of (his) actions, but (we) accept that (he) did panic and overreact, making a irrational decision in the end."

41. This case was unusual in that the Appellant was a "heavyweight" jockey, being 176 centimetres tall with a riding weight of 58 kilos. He had struggled in recent months to maintain his weight and was continuously having to "waste" to make riding weight. He made it clear in the course of the inquiry and after, that a lengthy suspension may signal the end of his racing career.

42. Whilst I am of the view that the Stewards did not err in finding that a suspension was the appropriate penalty, in this case I am of the view that given the unusual circumstances outlined in these reasons and having considered penalties applied in this and other jurisdictions, that Stewards erred in imposing a four-week suspension in this matter.

43. I would therefore uphold the first part of ground 3 and ground 4 of this appeal and instead impose a penalty on the Appellant of 14 days suspension.

44. There was some argument before me as to the number of days of suspension that the Appellant served before a stay was granted in this matter. Chronologically, 3 days suspension occurred between commencement and the grant of the stay. In effect, the Appellant claimed to have served 9 days suspended. Mr Borovica conceded at the hearing of the Appeal that in effect 6 days could be perceived to

have been served. I would agree with Mr Borovica that that would be a reasonable period, which leaves a period of eight days still to be served.

45. I make no order, specifically, in respect to that. Should the parties not be able to agree the end date for the suspension, there will be liberty to apply.

KAREN FARLEY SC, CHAIRPERSON