TASMANIAN RACING APPEAL BOARD

Appeal No 05 of 2021-22

Panel:	**Mr Patrick O'Halloran (Chair)** **Mr Rod Lester (Member)** **Ms Wendy Kennedy (Member)**	**Appellant:**	**Mr Lane O'Shannessey**
Appearances:	**Mr Anthony O'Connell (on behalf of the appellant)** **Mr Louise Brooks (on behalf of the Office of Racing Integrity)**	**Rules:**	**AR 228(b) misconduct, improper conduct or unseemly behaviour**
Heard at:	**Via Microsoft Teams and Prospect Government Offices**	**Penalty:**	**3 Months disqualification of licence (Stay of proceedings granted)**
Date:	**Thursday 10 February 2022** **Tuesday 22 February 2022** **Thursday 17 March 2022**	**Result:**	**Penalty varied to a reprimand**

REASONS FOR DECISION

1. As at 4 September 2021 the Appellant and a Ms Van Dongen were both licenced Thoroughbred participants. The Appellant as a licenced stable hand and Ms Van Dongen as a licenced stable hand / licenced Harness driver

2. Following an inquiry conducted on 26 September and 16 November 2021 - Stewards found that that the Appellant had breached AR 228(b)./ Such rule provides:

   '*A person must not engage in*

   (b) misconduct, improper conduct or unseemly behaviour'

3. The particulars of the charge (as recorded within the Stewards Inquiry Decision dated 16 November 2021 - and stated in substantively similar terms to the Appellant at the Inquiry on that same date) '*were that as a licenced stable hand with the Office of Racing Integrity, Mr O'Shannessey engaged in improper conduct at track work on the morning of September 4 when he physically assaulted Miss Hannah Van Dongen*'

4. Within the (initially) available transcript of the (part heard) Steward's Inquiry of 16 November 2021, the Appellant:
   a. made the repeated frank admission that '*Yeah I kicked her up the bum, yeah I did*' (p 2 of 7)

b. repeatedly denied any allegation of his '*arm movement to the upper part of (Ms Van Dongen's) body*' and '*it looks like I hit her but I never. She would have said but I definitely never hit her. That's no no , definitely no'*.

5. Relevantly - for the determination of one aspect of this appeal - as further recorded within **that** transcript[1] the Appellant plead guilty to the charge as particularised above. Notably the particulars of the charge were silent as to the manner of the assault the Appellant was said to have committed (that is a strike, or, a 'kick up the bum', or, something else or other).

6. Following the inquiry, the Appellant's license was disqualified for a period of three months commencing midnight 17 November 2021.

7. This appeal relates both to the conviction and penalty. The Appellant was granted a stay of the disqualification pending the determination of this appeal.

Manner of Hearing

8. Following the filing of the Notice and Grounds of Appeal by the Appellant on 17 November 2021 the Board and the parties were advised that the audio recording pertaining to the hearing of the Inquiry conducted on 26 September 2021 was no longer available.

9. A preliminary issue therefore arose as to how the Board was to properly hear and determine the appeal in accordance with the principles provided for within the *Racing Regulation Act 2004* ('the Act') contained within sections 30(6), 30(6D).

10. For further consideration by the Board was how those principles were to be considered alongside section 30(6B) of the Act. That section provides:

> *(6B) An appeal is to be heard and determined upon the evidence at the original hearing when the decision or finding was made, but, if the presiding member considers it to be proper, expert or other evidence may be required or admitted.*

11. Within the initial listing of the appeal - on 10 February 2022 – having heard submissions from the parties the Board indicated that:
    a. the circumstances of this appeal (primarily the absence of the transcript of the first day of inquiry) required a departure from the settled principles noted in Appeal No 12 of 2015/16 Scott FORD at paragraph 8
    b. it would hear and determine this appeal as 'an appeal de novo' - noting that such an approach would not bind the Appellant's 'plea of guilty' entered within the Stewards Inquiry and as such 'change of plea' considerations [2] were not enlivened
    c. leave would be granted to allow the Appellant to abandon several of the original grounds of appeal which pertained to asserted failures of natural justice and/or procedural fairness that were said to have occurred during the Steward Inquiry

[1] And similarly recorded within the Stewards Inquiry Decision dated 16 November 2021 under heading 'DECISION"

[2] *Weston v R* (2015) 48 VR 413; [2015] VSCA 354 at [109], Redlich JA

d. directions would be issued to allow the prosecuting agency the opportunity to particularise (i) the charge sought to be prosecuted and (ii) the witnesses and evidence it would seek to rely upon.

APPEAL DE NOVO

12. Following further listings where the appeal was not able to properly commence the hearing de novo (hereafter referred to 'the appeal hearing') commenced on 17 March 2022.

13. The hearing was conducted on the basis that the charge for the Board to determine was in regard to:

> *The Particulars of the Charge are as follows:*
>
> *Rule: AR 228 Conduct detrimental to the interests of racing*
>
> *A person must not engage in*
> *(b) misconduct, improper conduct, or unseemly behaviour*
>
> *Particulars:*
>
> *Mr Lane O'Shannesssey, licenced stable hand, engaged in improper conduct on the morning of 4 September 2021 between approximately 7.40am and 7:50am when he physically assaulted Miss Hannah Van Dongen, licensed track rider/stable hand, by (a) striking her to her head and (b) kicking her in the bottom.*

14. Within written submission under cover of correspondence dated 19 February 2022 the Appellant indicated (and confirmed within the appeal hearing) that:

> In relation to part (a) of the charge "striking her to the head" the plea is NOT GUILTY
>
> In relation to part (b) of the charge "kicking her to her bottom" the plea is GUILTY

15. Within the appeal hearing of significance to the Board - in the determination of the first particular (particular (a)) of the charge - was the video footage ('the CCTV footage') of the Spreyton Racecourse (training complex) from 4 September 2021 covering the time period 7.28am to 7.50am (Exhibit **ORI 1**).

16. There was no challenge from the Appellant that the persons depicted within the CCTV footage were the Appellant and Ms Van Dongen.

17. In accoradance with the principle(s) to present and/or produce all relevant evidence at the appeal hearing, counsel for ORI called Ms Van Dongen as a witness. This witness was shown the CCTV and was questioned by both counsel.

18. The substance of Ms Van Dongen's evidence before the Board was:

a. (as to the dynamic that existed between herself and the Appellant on that day) that her recollection of the events of 4 September 2021 had been

recorded within an email dated 7 February 2022 as 'she had been asked to make a statement' (**Exhibit ORI 2**). Such recollections included that on this day (the 4th of September):

i. she had been particularly upset due to the harassment by others (not the Appellant) that she had been receiving in the lead up to and on that specific day,
ii. she had indicated to the appellant she was going to confront the harassers - with the Board inferring that such confrontation was intended to be made soon after disclosing it to the Appellant and
iii. she had generally taken her upset out on the Appellant within her subsequent interactions with him on that day

b. She accepted in response to questions from ORI that she had been verbally arguing with Appellant and that the Appellant had been swearing at her
c. in regard to the **second** particular - which the Board established through questioning to Ms Van Dongen was said to have occurred prior to the first stated particular – Ms Van Dongen provided within her evidence in the appeal hearing that on 4 September 2021 –
   i. that at a time prior to the period captured within the CCTV footage - that the Appellant had 'kicked me up the ass'
   ii. (per her email) '*I was very upset at the time and snapped and took it out on (the Appellant) with verbal abuse and as a result he told me to 'grow up' and 'kicked me up the ass'. This was a very light kick. I did not fall to the ground and barely felt it. He may have made contact but it was very minimal'*
d. in regard to the **first** particular –
   i. in evidence she accepted she was depicted in the footage but categorically did not accept that the Appellant had punched her
   ii. her evidence was that immediately prior to the time point in which it was said the Appellant had struck her she had been mouthing off at the Appellant, that she (in the spur of the moment due to upset with the harassing party) had gone to kick the Appellant in between his legs and lost her balance and/or that she had then ducked (away from the Appellant) in a reflex (action).
   iii. In regard to what she was ducking away from she stated that the Appellant 'may have put his hand up'
   iv. As to her certainty whether she was struck or not she provided '*100% no contact made*'. And that she would not have walked back towards the Appellant if she had (in fact) been punched
   v. She did not accept the suggestion of counsel for ORI that the CCTV footage showed her touching her face but rather that the gesture was her fixing her helmet after it had touched the wall
   vi. As contained within her email 'statement' – that following the interaction involving the kick *'(The appellant) did NOT physically touch me after that'*
e. under questioning by Counsel for the Appellant within the appeal hearing she stated that
   i. on that day she '*didn't feel intimidated by (the Appellant)*' and didn't feel threatened at all - The Board notes that the above evidence was consistent with that provided within her email where she had provided '*At no point did I feel threatened or intimidated by (the Appellant)*'

ii. immediately after the interaction said to be the strike, she noted that she had followed after the Appellant as she knew that he wouldn't physically touch her in any way
iii. didn't feel the need to report any aspect of what occurred on the date and, that following the interaction, no one followed up with her in regard to her welfare

19. Within the appeal hearing the Board also heard evidence from a further witness, and received additional exhibits, that spoke to the issues of identifying the initial reporting of (a verbal) altercation (the basis of particular (a)), the timeline and conduct of the investigation[3] and supply of the CCTV footage.

20. Also received as Exhibits without objection were the transcript of the Stewards Inquiry from 16 November 2021 **(ORI 5**) and Fine and Notification of Penalty (**ORI 6**) (re the disqualification of three months penalty- re submission re penalty at first instance)

21. The appellant did not give evidence.

Submissions as to factual findings to be made

22. Within her submissions to the Board Counsel for ORI's submissions included:
    a. that the CCTV footage at time period 7.49.45am depicted the Appellant step towards Ms Van Dongen and punch her with his right hand to her head/face – causing her to stumble backwards.
    b. that the Appellant had - through his plea of guilty accepted the basis of the second particular / particular (b) of kicking to the bottom with the concession that the evidence founding that particular came initially from the Appellant himself

23. Within his submissions to the Board Counsel for the Appellant's submission included:
    a. with reference to the allegations contained within particular (a) – that the Board should accept the description of events provided by Ms Van Dongen within the appeal hearing, that such a description was not inconsistent with the actions as captured and recorded with the CCTV - and that such an interaction or event taken at its highest was best described as tomfoolery (between the parties)
    b. with reference to the allegations contained within particular (b) that it was testament to the character of the Appellant that he had (at an early stage of the appeal hearing) plead guilty to this particular - noting that the particular was based on his own admission (with further note as to the timing and circumstances in which the admission was made). He submitted that such action could properly be characterised as on the 'very, very low side of improper action'.

Submissions as to penalty

24. In terms of **penalty** counsel for ORI provided:

[3] Witness Nigel WHELAN Exhibits ORI 3 and ORI 4

a. a considered and detailed number of documents and past decisions[4] including a reliance on the principles and authority referred to within *Hodges, Hillier, Hillier and Ford* - Appeals 25, 26, 27, 28 of 2016/17
b. That the nature of the actions of particular (b) in and of itself could and should attract a penalty within the range 3 months

25. Counsel for the Appellant *inter alia* – relied on the case of Ryan – appeal no. 07 of 2019/20 including para 9
    a. *It is not necessary to go through the precedents in any detail, suffice to note that the appeals of Rohan Hillier (Appeal No. 26 of 2016/17), Troy Hillier (Appeal No.27 of 2016/17) and Clark (appeal No. 03 of 2013/14) resulted in fines in the range of $500 - $1,000 for similar conduct.*

THE MISSING TRANSCRIPT - NEW OR FRESH EVIDENCE

26. At the conclusion of receiving evidence and related submissions at the appeal hearing the Board reserved its decision and adjourned the appeal to no fixed date. During the adjourned period the Board was advised that the audio recording of the Stewards inquiry of 26 September 2021 had been located.

27. The Board determined to obtain a transcript of that hearing and provided it to the parities. Further directions were listed so the parties could be heard as to what , if anything they wished to do with the recently located recording (including whether they sought the Board to reconvene and hear further submission and/or further evidence relating to the recently located recording).

28. Chair of this Appeal received submissions from the parties as to whether the Board was able to receive - and in the event that it could whether it should.

29. The submissions provided by counsel for ORI were of great assistance and are reproduced in full below.

> *It is the Stewards position that the Board may accept into evidence the initial portion of the transcript, as accepting that evidence is akin to a re-opening of a case. The power to re-open and accept further evidence is discretionary and a number of considerations are relevant.*
>
> *I have set out below a series of excerpts from relevant cases that are useful.*
>
> *Whilst the Board has a discretion to admit the additional evidence after the conclusion of the hearing but before a decision/judgment is made, based on the decisions/propositions set out below, the Stewards do not seek that discretion be exercised in this matter (noting this may not be the position in any future matters).*
>
> *The additional evidence located on this occasion does not appear to be material and appears to be of little probative value given the circumstances of this matter where at the hearing both Mr O'Shannessey and Miss Van Dongen gave evidence in person before the Board. Further, the potential to involve undue waste of time of re-convening the Board, the delay in the completion of the proceeding, and the consequential costs (given Mr O'Connell charges a fee for*

[4] Decision re Bill RYAN of 21 January 2020 for a charge under ARR 228(b), Decision re Grace Willoughby of 6 January 2016 for a charge under AR 175(q)

his services) appear to outweigh the benefit of the evidence, in this particular matter.

The portion of the transcript now located adds little, if anything, to the evidence already given, and as such we do not seek the discretion to admit it be exercised on this occasion.

Relevant case excerpts are:

***Reid v Brett [2005] VSC 18**,*

[41] The criteria governing the exercise of the discretionary power to re-open a case to admit further evidence where the hearing has concluded but judgment has not been delivered have been said to be as follows:

(a) the further evidence is so material that the interests of justice require its admission;
(b) the further evidence, if accepted, would most probably affect the result of the case;
(c) the further evidence could not by reasonable diligence have been discovered earlier; and
(d) no prejudice would ensue to the other party by reason of the late admission of the further evidence. (citations omitted)

Chao v Chao (No 2) [2008] NSWSC 612

[2] For present purposes, the principles governing such an application are to be found in the judgment of Goldberg J in Hawthorn Glen Pty Ltd v Aconex Pty Ltd (No 1) [2007] FCA 2010. They may be summarised as follows. The Court has a discretion to grant a party leave to re-open its case after final submissions have been concluded and the Court has reserved its decision. The ultimate question is whether the interests of justice are better served by allowing or rejecting the application. It is relevant to consider whether prejudice would be occasioned by the late introduction of the evidence to the other party. It will also be relevant to consider the materiality of the proposed additional evidence, and whether it could by reasonable diligence have been discovered before, or at least any explanation for its not having been adduced earlier. If there was a deliberate decision made not to call the evidence when it ought to have been called in the ordinary course of proceedings, that will typically tell decisively against allowing a reopening, although there is no hard and fast rule requiring the Court to reject an application even where the decision not to call a witness or tender a document was a deliberate one.

Smith v New South Wales Bar Association (1992) 176 CLR 256; [1992] HCA 36

[27] It has long been the common law that a court may review, correct or alter its judgment at any time until its order has been perfected. …The power is discretionary and, although it exists up until the entry of judgment, it is one that is exercised having regard to the public interest in maintaining the finality of litigation. Thus, if reasons for judgment have been given, the power is only exercised if there is some matter calling for review. …And there may be more or less reluctance to exercise the power depending on whether there is an avenue of appeal. …It is important that it be understood that these considerations may tend against the re-opening of a case, but they are not matters which bear on the nature of the review to be undertaken once the case is re-opened… (references omitted)

[32] If an application is made to re-open on the basis that new or additional evidence is available, it will be relevant, at that stage, to enquire why the evidence was not called at the hearing. if there was a deliberate decision not to call it, ordinarily that will tell decisively against the application. ...But assuming that that hurdle is passed, different considerations may apply depending on whether the case is simply one in which the hearing is complete, ... or one in which reasons for judgment have been delivered. ...It is difficult to see why, in the former situation, the primary consideration should not be that of embarrassment or prejudice to the other side. ...in the latter situation the appeal rules relating to fresh evidence may provide a useful guide as to the manner in which the discretion to re-open should be exercised.

Movie Network Channels Pty Ltd v Optus Vision Pty Ltd *[2009] NSWSC 132 at [4] – [8] :*

[4] *In every case the overriding principle to be applied is whether the interests of justice are better served by allowing or rejecting the application to re-open [Inspector-General in Bankruptcy v Bradshaw [2006] FCA 22 at [24]; Urban Transport Authority of NSW v Nweiser (1992) 28 NSWLR 471 at 478]. An application to re-open is subject to various degrees of scrutiny depending on the stage of the proceedings when the application is made. The test of what is 'just' at this stage of the proceedings is akin to the considerations applicable where leave to rely on fresh evidence is sought on appeal. That is, the evidence must be credible, highly probative and not previously obtainable by reasonable diligence [Jesseron Holdings Pty Ltd v Middle East Trading Consultants Pty Ltd (No 2) (1994) 122 ALR 717 at 719 per Young J; Ritchies at [51.51.50]; Australasian Meat Industry Employees' Union (WA Branch); Ex parte Ferguson (1986) 67 ALR 491 at 493–494 per Toohey J; Murray v Figge (1974) 4 ALR 612; Betts v Whittingslowe (No 1) [1944] SASR 163; Hughes v Hill [1937] SASR 285; Watson v Metropolitan (Perth) Passenger Transport Trust [1965] WAR 88].*

[5] *Naturally the principles which inform the exercise of the discretion to re-open are to be read against the general background of the obvious public interest in the finality of litigation: cf Autodesk Inc v Dyason (No 2) (1993) 176 CLR 300 per Mason CJ at 302–303.*

[6] *In Inspector-General in Bankruptcy v Bradshaw [2006] FCA 22 Kenny J identified at [24] certain recognised classes of cases in which a court may grant leave to re-open as including where:*

(a)Fresh evidence becomes available [Granitgard Pty Ltd v Termicide Pest Control Pty Ltd (No 3) [2009] FCA 82 (evidence from a 'whistle blower' became available after the conclusion of the hearing)];

(b)There is inadvertent error; [Telecom Vanuatu Ltd v Optus Networks Pty Ltd (No 2) [2009] NSWSC 33];

(c)There is a mistaken apprehension of the facts [Urban Transport Authority of NSW v Nweiser (1992) 28 NSWLR 471; Autodesk Inc]; or

(d)There is a mistaken apprehension of the law [Urban Transport Authority of NSW v Nweiser (1992) 28 NSWLR 471].

[7] *In Smith v NSW Bar Association (1992) 176 CLR 256 at 266 a majority of the High Court found that:*

> *If an application is made to re-open on the basis that new or additional evidence is available, it will be relevant, at that stage, to inquire why the evidence was not called at the hearing. If there was a deliberate decision not to call it, ordinarily that will tell decisively against the application." [See also: Barker v Furlong [1891] 2 Ch 172 at 184; Hughes v Hill [1937] SASR 285 at 287; Multicon Engineering Pty Ltd v Federal Airports Corporation (NSWSC, Cole J, 10 December 1993, unreported)].*

[8] *In ASIC v Rich (2006) 235 ALR 587 at [18] per Austin J listed the factors that he agreed were relevant to the exercise of the discretion as follows:*

> *i.The nature of the proceeding [See also Woolworth Ltd v Olson [2004] NSWSC 871];*
>
> *ii.Whether the occasion for calling the further evidence ought reasonably to have been foreseen;*
>
> *iii.The consideration of fairness that the defendant is entitled to know all of the evidence he has to meet in taking forensic decisions as to cross-examination and the nature and extent of the evidence he will himself adduce on the matters in question;*
>
> *iv. The extent to which the plaintiff has embarked upon calling evidence on the issue in question in its case in chief;*
>
> *v The importance of the issue on which the further evidence is sought to be adduced to the pleaded issues in the case;*
>
> *vi.The degree of relevance and the probative value of the further evidence sought to be adduced and its potential to involve an undue waste of time;*
>
> *vii.The prejudice to the defendant in terms of delay in the completion of the proceeding and the consequential costs;*
> *viii.The public interest in the conclusion of litigation [See also Hawthorn Glen Pty Ltd v Aconex Pty Ltd (No 1) [2007] FCA 2010 at [48]]; and*
>
> *ix.What explanation is offered by the plaintiff for not having called the evidence in chief.*

30. Ultimately, in the exercise of its discretion the Board, did not accept the earlier transcript into evidence on this appeal. It is noted that the exercise of the discretion in this manner is based on the not usual circumstances of this case and is not to be seen as setting a precedent for future cases where new or fresh evidence is sought to be admitted.

FINDINGS

31. At the conclusion of the evidence within the appeal hearing the Board observed that each particular of the charge appeared more properly to be characterised as two

separate events and not so closely associated in time to be characterised as a series of events or committed in close time proximity to each other.

32. Due to the ultimate findings of the Board this issue does not require further consideration.

33. Whilst not a matter directly relevant to the determination of the charge the Board was not able to make a finding as to who informed the stewards at first instance of the relevant event.

Second Particular

34. As noted above whilst laid as the second particular the Board finds that this (accepted) improper conduct occurred first in time.

35. The Board finds that prior to the events captured in the CCTV footage the Appellant engaged in improper conduct in the manner described by Ms Van Dongen within her email statement (**ORI 2**) – see that description at paragraph 18(c) of these reasons.

First Particular

36. Whilst not an exhaustive list of matters the Board gave weight to in their determination of what was captured in the CCTV footage the Board observes:

    a. verbal statements captured within the CCTV footage prior to the time of the relevant interaction record a male voice, which in review of the totality of the evidence the Board finds was that of the Appellant, can be clearly heard to be yelling the phrase 'ignore people'. Such utterances are consistent with Ms Van Dongen's narrative of what was being discussed between herself and the Appellant in the lead up to the relevant interaction.

    b. that within the appeal hearing aspects of Ms Van Dongen's evidence tendered to reflect the quite clear loyalty and close professional relationship she had with the Appellant from the five years of working with him – however on questioning Ms Van Dongen remaind unmoved from her firm narrative of events of what did and did not occur;

    c. the Appellant's consistent account incuded that which was provided within **Exhibit ORI** p 3 '*There was no arm movement of mine, it might have been Hannah's arm doing something but it defiantly wasn't my arm...I guarantee it' and at line 36 'No I kicked her up the, that doesn't look like it, it looks like I hit her but I never. She would have said but I definitely never hit her. That's no no definitely no'*

37. In consideration of all matters properly placed in the appeal hearing the Board cannot be satisfied to the requisite standard that the Appellant struck Ms Van Dongen to the head in the manner alleged.

38. The Appellant therefore falls to have a penalty imposed for the second particular only.

GUIDING PRINCIPLES REGARDING 'OFF THE TRACK / CONDUCT' CHARGES

39. The Board notes that it is trite to observe that:
    a. a penalty for any and each case needs to be determined on its own facts including not just that of the actions that constitute the relevant conduct but to also take into account the personal circumstances of those to whom the penalty will be applied (including any history of similar offending).
    b. there can be a range of aggravating features depending on the location of where the offending is said to have occurred and the classes of person who could have witnessed or been exposed to the relevant conduct.

A comment on 'conduct charges'

40. As observed by Chair Tom Cox in the decision of William Ryan the comments in consideration of AR 228 (b) and workplace expectations whist arising in different factual scenario remain apposite:

> *Para 8 It is trite to say that conduct of this sort, at a race meeting where patrons and other industry participants may observe such behaviour, is totally unacceptable. The conduct may not have been seen by general members of the public, however, it involved employees of the Office of Racing Integrity having to physically restrain both the appellant and Mr Ganderton. That is a significant aggravating factor in our view. Those employees ought to expect to attend their workplace without the risk of having to be involved in a physical confrontation where they may be injured and suffer the stress of seeing or being involved in what were two nasty, unseemly interactions. The fact that the appellant initiated physical aggression in both altercations is also a significant aggravating factor.*

41. The Board notes that nothing in these reasons should be conveyed to diminish the important statement of principle made by the Stewards in their inquiry findings on this matter in regard to the seriousness of 'conduct charges' and the need to provide and maintain a safe and modern professional workplace environment. As was correctly observed within the Stewards Inquiry Decision of 16 November 2021 '*violence in the workplace is not to be tolerated under any circumstances particularly that of 'violence towards a female co-worker*' .

AS TO PENALTY

42. Relevant to penalty on the second particular the Board observes:
    a. The evidence that forms the basis of this derives from Ms Van Dongen and the Appellant's admission regarding same - see within the 16 November 2021 (p 2 line 15-22, p 3 line 43)
    b. The Appellant's early plea of guilty to this charge (noting the timing of when that particular was first laid)

43. Ultimately the circumstances of the initial Steward's Inquiry, the appeal hearing and the circumstances in which the improper conduct were found to have been committed are so unusual as to almost be characterised as unique.

44. In consideration of that the orders of the Board are:

a. That the decision of Stewards made on 16 Novemeber 2021 is quashed;

b. That for the breach of AR 228(b) as plead to regarding the second partilured act of - improper conduct by 'kicking (Ms Van Dongen) in the bottom' – the Board imposes a penalty of a reprimand (per AR 283(1)(c)).

45. The decisions of the Stewards having been varied, the Board orders pursuant to ss 34(1A), (2)(d), (4A) and (4B)(c) of the *Racing Regulations Act 2004* that 25 per cent of the Appellant's prescribed deposit is forfeited to the Secretary of the Department and that the Appellant pay 25 per cent of the costs incurred in the preparation of the transcript of the Steward's inquiry.

DATED: 8 December 2022