

TASMANIAN RACING APPEAL BOARD

Appeal No 15 of 2022-23

Panel:	Ms Kate Cuthbertson SC (Chair) Ms Amber Cohen Dr Suzanne Martin	Appellant:	Ms Liandra Gray
Appearances:	Mr Bruce Free (on behalf of the Stewards) Mr Anthony O'Connell (on behalf of the Appellant)	Rules:	AR 231(1)(b)(ii)
Heard at:	Conference Room Office of Racing Integrity Prospect Government Offices 171 Westbury Road Prospect TAS	Penalty:	\$4,000 fine with \$2,000 suspended for a period of 2 years
Date:	24 July 2023	Result:	Dismissed

REASONS FOR DECISION

1. On 24 July 2023, the Board heard this appeal.
2. The appeal concerns a determination by the Stewards that the Appellant, Ms Liandra Gray, was guilty of a charge under AR 231 Care and welfare of horses, in respect of conduct which occurred on 2 January 2023.
3. The Stewards held an inquiry into the matter on 9 May 2023. The particulars of the charge were as follows:

Under the Australian Rules of Racing AR231 Care and Welfare of Horses Part 1, a person must not

(b) if the person is in charge of a horse – fail at any time

(ii) to take such reasonable steps as are necessary to alleviate any pain inflicted upon or being suffered by the horse;

The particulars of the charge are that you, as a licensed trainer with the Office of Racing Integrity on the 2nd of January after the horse, OUR SATURDAY, cast itself on a post in the stalls, you rode the horse when it was lame and suffering pain and that you failed to provide adequate treatment in a timely manner to ensure the health of the horse was addressed.

4. The Appellant pleaded not guilty to the charge. After hearing evidence from Ms Gray, Ms Dianne Parish, Mr Daniel Ganderton, Mr Yasuhiro Nishitani, Mr Lane O'Shannessey and Dr Bruce Jackson, the Stewards found that they could sustain the charge and fined Ms Gray \$4,000 with \$2,000 wholly suspended for two years on the condition that Ms Gray did not re-offend under AR 231.

5. The Appellant was the trainer of a horse, OUR SATURDAY. The horse had got its leg caught over the rail (cast) in the stalls at the Spreyton Racecourse, where it had been taken for the purpose of track work. The issues before the Stewards and now before the Board relate to the injury sustained by the horse and the actions taken, or not taken, by Ms Gray following the incident which caused it.
6. AR 231(1)(b)(ii) provides that:

*“A person must not: ...
(b) if the person is in charge of a horse – fail at any time: ...
(ii) to take such reasonable steps as are necessary to alleviate any pain inflicted upon or being suffered by the horse; ...”*
7. None of the terms in the rule are specifically defined in the rules and each of them take on their ordinary meaning.
8. The Appellant has appealed against the conviction, and in her notice of appeal says the following:

It is my view that after fully ascertaining that the horse in my care was suffering pain I administered pain relief at the earliest opportunity. I demonstrated at the inquiry that when I firmly formed the view that the horse was likely suffering pain my actions in administering pain relief cannot be considered unreasonable to the extent I could be culpable under the rule I was charged.
9. During the course of this hearing the Appellant was represented by Mr O’Connell. The Stewards were represented by Mr Free.

Evidence

10. The Board had before it the following material:
 - (a) The transcript of the Inquiry held on 9 May 2023;
 - (b) The notice and grounds of appeal;
 - (c) The Appellant’s offence record;
 - (d) A media release dated 16 May 2023;
 - (e) The Steward’s exhibits, including:
 - i. Email trail between Dianne Parish and Mr Free dated 2 January 2023;
 - ii. Report by Dr Bruce Jackson, Vet Consultant dated 2 February 2023;
 - (f) Stewards’ Decision dated 9 May 2023;
 - (g) Copy of films from the Spreyton Training Facility taken 2 January 2023;
 - (h) The Appellant’s exhibits, submitted shortly prior to and at the hearing including:
 - i. Treatment logbook for OUR SATURDAY;
 - ii. Surgery Report from Kannegieter Equine Specialists;
 - iii. Letter from Dr Barry Campbell
 - iv. Letter from Dr Andrea Bowland dated 24 July 2023
11. It is not necessary to detail the content of each of those items for the purpose of this statement of reasons for decision.

Evidence at Steward's Inquiry

12. Turning now to the evidence heard at the Stewards' Inquiry. The Stewards first heard from Ms Parish. They read Ms Parish's email of 2 May 2023 and ask if Ms Parish had anything to add, she responded that she did not. In the email, Ms Parish had reported that the horse had got its near hind leg wedged between two metal bars in a tie-up stall whilst Ms Gray was not present; that she, Mr Nishitani, Mr O'Shannessey and Mr Ganderton worked on freeing the horse; and that the horse was very sore understandably. She said that Ms Gray had then arrived and Ms Parish "informed her that the horse had been badly cast. As you could see, the injuries sustained to the near hind stifle area." However, it was not clear whether Ms Parish said anything to Ms Gray about her observations of injury. Ms Parish then quoted some things that she alleged she had heard Ms Gray say, however, those things are not relevant to the charge of whether Ms Gray took reasonable steps to alleviate pain inflicted upon or being suffered by the horse.
13. At the inquiry, Ms Parish was not asked about what information she passed on to Ms Gray. She was asked whether the horse was lame and responded that it couldn't put its leg to the ground and was definitely lame.
14. Ms Gray was then asked by one of the Stewards, Mr Tyson, whether she refuted comments that Ms Parish had said in her email that Ms Gray had said. Ms Gray responded that she did not even recall talking to [Ms Parish], it was [Mr O'Shannessey] who had told her about the incident. She said Mr O'Shannessey had said that the horse had been cast. Ms Gray explained

So I got off, walked over, had a look to make sure he didn't have any cuts or anything that needed urgent addressing. He didn't, he just had a little bit of hair off up his inside of his hind leg. And then I, so I rode, I had one more ride for Barry, so I went and did that before I went back and had a proper look at him.

15. The Stewards then took evidence from Mr Ganderton, who confirmed he was one of the persons who assisted the horse in freeing its leg. He said there were certainly marks to the horse's leg and it looked visibly sore. He was asked whether the horse was holding his leg up and he responded in the affirmative. Mr Ganderton was then asked if he could "obviously see it was visibly in pain?" and he responded "on his toe effectively". He confirmed the horse's leg had hair off it to the inside of his hind, and that he did not discuss it with Ms Gray as he was gone before she returned. He said he had asked Mr O'Shannessey to let Ms Gray know.
16. Stewards then took evidence from Mr O'Shannessey by telephone, who also confirmed he had also helped free the horse's leg. He said he observed the horse had hair off its leg and was holding it up. Unfortunately, Mr O'Shannessey was not asked whether he said anything to Ms Gray and if so, whether he made any comment to her about whether the horse was suffering an injury or not.
17. Stewards then asked Ms Gray to explain why she rode the horse up to the bullring if she knew it was lame. She responded that Mr O'Shannessey had told her it was cast so she had a look to make sure there were no cuts that needed bandaging. There were no cuts. She said she rode another horse and then went back and he wasn't resting his leg by that time. She said she had seen other horses still race after this has happened, they are not

always sore so she just wanted to make sure. She said that she cannot swing on up at the bullring so she had to ride him up there. He was fairly stiff when he was walking but the further he walked the less stiff he got. She said

I took him up and walked two laps of the bullring and trotted three laps. He was getting better and better as he sort of warmed up, but I just wanted to stretch his legs, and then I got off him, walked him back to the wash bay, gave it a cold hose.

18. Ms Gray was asked when she turned him around out of the wash, did she believe that he was sore then. She responded

I think he was a lot better. I think the further – even in the video walking up to the bullring, when he actually walked he looked a lot better than when he walked along the bottom of the stalls and by the time he walked out of the wash bay he didn't look too bad at all. Maybe marginally as he turned in a tight circle to walk out.

19. When asked what happened the next day, Ms Gray responded that he had the next day off. She explained he had been going to jump out but did not. He was put out in a paddock so that he could move around to prevent any swelling. She then worked him at home the next two days and the day after that, did some slow track work. She explained that the horse was currently recovering from “kissing spine” surgery, a condition which became apparent approximately one week after the incident. When asked if she understood the concerns that she rode the horse when it was lame, she responded

I mean I could understand if I had taken him out on the track and worked him or galloped him, but I have always been taught that the best thing for stiffness and the best thing to keep swelling down is a little bit of light exercise and I walked two laps and trotted three laps of the bullring. I wasn't up there for half an hour. He didn't canter and he probably trotted for two minutes, if not even two minutes...

20. Ms Gray went on to say that when she got [back] to OUR SATURDAY, after finishing work on the other horse, “he was putting weight on his leg, he was standing normally.” She said that given the opinion of the vet, maybe she hadn't done the best thing but that wasn't an intentional thing. She said she believed that she was doing the best thing for the horse, as she had been taught – light exercise, hosed its leg, gave him Bute (an anti-inflammatory pain relief medication), gave him a day off. She said she gave the Bute as soon as she got home. She confirmed there is a vet surgery about 1 kilometre down the road but it would only take her 5 minutes to get home and she would have been home before the vet surgery even opened.

21. Stewards then heard evidence from Mr Nishitani that he assisted with getting the horse's leg off the rail. When asked if he could see that the horse's leg was sore at all, he responded “He couldn't walk. ... Yes, he quite sore.” He said he did not put weight on the leg.

22. Finally the Stewards heard from Dr Bruce Jackson, who said he was “on a sort of temporary basis occupying the regulatory veterinarian role for Office of Racing Integrity.” He said it was his opinion that the horse should not have been ridden because it had a clear and visible lameness. As to the treatment that should have occurred, he said “often with horses, of course, its hosing, and sometimes strapping, and as soon as

practical to get some anti-inflammatory type treatments into that either local or systemic to treat the acute injury.” He said somebody riding the horse is obviously going to put more weight on the leg and therefore cause more pain. He said in certain circumstances, referring to a soft tissue injury, you might do a little bit of exercise to get some sort of circulation in the area but if you’ve got an acute injury to a limb and you do more exercise, you are going to do some more injury. He said the principle is A, don’t do any more harm and B, reduce the amount of haemorrhaging and that is why it is cooled down with hosing.

23. In his written report, Dr Jackson had confirmed having viewed the video footage at the racing and training complex and said the horse was displaying a grade 3-4 lameness, on a 1-5 scale, of the rear hind leg and that the horse should not have been ridden. He went on to express an opinion that riding this horse was “unlikely to have significantly exacerbated a skin wound/bruising/soft tissue injury”. Dr Jackson commented on whether there had been a breach of various rules. The Stewards noted at the Inquiry they had not taken into consideration that part of Dr Jackson’s report, nor did the Board at the hearing of the appeal.

Further Evidence at Hearing of Appeal

24. At the hearing before the Board, Ms Gray described the bullring as being 40-50 metres away and Mr Free suggested it was “a little bit more than 50 metres away”. Ms Gray described it as being 2 metres wide and about 30 metres around. Mr Free did not give any different view of the dimensions of the bullring. Ms Gray explained that she could not rope a horse in the bullring because of the dimensions. She also said there was no one at the facility on the day who could have led the horse for her to observe it walking. She said the horse had a condition known as “kissing spine”, which was diagnosed a month to six weeks after the incident. She said the horse had an unusual gait, which she put down to that condition. She said it was hard to tell that he was lame when she first got on him because of his kissing spine. He was “always a bit funny when you first got on him, jig-jogging sideways. He just never felt quite right until he got on the track.” She said the reason she had taken him to the bullring was to assess him to see if he needed Bute.

Onus and Standard of Proof

25. The onus of proof lies with the Stewards. The Stewards must discharge the onus in accordance with the standard set 3 out in *Briginshaw v Briginshaw* (1938) 60 CLR 336. As Dixon J observed in *Briginshaw* (at 361-362):

when the law requires the proof of any fact, the tribunal must feel an actual persuasion of its occurrence or existence...It cannot be found as a result of a mere mechanical comparison of probabilities.” The standard is of ‘reasonable satisfaction’ ...but reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer.... In such matters ‘reasonable satisfaction’ should not be produced by inexact proofs, indefinite testimony, or indirect inferences.

It is well accepted, however, that *Briginshaw* does not alter the standard of proof, that is, on the balance of probabilities.

Submissions

26. Mr O'Connell submitted, on Ms Gray's behalf, that although there had been a lot of graphic and detailed description of the incident from the witnesses, Ms Gray did not see any of it and she was only told, by Mr O'Shanessey, that her horse had been cast. He said when Ms Gray was in a position to make an assessment, she sees the hair missing [from the horse's leg] and it seems to be stiff in the joints, she then goes about what she believes she has been taught; that it might need some light exercise to assess it further. He noted Dr Jackson had agreed that in some circumstances you might give the horse some light exercise to assess an injury but conceded that Dr Jackson had said that riding the horse would put it under more pressure. However, he says that Ms Gray has put forward a reasonable explanation for that, which was that she wanted to assess the horse in the bullring but could not get on the horse there and had to ride it there. He said Ms Gray has been very open about how she sought to evaluate the extent of any injury, lameness, soreness. He said the horse had been taken to the track for the purpose of track work so she took it to the bullring to assess whether that could be facilitated. She assessed that she wasn't going to continue with any form of track work, went to the wash bay, applied a cold hose and decided the day was over. She took the horse home and gave it some Bute.
27. Stewards submitted that, there is a huge issue in the racing industry with animal welfare. Mr Free said, referring to the transcript, you've got Mr Ganderton, Mr O'Shanessey all saying it was lame. He said that according to Ms Parish's email, she had informed Ms Gray that the horse was badly cast as you could see the injury to the near hind leg. He referred to other charges and penalties but noted that the Stewards had decided to charge with not taking reasonable steps to alleviate the pain inflicted. He said that everything had been taken into account, in terms of the evidence that was put forward. He said that Ms Gray had shown no remorse throughout the Inquiry about what she had done wrong in taking steps to see that the horse was lame. Mr Free said that the purpose of Dr Jackson's report was to show that the horse was lame.

Determination against Conviction

28. There is no dispute over a number of relevant facts. It is not disputed that Ms Gray did not see the incident, that she was told that the horse had had its leg over the rail, that she rode the horse to the bullring, that she led it back to the wash area and applied a cold hose to the area of the injury, and then took the horse home and gave it Bute, an anti-inflammatory pain relief medication.
29. What is in dispute, relevant to the charge, is the extent of any lameness, whether Ms Gray was advised that the horse was lame by anyone before she assessed it herself, whether any lameness was evident at the time Ms Gray assessed the horse in the stalls and before she rode it, and whether it was reasonable for Ms Gray to give the horse light exercise before making the decision to treat it for injury, and whether it was reasonable that she rode it in the course of that assessment.
30. Importantly the charge makes no reference to any conduct other than conduct related to taking steps, or failing to take steps, to alleviate any pain upon or being suffered by the horse. For this reason, the Board makes no determination as to the disputed exchange of words between Ms Gray and Ms Parish. Ms Parish's evidence, therefore, taken at its

highest, is that in her opinion the horse was lame and that she informed Ms Gray the horse had been badly cast and that Ms Gray was aware of that fact.

31. There is no clear evidence that Ms Parish had said to Ms Gray that the horse was lame. Ms Gray does not accept that Ms Parish spoke to her at all, conceding only that Mr O'Shannessey had advised her the horse had got its leg over the rail. Mr O'Shannessey was not asked whether he made any comment about the horse being injured and Ms Gray's evidence was that he did not. There was no evidence that Ms Gray had any knowledge of the observations made by Mr Nishitani, Mr Ganderton, Ms Parish or Mr O'Shannessey about the horse's lameness or otherwise. Ms Gray's position was that, upon receiving the information that the horse had been cast, she did an initial check for any abrasions and came back a short time later to assess for any injury. The question for the Board then, with regard to the charge of failing to take such reasonable steps as are necessary to alleviate any pain inflicted upon or being suffered by the horse, is whether Ms Gray's actions, based on the knowledge that the horse had been cast and there were visible signs of injury namely the removal of hair, were reasonable or not. The critical time as to whether the horse was exhibiting signs of lameness was therefore when Ms Gray was assessing it herself.
32. Dr Jackson's evidence was that, upon reviewing the footage from the training facility, the horse had a clear lameness. His evidence was the horse should have been treated with the ice principle, which he described as involving hosing, sometime strapping and, as soon as possible, some anti-inflammatory type treatment to treat the acute injury. He said at the Stewards' Inquiry that a person riding the horse was obviously going to put more weight on the leg and therefore cause more pain. He said in some circumstances, a little bit of exercise might be justifiable with a soft tissue injury but with an acute injury to a limb, if you do more exercise, you're going to do more injury.
33. The Board notes that the actions Ms Gray took were visual inspection for abrasions, riding for either or both of light exercise or assessment purposes to and around the bull ring (being 5 laps of 30 metres and 50-60 metres to get there), trotting for 2 minutes or less, cold hosing and then taking the horse a short drive home and immediately giving inflammatory pain relief.
34. Dr Jackson expressed that riding a horse with an acute leg injury would have caused it pain. Dr Jackson says that the horse was clearly lame. Ms Gray says she assessed the horse by giving it light exercise and upon doing so, formed the view that she should not train it and should take the horse home to administer pain relief. To the extent that Dr Jackson's evidence was that the horse was lame, it was not inconsistent with the conclusion ultimately drawn by Ms Gray after riding the horse.
35. The Board had before it a letter of Dr Boland submitted by Ms Gray, which was not available to the Stewards at the time of the Inquiry and which was unable to be tested at the hearing, as Dr Boland was not present, indicating the level of lameness could not be assessed from the video footage. The Board gives little weight to this evidence.
36. Ms Gray did not see the incident occur but was aware that the horse had been cast. She undertook an initial assessment of the horse immediately upon being told of the incident to look for any abrasions that might need urgent attention. She observed there was hair off but no abrasions. Notwithstanding that she had limited information and there was no evidence she had been advised of an injury specifically, Ms Gray was on notice that there had been an incident which may have caused an injury. She was also aware that there was at least some indication that the horse's leg had been injured by the hair being

off the affected area. When she returned to the horse after finishing work on another horse, to fully assess it, it was not resting its back leg. Ms Gray said at the hearing that she had no one to assist her in her assessment by leading the horse for her. There was no evidence that Ms Gray had made any attempt to assess the horse by leading it herself. She considered the horse to ordinarily have an unusual gait. She assessed the horse as stiff when she first mounted it but felt it become less so as she rode it. She nevertheless rode it to the bull ring and around the bull ring, including trotting it, before, deciding to dismount the horse to lead it to the wash bay for a cold hose to the area. She then loaded it to take it home to administer pain relief in the form of Bute. She estimated the drive home to be 5 minutes. Mr O'Connell said it may have been 10 minutes.

37. Having considered the submissions of the parties, the race film, which was unfortunately quite limited but clearly showed that the horse was lame while being ridden by the Appellant, and the evidence before the Board, the Board is comfortably satisfied that the Appellant failed to take all reasonable steps to alleviate any pain inflicted upon or being suffered by the horse, albeit we accept that she did not act with total disregard for the welfare of the horse. In circumstances where there was a reasonable likelihood that the horse had suffered an injury, it should not have been ridden. The Board does not accept that she would have been unable to observe the horse for lameness if she led it herself. Further, she would have had less capacity to visually assess the horse for lameness by riding it. Given her evidence about the horse's unusual gait, it is difficult to accept that riding the horse was the only way that Ms Gray could have assessed the horse for lameness in the circumstances. The proper course would be for Ms Gray to have assessed the horse by leading it and only if it was assessed to be sound should it have been ridden for any purpose.

38. The appeal against conviction is dismissed.

Submissions and Determination on Penalty

39. At the Stewards' Inquiry and at the hearing, evidence was given and submissions made that even if the Appellant had not made the right decision, then this had not been intentionally done and was based on a misunderstanding of the recommended process following an injury. The Stewards quite appropriately considered the Appellant's record in respect to previous charges. They found nothing of relevance to this charge. The Appellant noted she had been in the industry for 16 years. Stewards invited the Appellant to make a submission as to how a fine might impact upon her lifestyle, which she did, indicating that "it wouldn't be ideal".

40. The Board is not satisfied that there was any error in the manner or decision making process of the Stewards at first instance when assessing and/or determining penalty or that the penalty imposed was manifestly excessive. The charge relates to the care and welfare of horses such that consideration must be given to imposing penalties that will make perfectly clear the need to put animal welfare at the forefront of every decision taken in respect to a horse in the industry. Animal welfare is a matter of vital importance to the racing industry. It is key to ensuring the integrity of the industry. failures to meet appropriate standards, not only harm the animals involved but affect the reputation of the industry at large. A large proportion of the fine was suspended in this case, reflecting the mitigating circumstances and providing a mechanism to deter the Appellant from committing a similar breach. The appeal in respect of penalty is also dismissed.

41. In accordance with section 34(1A) and (2)(a) of the Racing Regulation Act 2004, fifty percent of the Appellant's prescribed deposit is to be forfeited to the Secretary of the Department. The Appellant is ordered to pay fifty percent of the cost incurred in the preparation of the transcript in accordance with s34(4A) and (4B)(a) of the Act.

DATED: 3 OCTOBER 2023