TASMANIAN RACING APPEAL BOARD

Appeal No 15 of 2023-24

Panel:	**Kate Cuthbertson SC (Chair)** **Amber Cohen (Deputy Chair)** **Rodney Lester (Member)**	**Appellant:**	**Matthew Cooper**
Appearances:	**Roger Brown (on behalf of the Stewards)**	**Rules:**	**AHRR 231(1)(e)**
Heard at:	**Stewards Room** **Elwick Racecourse** **6 Goodwood Road** **Glenorchy TAS**	**Penalty:**	**Disqualification of 5 months from midnight 14 January 2024 until midnight 14 June 2024**
Date:	**5 February 2024 and on the papers**	**Result:**	**Dismissed**

REASONS FOR DECISION

Background

1. On 5 January 2024, stewards conducted an inquiry into the appellant's conduct during the course of an event being held at the Carrick Park Paceway on 31 December 2023. The appellant is a licensed trainer but did not have any horses competing at the race meeting. On the evening of the event, stewards received a complaint from a driver, Mr Mark Yole (Mr Yole), that the appellant had assaulted him by grabbing him around the throat as he was heading back to the stalls area after competing in Race 6. Stewards also spoke to two other witnesses about the incident on 31 December 2023.

2. During the course of their subsequent investigation, stewards spoke with the appellant on 2 January 2024 at his home. During the course of that interview, he conceded that he had made contact with Mr Yole on the evening in question by scruffing him. A body worn camera was operated during the course of the interview and stills of that footage show the appellant demonstrating that he grabbed (or scruffed) Mr Yole's clothing with his left hand to the collar area.

3. On 3 January 2024 and following that interview, the appellant was advised in writing that an inquiry would be held to inquire into the incident. In that letter, the particulars of the charge being considered was put by stewards as follows:

   That on Sunday 31st December 2023 at Carrick Park Paceway, being a licensed person, you assaulted licensed participant Mr Mark Yole by contacting his neck region while he was seated in his sulky, and that as such you are in breach of AHRR 231(1)(e).

4. AHRR 231(1)(e) provides as follows:

   A person shall not: Assault anyone employed, engaged or participating in the harness racing industry or otherwise having a connection with it.

5. At the inquiry held on 5 January 2024, stewards briefly outlined the allegation made by Mr Yole and the appellant's response to that allegation given during the course of the interview. It was noted that the appellant had been provided a recording of the interviews conducted with Mr Yole and the two witnesses, Mitchell and Nathan Ford. He was also provided with a recording of the interview he had with stewards on 2 January 2024.

6. During the inquiry, the appellant told stewards that he did stop Mr Yole in the parade ring as the horses were coming off and that he did grab Mr Yole after he thought he said something derogatory or bad about one of his horses. He was unable to specify what Mr Yole had said, stating he was not a "hundred percent or even fifty percent" and could not say that he had said something about his horse. He conceded that Mr Yole could have said something like "watch where you're going" or words to that effect. Following that discussion, the charge as outlined above was again put to the appellant. He confirmed that he was admitting the breach of the rule.

7. During the penalty discussion that followed, the appellant indicated he had grabbed Mr Yole's shirt and that he did not do so in a forceful manner. He admitted he had overreacted, that he had applied force and trespassed Mr Yole's body and stated it was minimal and at the lower end of an assault charge. He stated that he thought he had grabbed Mr Yole, asked him "What did you f'ing say" then let him go. Mr Yole had also indicated to stewards that the appellant had not persisted with the contact. The appellant explained that he had been feeling pretty emotional at the time as he had, before the incident, been discussing the accident which had resulted in the death of his horse CALL ME HECTOR. He stated he was in a world of his own, daydreaming, when he nearly walked into Mr Yole's horse. He had been drinking beer during the course of the day and footage of the moments before the incident and witness accounts suggest he was holding a beer can at that time, but he denied being affected by alcohol to any significant extent.

8. In arriving at penalty, Stewards noted that this was a second offence of a similar nature in a relatively short period of time. It was noted that the last penalty imposed was a suspension, but that had not had the desired effect of deterring the appellant. The appellant raised a number of other cases where fines had been imposed for what he argued were more serious assaults. He argued that the penalty imposed in respect of his previous matter was excessive. Stewards indicated that the other cases referred to by the appellant were distinguishable. Stewards indicated that a 6 month disqualification was an appropriate starting point but discounted that due to his early admission. A penalty of 5 months disqualification was ultimately imposed.

9. Stewards issued a written decision on 5 January 2024. They explained the background to the offence as follows:

   > "(d) When the horses which had competed in Race 6 were traversing their way back to the stalls area [the appellant] inadvertently stepped into the path of James Cagney, driven by Mr Mark Yole.
   > (e) [The appellant] then turned toward Mr Yole and contacted Mr Yole in the neck region with his hand.
   > (f) [The appellant] then released his grip on Mr Yole and exited the vicinity, and shortly after left the Carrick complex.
   > (g) Mr Yole subsequently reported the incident to Stewards.
   > (h) The Stewards took evidence from Mr Yole, together with evidence from driver Nathan Ford and Mitchell Ford, who were both in close proximity.
   > (i) [The appellant] was interviewed on Tuesday 2nd January 2024 at his property where he confirmed he had contacted Mr Yole in the throat region."

10. In their written decision, stewards noted that penalties for such matters are designed to punish the offending but are required to be proportionate to the offence. The aims of specific and general deterrence were also referred to. They noted this offence constituted a second conduct related breach of the rules committed by the appellant in recent years and was strikingly similar to conduct displayed in the 2021 incident where he made physical contact with another licensee. Stewards indicated that they did not accept that Mr Yole had said anything derogatory to the appellant, noting that there was no evidence to suggest he had uttered anything except to alert the appellant that he was in his path. Stewards referred to a number of decisions in Tasmania and other jurisdictions noting that they concerned first-time offenders. They expressed the view that the offending in this case was moderate, noting that after "placing his hand around Mr Yole's neck" the appellant desisted and the matter ended quickly.

11. In arriving at penalty, stewards stated that it was entirely unacceptable for a licensed person to conduct themselves in the manner in which the appellant did and that the penalty imposed ought

hold him accountable for his actions and discourage others from similar offending. A period of disqualification was considered appropriate given it was the appellant's "second breach of a conduct related rule within three years where he has seen fit to lash out [at] another licensed participant without provocation". In their view, a penalty falling short of a period of disqualification would not be sufficient to send the message to the appellant and the industry at large "that behaviours involving unsolicited physical contact are unacceptable and improper".

12. The appellant has appealed both his conviction and the penalty imposed. In his notice of appeal he set out his grounds as follows:

    Conviction: I was not afforded natural justice which denied an opportunity to fully reply to the charge.
    Penalty: the penalty is excessive and not consistent with similar incidents.

Appeal hearing

13. This appeal was originally heard on 5 February 2024 by a panel of the Board constituted by the Chairperson, Deputy Chairperson Cohen and Member Ms Wendy Kennedy. Prior to the decision being made, Ms Kennedy's membership of the Board expired. With the appellant's consent, the panel was reconstituted to determine the matter by substituting Member Mr Rod Lester. He was provided a transcript of the original hearing together with the material that was before Stewards and the additional documents relating to previous determinations in assault cases referred to during the course of the hearing by the parties. Having considered that material, Member Lester did not require that a further appeal hearing be convened. What follows is the decision of the reconstituted panel.

Conviction appeal

14. Given the appellant had entered a plea of guilty to the assault charge, it was necessary to understand the basis upon which he sought to withdraw his plea and of his argument that he was not afforded natural justice. Further information was sought from the appellant prior to the hearing of the appeal.

15. In response to a query regarding the basis upon which he sought to withdraw his plea, the appellant responded:

    My original plea was given on a specific action of my own admission. Yet in the stewards (sic) *decision the action described was not and has never been admitted too* (sic) *by myself. Furthermore this action was never raised and substantiated as I was not shown witness statements. Below is an email I sent to stewards 10.01.2024 outlining these concerns.*

    > *Ross, it is totally false that publications are saying that I grabbed Mark Yole to his throat. I never admitted to that and never had a chance to submit witnesses to that fact. Natural justice was not followed as to allow a defence otherwise. A poor assertion to make with evidence that I did not see.*

16. In response to a further request for information, the appellant said:

    1. As per my interview with Stewards at my property 02.01.2024, I did actually verbally and physically describe how I grabbed Mr.Yole. No mention of hands around his neck was ever raised. At the inquiry as I recall, Mr Brown gave a summary of events that day, stating that Mr. Yole had come into the Stewards room saying he had been assaulted. I cannot recall ever hearing that I placed my hands around his throat. I did plead guilty to what I thought was an admission to "contacting his neck region while he was seated in his sulky" as to my grabbing him by the jacket. That is why I was surprised when reading the Stewards decision and media reports of grabbing Mr. Yole around the throat, hence my email to Mr. Neal.

    2. As with regard to the particulars, it is of enormous difference as to my plea. In my opinion it is akin to punching someone as to pushing someone. The intent to hurt with applied force

through a punch or grabbing someone by the throat is totally different than scruffing a jacket. I did not want to hurt Mr. Yole. I would not have pleaded guilty if I was aware of the particulars that the Stewards were charging me over. It was an overreaction not malicious intent, guilty vs not guilty.

17. The appellant made similar submissions during the course of the appeal. He perceived that there was a distinction between the application of force he admitted to and that described by stewards in their decision. He submitted that he was denied natural justice because he did not have an opportunity to put his version of events, including by calling his own witnesses, in circumstances where he was led to believe his version of what occurred had been accepted by stewards.

18. The Board does not consider that the appellant has raised any issue to warrant allowing him to withdraw his plea and disturb his conviction for a charge pursuant to AHRR 231(1)(e). On any version of events, the appellant applied force to Mr Yole who was then engaged in the harness racing industry. That application of force, as acknowledged by the appellant, was unjustified. There is no suggestion the appellant was acting in self-defence. It was an application of force that was intentional and aggressive in nature. To the extent there is any difference between the version of events as accepted by stewards and the put forward by the appellant, that could only be relevant to penalty.

19. The appeal against conviction is dismissed.

Appeal against penalty

20. The appellant in effect has submitted that stewards have imposed a penalty upon him on the basis of an assessment of the factual circumstances with which he did not agree, a conflict which they failed to resolve. In addition, the appellant submits that the penalty is otherwise excessive. He submitted that his previous matter was not a charge of assault, that like incidents in other cases have resulted in penalties falling short of disqualification and that stewards failed to give adequate consideration to his circumstances and the impact of disqualification.

21. As to the factual basis upon which stewards proceeded to impose penalty, there is no question that the conduct described in the charge put to the appellant is consistent with the account he gave, that is that he made contact with Mr Yole's neck region. The appellant's complaint focusses on a statement in the stewards' written decision that the appellant "did place his hand around Mr Yole's neck". Other references to the contact in the decision refer to making contact with Mr Yole's neck or throat region.

22. Stewards submitted that they had proceeded on the basis put forward by the appellant. The reference to the appellant placing his hand around Mr Yole's neck was not intended to be interpreted as conduct any different to that admitted by him. The language used by stewards is somewhat loose, however, the Board considers that this aspect of the appeal can be readily resolved by dealing with the balance of the issues by assessing the appropriateness of the penalty imposed on the basis that the application of force constituting the relevant assault was as described by the appellant.

23. In respect of the appellant's prior matter relied upon by stewards, the appellant has submitted that it concerned a breach of a different rule, namely AHRR 231(2). That rule provides that a person shall not misconduct himself in any way. The appellant's offence report does not disclose the conviction or penalty imposed in relation to the matter for reasons which are not clear to the Board. There was, however, no dispute that the appellant had been charged and found guilty of an offence contrary to AHRR 231(2) and had been suspended for a period of 2 years. Nor was there any dispute as to the context in which that penalty was imposed.

24. In 2021, samples taken from a horse trained by Mr Cooper on 2 separate occasions were found to contain the prohibited substances Stanozolol (an anabolic steroid), GW501516 (a hormone and metabolic modulator) and o-desmethyltramadol (the main active ingredient in tramadol). In May 2021 and pending the inquiry being held into the prohibited substance allegations, stewards were

alerted to the appellant's conduct at a race meeting. He was intoxicated, was yelling and making a scene in the bar and then became involved in a verbal altercation with two other participants in the stabling area. When stewards arrived, they found the appellant wrestling another participant. As stewards tried to break the wrestle up, the appellant bit the other participant on the face drawing blood. In the course of trying to get the appellant away, he scruffed the acting chair of stewards and pushed him backwards. He also grabbed another steward. Stewards attempted to talk the appellant down, but he was not co-operative. Police were called. He refused to leave and had to be taken away by police. Following this behaviour, stewards suspended the appellant's licences on 23 May 2021 pending the inquiry.

25. Before the misconduct matter was dealt with, the appellant was disqualified for a period of 12 months from 20 August 2021 on the prohibited substance matters. The inquiry in respect of the appellant's behaviour in May 2021 was not conducted until after the appellant's disqualification was served. He was ultimately suspended on that charge for 2 years, backdated to 23 May 2021 with the last 6 months of that penalty suspended. As the Board understands it, the effect of this was that the appellant was suspended for a period of approximately 3 months after the expiration of his disqualification on the prohibited substance charges.

26. The appellant has asserted that the penalty that was imposed on the prior misconduct matter was excessive. The penalty was not, however, appealed. It is not for this Board to retrospectively determine whether the penalty was appropriate or not. In light of the complainant's egregious conduct, however, it does not appear to the Board that such a complaint has any merit. Further, there is no merit in the appellant's submission that the misconduct matter is not the same type of offence as the assault matter. It involved serious assaultive behaviour and was quite rightly regarded by stewards as demonstrating highly concerning conduct on the part of the appellant towards other participants and officials that is completely unacceptable. It was appropriate that stewards take this past conduct into account when determining penalty in this matter.

27. A national record of penalties imposed for breaches of AHRR 231(1)(e) since 2021 discloses that penalties imposed have included fines, suspensions, warning off and disqualification. Two disqualifications of 6 months have been imposed. There is no record of those penalties being appealed. In two cases, warning offs have been substituted by fines following an appeal. In respect of two other disqualifications, on appeal one was replaced by a fine, the other replaced by a fine and a wholly suspended suspension.

28. The Board has also been referred to a number of appeal and tribunal decisions[1] and integrity updates dealing with charges pursuant to AHRR 231(1)(e). The integrity updates are of limited assistance as the details of the conduct involved or the participants prior matters are not provided in sufficient detail. In respect of the appeal decisions, they are readily distinguishable from the appellant's matter. First, none of the successful appellants had relevant prior matters. Secondly, a number of the incidents arose from melees or other incidents where provocation was accepted as an explanation. In the case of the Victorian Racing Tribunal decision, it was accepted that the participant's conduct was a pre-emptive response to a perception of potential danger. A 4 month suspension was imposed in that case.

29. During the course of the hearing, stewards emphasised that Mr Yole was in a vulnerable position when he was assaulted. He had just finished a race, had his feet in the stirrups and hands on the reins. He was in his workplace and had a right to go back to the stables without any interference. There was no justification for the appellant's conduct. Stewards submitted that it was appropriate to impose a penalty to both attempt to deter the appellant from conducting himself in this way in the future and to send a clear message to the industry that such conduct is unacceptable and will not be tolerated.

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[1] NSWHR Appeals Panel - HRNWS v Appellant Darren Elder 20 February 2024; HRNSW November Integrity Updates & Information (2023) – Inquiries Conducted; Queensland Racing Appeals Panel – RAP-50 (Adam Russo); Queensland Racing Appeals Panel – RAP-49 (Justin Downey); Queensland Racing Appeals Panel – RAP-47 (Jack Trainor); Queensland Racing Appeals Panel – RAP-48 (Jason Grimson); Victorian Racing Tribunal – HRV v Dylan Marshall (19 September 2023); HRNSW May Integrity Updates & Information (2021) – Inquiries Conducted.

30. The Board agrees. It is accepted that the appellant did not persist with his assault and that it was short lived and caused no injury to Mr Yole. It was, however, entirely unacceptable conduct. It occurred in circumstances where Mr Yole was vulnerable and going about his business as he was entitled to do. The appellant's conduct is difficult to explain. There is no rational reason for him to behave the way he did. He made early admissions to his conduct, but that is of limited mitigation given his conduct was witnessed by others.

31. In the circumstances, the Board considers that the penalty imposed was not excessive in the circumstances. The appeal against penalty is also dismissed.

32. In accordance with section 34(1A) and (2)(a) of the *Racing Regulation Act 2004*, 50 percent of the appellant's prescribed deposit is to be forfeited to the Secretary of the Department. The appellant is also ordered to pay 50 percent of the cost incurred in preparation of the transcript in accordance with section 34(4A) and (4B)(a) of the Act.

DATED: 17 APRIL 2024