

# TASMANIAN RACING APPEAL BOARD

## Appeal No 28 of 2023-24

<b>Panel:</b>	<b>Ms Amber Cohen (Chair)</b>	<b>Appellant:</b>	<b>Mr Craig Newitt</b>
<b>Appearances:</b>	<b>Mr Bruce Free (on behalf of Stewards)</b>	<b>Rules:</b>	<b>AR 210(1) A rider must weigh in when required to do so</b>
<b>Heard at:</b>	<b>Conference Room Office of Racing Integrity Prospect Government Offices 171 Westbury Road Prospect TAS</b>	<b>Penalty:</b>	<b>\$500</b>
<b>Date:</b>	<b>24 May 2024</b>	<b>Result:</b>	<b>Dismissed</b>

### REASONS FOR DECISION

1. On 24 May 2024, the Board heard this appeal.
2. The appellant, Mr Newitt, was the rider of BANKROLLBENNY. This appeal concerns the conduct of Mr Newitt following race 7 on 24 April 2024, at a meeting held by the Devonport Racing Club.
3. Stewards held an Inquiry on 24 April 2024, at which they heard from the appellant and Ms Brittany Hine, who was the clerk of scales on that race day.
4. After the Inquiry, Stewards charged Mr Newitt under Australian Rules of Racing 210(1), which provides:

A rider must weigh-in when required to do so.

5. Stewards gave the following particulars:

The particulars of the charge are that you as the rider of BANKROLLBENNY in Race 7, on returning to scales, failed to weigh in when required to do so after winning on BANKROLLBENNY.

6. Stewards asked Ms Hine what happened that afternoon. Ms Hine gave this evidence:

CHAIRMAN: You are the clerk of scales this afternoon, Race 7, we were adjudicating, you said to me at the end of the meeting that you were waiting for Mr Newitt to weigh back in.

MS HINE: Yes.

CHAIRMAN: You're fully certain that Mr Newitt didn't weigh in?

MS HINE: Yes I had nothing written down for him (inaudible).

CHAIRMAN: So you would write it down if he comes in, or circle it, or whatever on the thing?

MS HINE: Yes, they're written down as soon as they get on the scales.

7. After Stewards put the charge to Mr Newitt, he pleaded not guilty. He said this was because he knows that he weighed in. When asked how he knows that he weighed in, he said:

Well, if I hadn't of weighed in I would have still had my number with me.

8. When Mr Newitt was asked where his number was, he said:

Where it's meant to go. Where you drop them off before you go into the Scales room. I know I weighed in. I know I weighed in. Anyway, carry on.

9. Mr Newitt went on to say "she just hadn't written it down".

10. Having heard from Mr Newitt, Stewards formed the view that they could sustain the charge and invited Mr Newitt to put a view forward as to penalty. Mr Newitt declined to comment on penalty. He did, however, raise a query about how correct weight had been given if he had not weighed in. Stewards replied that they can choose to give correct weight even when a winner did not weigh in.

11. The appellant has appealed against the conviction and penalty, and in his notice of appeal says the following:

That I weighed in and the clerk of scales failed to write it down, correct weight was declared and only afterwards I was accused of not weighing in. "Correct weight" is exactly that, all riders weighed in correctly and yet as the winner, I'm accused of not weighing in.

12. The Board considered the transcript of the Stewards' Inquiry and noted the matters outlined above at paragraphs 6 to 10.

13. The appellant made statements at the hearing that were largely consistent with what he had said at the Inquiry. He believed he had weighed in. He was not able to explain why it had not been written down. He said also that he had not had as many rides from a certain trainer or trainers since this incident, indicating this has had a detrimental effect on his reputation.

14. At the hearing, Mr Free on behalf of Stewards explained that on the afternoon in question, he had gone to the clerk of scales after Race 7 and asked her what she was waiting on. She had advised him that she was waiting on Mr Newitt to weigh-in. Mr Free said that he then sought out and advised Mr Newitt he had not weighed in, to which he replied "are you sure?". This was at least 15 minutes after the race had finished and Mr Newitt had removed his riding gear and was preparing for a shower. He said that Stewards have a discretion to announce correct weight or to disqualify the horse. He discussed with other Stewards what they wanted to do as a result of Mr Newitt not weighing in and they did not wish to disqualify so they declared correct weight. He said Stewards were not concerned that Mr Newitt had not carried enough weight, but rather they saw it as an oversight. Nevertheless, he said the obligation was on riders to ensure they had weighed-in. Mr Free provided to the Board a copy of the weigh-in sheet for Race 7, which showed handwritten notes of the weights of all riders having weighed-out and weighed-in, with the exception of Mr Newitt, who had a blank space under his weigh-in record, with a circle around the blank space. Mr Free explained Ms Hine had circled it and shown it to Mr Free when he spoke with her after the race.

15. Mr Free sought to call Ms Hine, without notice to Mr Newitt, although Mr Newitt was agreeable to this. Ms Hine provided a written statement to the Board explaining the set up of the Scales room and her procedure in recording weights. Mr Newitt did not object to the Board receiving

the written statement. Ms Hine also gave oral evidence, which was largely consistent with the statement she had prepared. She said that after the completion of Race 7, she had recorded all weights bar Mr Newitt and she informed Mr Free of this. She said after Mr Free had informed Mr Newitt that he had failed to weigh in, he came to the doorway of the Scales room and said "Didn't I weigh in?", to which she replied no, she had not seen him in the Scales room since the completion of the race. After that occurred, Mr Free signed the weigh-in sheet and after some back and forth, Ms Hine informed the broadcaster and judge "correct weight on judges [sic] numbers". Mr Newitt asked Ms Hine if she had told another person working that afternoon that Mr Newitt had been in the Scales room. Ms Hine denied this.

16. Mr Newitt did not disagree with the evidence of Mr Free except as to the words he said to him when he was informed he had not weighed in. Mr Newitt's evidence was that he had replied to Mr Free, "what do you mean?". As for Ms Hine's evidence, Mr Newitt submitted that Ms Hine had been mistaken. He had weighed in and she had failed to write it down. He said his argument was that he should not be punished for someone else's mistake.
17. As to Mr Newitt's record, the Board notes that at the Inquiry, Stewards had noted no prior record of a breach of this rule. Mr Newitt had advised Stewards that he had ridden more than 13,000 races. At the hearing, Mr Newitt noted that he had short-changed himself. He had, in fact, ridden in more than 19,500 races. Stewards did not question this history and did not submit any prior breach of this rule had occurred.
18. The Board notes that there was no video footage available of the area to corroborate Mr Newitt's evidence, nor were there any independent witnesses available. Unfortunately, this was a case of he said, she said. All witnesses and parties were open and frank before the Board.

#### **Determination of Appeal against Conviction and Penalty**

19. The Board has considered the evidence and submissions of each of the parties to this appeal.
20. The Board accepts the evidence and submission put by Stewards. In particular, the process by which the clerk of scales records the weights after a race and the process on the afternoon in question, including her discussions with Stewards when Mr Newitt had failed to weigh-in. The Board accepts also the evidence of Mr Free as to what discussions occurred after the race, which support the determination of Stewards. The Board takes Mr Newitt's failure as a procedural oversight, rather than a deliberate breach of the rules.
21. Taking into account the requisite standard of proof and the evidence available, the Board is comfortably satisfied that the evidence demonstrates that Mr Newitt failed to weigh-in.
22. Other than the evidence given as to Mr Newitt's long record of racing without breach of this rule, no submissions were made as to penalty by Mr Newitt. Stewards noted at the Inquiry no previous breaches of this rule and at the hearing, said they took into account that Mr Newitt had won this particular race so the fine took into account Mr Newitt's likely higher earnings for this race in determining \$500 to be an appropriate fine. The Board is satisfied that Stewards gave adequate consideration to the factors relevant to penalty.
23. As a consequence, the appeal is dismissed and the decision of Stewards as to conviction and penalty affirmed.
24. Pursuant to ss 34(1A) and (2)(a) of the *Racing Regulation Act 2004* (the Act), the appellant is ordered to forfeit fifty percent of the prescribed deposit. Further, pursuant to ss 34(4A) and (4B), the appellant is ordered to pay fifty percent of the costs incurred in the preparation of the transcript prepared in relation to this appeal.

**DATED: 18 JUNE 2024**