Appeal decision

Decision date: 18 August 2015

Hearing date: 9 June 2015

Code of racing: Harness

Appeal panel: Mr Brock Miller (Chair)
Mr Paul James
Mr Daryl Kays

Appearances: Trevor Ian Lambourn (Appellant)
Racing Queensland (Respondent)
Mr R Oliver of Counsel appeared on behalf of the Appellant
Mr D Kent QC appeared on behalf of the Respondent

Decision being appealed: Two charges contrary to AHR Rule 173(1) - $10,000 and disqualification for 2 years from 28 February 2015

Appeal result: $10,000 to be reduced to $2,000 and the disqualification period of two years to be reduced to nine months.

The Appellant is a licensed harness racing trainer in Queensland and was the subject of an inquiry undertaken by the Stewards arising out of an incident whilst he was the driver of the horse *Kalvin* at Albion Park on 27 February 2015. The Stewards were concerned at the performance of the horse and at the conclusion of the inquiry identified that the matter would receive further attention particularly with respect to any betting trends of that horse on the day in question. It appears at that point in time the Appellant identified to the Stewards that he had backed the horse and on reviewing his betting records from his telephone, the Stewards identified that he had also backed number 7 in the race. That horse was also associated with his stable as a result of his wife's interest.

It became quite apparent to the Stewards that the trainer was unaware that he was barred by the Rules from betting in a race in which he participated. As a result of that initial revelation, the Stewards undertook a significant investigation into the history of betting by the Appellant in races in which he had bet and in which he had driven. There were numerous contradictions in the evidence but suffice to say that it was apparent that the Appellant had opened a betting account in his name many years prior and had used that account for betting primarily on thoroughbred races but suffice to say the account had also been used by him to bet on horses which he drove and other horses in which he had an interest which participated in the harness racing industry and at the same time that same betting account had been used by his wife who was, it became apparent during the course of the inquiry, a regular gambler on harness racing.

As can be seen from the Stewards' report, the first charge included 288 bets where he participated as the driver and 33 occasions where he wagered on the horse he drove and another runner from his own stable driven by someone else. The second charge included 40 occasions on both the horse he drove and on runners trained and driven by other people. As can be appreciated, the Stewards took into account the seriousness of these charges and imposed the penalties of $10,000 plus a disqualification for two years. The plaintiff had no hesitation in admitting that he had breached the Rules even though he was unaware that he was forbidden to do so, but he made it plain that the vast majority of bets, and we are talking here of significantly more than 50 per cent thereof, were placed on his account in his name but not by him. These bets it subsequently became common knowledge had been placed by his wife. The Stewards believed that his reluctance to be forthright identified that he had much to hide and doubted the veracity of his allegations relative to the wife.

The evidence supports a suggestion that even on his own estimates of what horses he backed, he did admit to breaching Rule 173 on no less than 20 occasions and as such, it was irrelevant whether his wife can be claimed to have been the major user of the account. Whatever the number of bets he alleges he may have had, he most assuredly breached the relevant rule of racing and no matter which way one looks at the equation, it is impossible to determine otherwise than that he was guilty of the offences charged.

The Stewards were concerned to ensure that the penalty they imposed should be sufficient to be reflected as a significant deterrent to future conduct of this type of activity both by the Appellant and by others in the industry. In doing so, they referred to numerous instances of offending against Rule 173 and quoted many cases involving jockeys Oliver, Shinn, Robl and other persons significantly penalised along similar lines. Oliver for instance was suspended for a period of two months following an 8 months disqualification, Shinn received a 15 month disqualification and Robl was disqualified for 3 months for each breach that he faced and for a further 6 months for giving false and misleading evidence. Other matters that were referred to showed periods of disqualification ranging from six months to 12 months.

The Appellant strongly argued that the penalties imposed against him were far and away outside the ordinary and were excessive in all the circumstances. He did accept through his counsel that a penalty had to be imposed for his breach of the Rule but he wanted it resolved on the basis that as he was responsible only for five per cent of the bets, then the penalty should be reduced by a significant margin almost to the time already served.

This Board accepts that the Appellant was not the author of all of the bets but is not in a position to identify the actual percentage or number thereof. Suffice to say, even on his admission, 20 bets is a significant number and it warrants a significant penalty being imposed. In respect to placing bets on horses that he was driving as had been set out in Exhibits 1, 2 and 3 submitted to the Stewards, he was fined the sum of $10,000. In respect of placing bets on horses other than those that he had driven but which competed in the same race and which were noted in Exhibits 4 and 5 to the Stewards, he was disqualified for holding a trainer's licence for two years. The Stewards believed that as the account was in his name that he was responsible for all of the bets and the penalty imposed presumably reflected same. This Board does not agree that that is the correct procedure to have been adopted in imposing a penalty.

Mr Oliver Counsel for the Appellant agreed in this Appeal that the penalty that was imposed by Stewards was a significant penalty but argued that the imposition of such penalty can only be based on the finding that Mr Lambourn, the Appellant placed all of the bets in the Exhibits. That seems to be the approach so far as this Board is concerned and as stated above, it is not appropriate for the penalty to be maintained in such circumstances. Interestingly, Rachel Scott, the partner/wife of the Appellant, acknowledges that it was she who placed the majority of all of the bets on horses that participated in races which opposed horses driven by the Appellant. The Appellant admitted at the outset of the Stewards' inquiry that he also backed number seven in the race in which Kalvin participated which he drove. It seems however more likely than not that Rachel Scott was the author of that bet and that the penalties imposed by the Stewards on Mr Lambourn should be reduced. This Board accepts that Lambourn was ignorant of Rule 173(1). There is no doubt that his being allowed to bet on horses in races which he was driving could possibly undermine the public's confidence in the integrity of harness racing and as a result he must be penalised. This Board has also taken into account the fact that the Appellant proffered the evidence that he had bet upon the horse Kalvin and on the other horse but it is the belief that he did so, more so because at the initial inquiry he was concerned that he may face much more serious charges of failing to allow a horse to run on its merits. There is no suggestion that the Stewards intended to press such a charge but they certainly were entitled to enquire into the betting trends because of the performance of the horse in question. In the opinion of this Board the financial penalty of $10,000 should be reduced to $2,000 and the disqualification period of two years should be reduced to nine months.