Appeal decision

Date: 9 March 2015

Code of racing: Harness

Appeal panel: Mr B Miller (chair), Mr P James and Mr D Kays.

Appearances: Mr S Neaves, barrister, appeared on behalf of trainer-driver Gary Vernon.

Mr D Farquharson, stipendiary steward, appeared on behalf of the stewards.

Decision being appealed: Fines totaling $4,500 and six months' disqualification – AR 173(1)

Appeal result: Appeal dismissed. Disqualification penalty varied.

Extract of proceedings – in the matter of a decision concerning betting activities of trainer-driver Gary Vernon between May 2014 to July 2014 with Bet 365 and drives in certain harness races.

THE CHAIRMAN: This appeal was confined to an appeal in regard to penalty only and the basis of the appeal was that the period of disqualification of the appellant was excessive in all the circumstances having proper regard to all of the facts, the antecedents of the appellant and on the decided cases and on questions of law.

There were 12 charges in all and on five of these charges the appellant received a period of six months disqualification for in essence placing bets on horses other than the horse he drove in harness races. It was conceded in the appeal by Mr Neaves on behalf of the Appellant that the fines also imposed in respect of these offences totaling $4,500 were about right however the appellant argued that the period of disqualification bearing in mind all of the relevant factors to be discussed later in this judgment was excessive, and that the period of disqualification of six months on five of the charges should have been served concurrently and not cumulatively.

Mitigating circumstances

It is quite clear from the transcript and from the stewards' submissions to this board that the appellant was at all times cooperative and readily admitted his culpability with a guilty plea to the stewards' inquiry at an early stage. (page 33 of transcript, line 1). It is also significant that the stewards, as they are required to do, inquired into the circumstances of each race in which the appellant drove and did not find any evidence that the result of the races in which the appellant drove were in any way contrived or compromised or that the result was in any way affected by the manner in which the appellant drove his horse or the manner in which other horses in those races were driven (page 36 of transcript, lines 13 to 14).

It is indeed noteworthy that in one particular race in which the appellant bet on another horse in that race the appellant actually won the race on the horse which he was driving.

In all instances, the appellant's bets were bets to win.

Past history

The appellant had a very good record concerning his past history, both training and driving, over a period of approximately 30 years in which he held a licence and significantly his appearances before the stewards were mainly in relation to interference related matters and not in relation to integrity issues.

Betting and decided cases

These offences occurred over a relatively short period of time, namely 54 days. The stewards in arriving at their decision quoted certain precedent cases including the thoroughbred cases of *Shinn and Robl* and in the latter case those offences occurred over a period of some two and a half years. We have taken note of those and other cases in our decision. In the case of *Robl* there were certain aggravating factors not present in the present case in that the offences were committed over a long period of time involving substantial amounts.

This board is aware of other thoroughbred cases (Oliver case) where the winning bet was substantially higher than the present case and the jockey stood to win many times more than in the present case. The case of Jackson Painting was also considered in which case the stewards had certainly considered a running and handling inquiry, but decided the evidence to support that charge under Rule 147 was not sufficient.

The appellant in this case is a hobby trainer and as such is not normally in the limelight. His betting gains on the evidence of the stewards were of the order of $2,500 in relation to the offences in which he was charged. His bets were bets to win. His gains were modest, although not insignificant when compared with the gains and bets in the precedent cases. The rule under which the defendant was charged, namely rule 173(1), is a rule which states as follows *"a driver shall not bet in a race in which the driver participates".*

Integrity issues

Obviously this rule is indeed one which sets out to uphold the integrity of the harness racing industry and any offending behavior must indeed have considerable consequences for the offender. We are also mindful the betting public must have confidence that rules to uphold the integrity of the industry are followed. In this particular case the appellant chose to ignore these rules although he was aware of them. As a board we understand only too well the stewards have a difficult job in enforcing the rules so that a level playing field exists so that all parties be they participants or the betting public can enjoy the industry and be confident in its integrity. These were matters which were certainly addressed before this Board and of which we are very mindful.

Any breach of the rules in this regard is considered by the stewards and also by racing authorities and this board to be a serious matter and will attract penalties so as to send a

message to the offenders that such conduct will not be tolerated. That being said, we must consider all relevant matters of significance in this appeal.

Totality principle in sentencing

Counsel for the appellant and also indeed the stewards also referred to a principle of law known as the totality principle as was applied in the High Court case of Mill v R [1988] HCA 70 and indeed in arriving at our decision we have considered this case and this principle and quoting from a passage in the judgment which is described succinctly in Thomas, Principles of Sentencing:

"The effect of the totality principle is to require a sentencer who has passed a series of sentences, each properly calculated in relation to the offence for which it is imposed and each properly made consecutive in accordance with the principles governing consecutive sentences, to review the aggregate sentence and consider whether the aggregate is 'just and appropriate'. The principle has been stated many times in various forms: 'when a number of offences are being dealt with and specific punishments in respect of them are being totted up to make a total, it is always necessary for the court to take a last look at the total just to see whether it looks wrong('): 'when…. Cases of multiplicity of offences come before the court, the court must not content itself by doing the arithmetic and passing the sentence which the arithmetic produces. It must look at the totality of the criminal behavior and ask itself what is the appropriate sentence for all the offences'."

Decision

In arriving at our decision this board has considered all of the matters above-mentioned. As it has been stated many times previously, it seems clear that there is considerable disparity in the sentencing decisions both from this state as well as interstate for all codes of racing and it is difficult to identify an established guideline of penalties.

Indeed, even the rules of thoroughbred and harness racing differ in that jockeys are not permitted to bet at all, whereas harness drivers are not permitted to bet in races in which they participate.

Harness trainers, however, if they train but do not drive a horse, are permitted to bet on that horse.

This board takes the view that each case should therefore be dealt with on its individual merits.

In this case the appellant seems to be of good character and standing. He has made an early plea and early admissions in relation to his offending conduct which entitles him to a discount in penalty. The offences were committed over a short period of time. There is no evidence whatsoever on the stewards evidence that the results of any of the races were in anyway compromised by the appellant's conduct. The appellant is a hobby trainer and is not normally a trainer-driver who is or seeks to be in the limelight. He has cooperated fully with the stewards. He only has two horses in work. His training and driving remuneration over a period spanning some 30 years has been very modest. His past driving record it appears has not unduly attracted the attention of the stewards.

It is our decision taking into consideration all of the relevant circumstances and considering the principle of totality in sentencing that the fines of $4,500 imposed by the stewards should stand and we so order.

Concerning the period of disqualification of the driving and training licences of the appellant bearing in mind all of the above considerations it is our decision that the periods of disqualification on the five charges of six months each should be served concurrently and not cumulatively and we so order.

Further right of appeal information: The appellant and the stewards may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **14 days of the date of this decision**. Information in relation to appeals to QCAT may be obtained by telephone on (07) 3247 3302 or via the Internet at www.qcat.qld.gov.au