RACING APPEALS TRIBUNAL NEW SOUTH WALES

TRIBUNAL MR D B ARMATI

EX TEMPORE DECISION

WEDNESDAY 4 AUGUST 2021

APPELLANT ANTHONY MABBOTT

RESPONDENT HARNESS RACING NSW

AUSTRALIAN HARNESS RACING RULES 240 X 2 AND 243

SEVERITY APPEAL

DECISION:

1. **Appeal upheld**
    a. **Penalties – Charges 1 and 2: 8 years disqualification on each**
    Charge 3: 5 years disqualification
    All penalties to commence on 27 May 2013 and be served concurrently
2. **Appeal deposit refunded**

1. Former licensed trainer and driver Mr Anthony Mabbott appeals against a decision of Harness Racing NSW of 23 June 2021 to impose upon him a total period of disqualification of nine years to commence on 27 May 2013 for three breaches of the rules.

2. The charges relate to AHR 240 and AHR 243 and were laid as follows:

Charge 1:

> AHR 240. A person shall not, whether alone or in an association with others, do, permit or suffer anything before, during or after a race which in the opinion of the Stewards or Controlling Body may cause someone to be unlawfully disadvantaged or be penalised, or is corrupt or otherwise improper.
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> "The particulars being that you, Anthony Mabbott, a person licensed as a trainer by Harness Racing NSW, did engage in conduct that corrupted the betting outcome of Race 1 at the Tamworth harness racing meeting on 17 April 2013 in that you had a pre-race conversation with Mr Robert Clement in relation to the tactics to be adopted in that race and subsequently placed a bet on Banyula Fella to win that race."

Charge 2:

> AHR240
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> "The particulars being that you, Anthony Mabbott, a person licensed as a trainer by Harness Racing NSW, did engage in conduct that corrupted the betting outcome of Race 7 at the Muswellbrook harness racing meeting on 21 April 2013 in that you had a pre-race conversation with Mr Robert Clement in relation to the tactics to be adopted in that race and subsequently placed a bet on Woodlyn Girl to win that race."

Charge 3:

> AHR 243. A person employed, engaged or participating in the harness racing industry shall not behave in a way which is prejudicial or detrimental to the industry.
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> > "The particulars being that you, Mr Anthony Mabbott, a person licensed as a trainer by Harness Racing NSW, did behave in a way which is prejudicial and/or detrimental to the harness racing industry in that you engaged in conduct that corrupted the betting outcome of Race 1 at the Tamworth harness racing

meeting on 17 April 2013 and/or Race 7 at the Muswellbrook harness racing meeting on 21 April 2013.

Further that your arrest, conviction and associated media reports were detrimental to the harness racing industry"

3. The appellant, at the inquiry, pleaded guilty to those three charges and has maintained an admission of the breach of those rules on this appeal. It has always been a severity appeal. The necessity, therefore, to examine the facts in greater detail falls away.

4. The evidence has comprised a brief filed by the respondent which contains, critically, the actual decision of the stewards of 23 June 2021, a transcript of their inquiry of 14 December 2020 and certain facts relating to the sentence of the appellant, to which the Tribunal will return, in the District Court.The appellant gave oral evidence.

5. The notice of grounds of appeal raises seven issues. In summary form, they are: penalty too severe; no appropriate discount for the early plea, or subjectives, or the fact he is of prior good character and a productive and contributing member of the community; that there has not been appropriate application of parity; a mis-assessment of objective seriousness. And, in addition, there should be taken into account the interim suspension that was imposed on him and the criminal sanctions imposed by the District Court.

6. As stated, the facts need not be canvassed in great detail.

7. For the appellant they can be summarised as : that the appellant is currently 42 years of age; that he had been licensed to train and drive since 1995; that up to 27 May 2013 he had trained 1845 starters for 273 winners and 401 placings; and as a driver had driven on 233 occasions for 9 wins and 27 placings.

8. For the conduct he was approached by a formerly licensed person, but at the time unlicensed, a Mr Clement. He had conversations with Mr Clement on various occasions. The effect of those was, consistent with the plea, that between them they agreed that there would be a corruption of races.

9. The effect of his subsequent trial and conviction and of his conduct has led to the third charge, which is what might be described in other terms as conduct prejudicial. And here it was his arrest, conviction and associated media reports being detrimental. On two criminal charges of facilitate conduct that corrupts a betting outcome he received on each 75 hours community service cumulative. He served those sentences

10. In April 2013, Clement phoned the appellant, and it is quite clear that despite the appellant's attempts before the District Court in his evidence

there that he did not know he was breaching the law and the conduct was widespread in the industry, and reflected upon by the sentencing judge, Acting Judge Charteris, who rejected these views, the appellant knew full well what he was doing, that he knew what the rules of racing were, that he knew he and Clement were getting together for the purposes of ensuring that the race was run in a way that suited them.

11. Certain expressions that were adopted by them reflect those facts: “Nobody suspects a thing.” “Stay out of play.” “That’s the payback for you tonight.” “No kicking up.” “I’ll hand straight up.” “So that’s the deal.” And: “Mate, it’s fucking lovely when you do it like that.” “Yeah, it’s good.”

12. That sort of conversation in respect of count 1 clearly reflects the corrupt activity to ensure that the race was run to suit them and the connections associated with them and the appellant’s betting.

13. In fact, the race ran as prearranged. It played out exactly as was planned. The appellant had on that first race a $250 bet; he won $625 with a payout of $875.

14. Having had that success, they then had a few more chats about what to do and then put their heads together again in respect of what is the second matter. Similar conversations. Clement had contacted the appellant. They discussed driving tactics to be used. An opinion that one horse could not win unless certain things were done. And what was stated: “If you’re going to say ‘Okay, I’m handing up’, I think he can win. That’s all I’m checking out.”
And later they discussed it again. “You can go to the lead if you want”, said the appellant. “All right. Thank you. Tell her to come quick like she really wants”, a reference to one of the others who was driving. “Yeah. Don’t make it look like you’re half-hearted.” What could be more clearly a plan to corrupt a betting outcome? And then, to cap it all off, “Just keep that between me and you; all right? Just keep it quiet.”

15. In that race he bet $100. He won $450, with a return of $550. Unbeknownst, as is often the case, Clement’s telephone was being tapped.

16. On 27 May 2013 the appellant was arrested when a search warrant was executed upon him. He presented himself at the police station and immediately made admissions. He has maintained those admissions of his conduct ever since.

17. Regrettably, despite those admissions, he elected to plead not guilty and maintained that plea before the District Court over a period of some three years, until he then tells the stewards at their inquiry on 14 December 2020 that despite the fact he felt he was not guilty, that the costs of his legal defence, spread out over three years with solicitors and barristers, had got

to $90,000. He describes a barrister not experienced in the racing industry, who he implied to the stewards did not quite understand what it was all about, had convinced him that he should plead guilty and he did so.

18. He gave evidence to His Honour, who gave sentence on 16 September 2016. It is fair to say His Honour was not accepting of the evidence of the appellant in relation to certain of the beliefs the appellant tried to put across to exculpate him from what was patently corrupt conduct, and that did not stand him in good stead with His Honour. However, he gave him all due discounts in the sentencing for his subjectives, and those are matters which are again raised for consideration on penalty today.

19. There is some brief evidence from the appellant, which goes with the brief, and that includes the fact, as he told the inquiry that he is a successful baker owning and operating two bakeries in Tamworth with some 25 staff.

20. Interestingly, it was his evidence to the inquiry in December 2020 that he had given up training in about October 2012. It appears, although it has not been established as a fact, that he may have trained one horse to race after that. That is not critical. The point being that he cannot call in aid total personal financial hardship as a result of the loss of privilege of licence which occurred on his arrest on 27 May 2013. The reason being that he effectively had given up, with that possible one exception, training and driving. Therefore, any loss of his privilege of a licence does not carry with it usual financial consequences.

21. Of course, he could not have expected to have been able to train or drive after his arrest, and he did not do so. He was stood down under Rule 183 on 27 May 2013, so he did lose a number of the privileges of a licence. However, because he was suspended, he did not lose all of the privileges.

22. In addition, he has given evidence that his wife at the times in question was a registered owner and trainer of greyhounds and that he and his family attended greyhound meetings, which would have been, if he had been disqualified, a privilege not available to him.

23. Those then are the key objective and subjective factors.

24. The Tribunal must first determine objective seriousness.

25. The case law relied upon here has canvassed no new legal principles which would affect the Tribunal's numerous determinations on similar matters. To give a very, very brief paraphrasing of those, they are that this is a civil disciplinary hearing in which the Tribunal must have regard to the totality of the facts to date and project into the future what order is required to ensure the appropriate protective order for the industry is given. It is not a question, as would be the case in the criminal law, of imposing punishment.

The fact that an appropriate disciplinary order has with it an element of punishment is a mere outcome of such an order. In assessing objective seriousness, it is necessary to have regard to the integrity of the industry. Welfare matters do not arise here. This is the necessity to find a protective order to ensure the integrity of the industry is maintained as best as can be by disciplinary proceedings. Because such conduct directly affects the image of racing.

26. Here, it is the most graphic demonstration of the impact upon a level playing field which the wagering public are entitled to expect the participants will provide.

27. Here, in a calm and calculated and knowing way, the appellant set out to deceive the public and the regulator by ensuring the race was run to suit the appellant and the connections, with whom he was associated, including his father as the trainer, and to ensure that he made the profits to which reference has been made.

28. The betting public requires that a message be provided to this appellant that the engaging in this type of conduct carries with it the loss of the privilege of a licence, but also to provide a clear and unambiguous message to the industry at large, to be embraced also by the public, that this type of conduct will be dealt with by an appropriate disciplinary order.

29. The objective seriousness is in issue. To determine it, cases of parity have been called in aid. Those cases do not provide a precise factual scenario. The ones to which reference has been made generally involved the green light scandal, which are cases of Sarina, Fitzpatrick and Bennett, on behalf of the respondent, and Atkinson, on behalf of the appellant.

30. Dealing with Atkinson first, a decision of the Special Stewards Panel convened to deal with green light scandal matters, they imposed upon him a period of disqualification of 10 years in respect of AHR 241 in the most serious of conduct of a licensed person paying a steward not to test horses for prohibited substances.

31. In numerous decisions, the Tribunal has referred to the gravity of the green light scandal, its impact upon the industry and its impact upon its possible future. It could not be a more worst-case scenario for a corruption conduct type of activity than that in which the participants in the green light scandal engaged.

32. At the outset, it needs to be stated this is not a green light scandal matter and nor has it been suggested it is. The relevance of the reference to it not only is on parity but that it was in the public domain as to the gravity of that conduct when this appellant engaged in the corrupt conduct in which he did. He did it knowing of the likely consequences for him, despite his

endeavours to exculpate himself before the District Court from an understanding of wrongdoing, or making a simple mistake, or misunderstanding the rules. He set out to corrupt that race and he knew it.

33. The fact, therefore, is this: that, objectively viewed, acting in a corrupt way after others had been arrested and charged criminally and investigations were taking place and numerous people had been put out of the industry, permanently in some cases or on suspension pending determination in others, that he would nevertheless engage in this conduct. It is often said that such conduct involves a thumbing of one's nose at the regulator, the industry and the wagering public. The Tribunal considers that this type of conduct can be so classified.

34. It is difficult to apply Atkinson without the full decision being available, and the Tribunal has determined not to go to it. Because Atkinson's disqualification of 10 years was the final outcome. As to what discount might have been given or what starting point was given is not before the Tribunal. The Tribunal has some very vague recollection that it may have had a starting point of 15 years but is not certain of that.

35. The matter to which the respondent has taken the Tribunal of Sarina involved a warning off because he had not purged failures to cooperate with refusal to answer questions and gave false evidence, to paraphrase the case, completely.

36. The matter of Fitzpatrick had a very long history until it was resolved recently. He had two charges involving payment of stewards. He had a 15-year starting point determined by the Tribunal on appeal for which a three-year discount was given, given particular increased discount because of the whistleblower nature and the support given to him by the former Integrity Manager on that appeal, and he received a 12-year disqualification.

37. The other matter is Bennett. He was dealt with for Rule 187 matters and received a total period of disqualification of seven years in respect of aspects of breaches of 187. He was not dealt with for direct corrupt conduct. Bennett can be disregarded. Bennett is only cited in aid here for various legal principles, and they have been referred to already.

38. The Tribunal considers that, objectively viewed, this conduct here is, as has been classified by the respondent, most serious, and, as has been pointed out by the appellant, as not being the worst-case scenario. The Tribunal agrees.

39. Therefore, if starting points of 15 years were considered appropriate for paying out a steward and that type of corruption, then here, whilst the outcomes were much the same, the wagering public and the regulator and

other participants were gypped, as it were, that it is nevertheless less serious conduct.

40. Objectively viewed, therefore, the Tribunal has determined that there be a starting point of 11 years for charges 1 and 2.

41. It is necessary then to determine what, if any, discounts should be given for subjective factors. It is the respondent's case that this is so serious, no discount should be given. It is difficult to determine precisely from the expressions in the stewards' decision what they did, but it is now explained that there was some allowance made, in general terms, when it was an in globo determination of nine years for charges 1 and 2, and five years for charge 3 by them.

42. The appellant has always admitted his wrong conduct to the stewards and to the Tribunal and the Tribunal sees no reason why there should not be consideration of a discount of 25 percent for that. Ordinarily, his other subjectives would carry with them a further discount. They are reasonable. They are not entirely persuasive. He had a number of years in the industry before he came undone in 2013. He had no prior equivalent matters. He has made contributions to the industry and the community generally, and they are matters of importance.

43. But they are lessened in this case, in the Tribunal's opinion, by reason of the fact that he has not lost all of the privileges that might otherwise have been the case from his suspension in 2013. Not all of that hardship that would otherwise have flowed to him by a loss of income from the industry, because effectively he had withdrawn from it, in any event.

44. Therefore, that very strong subjective factor which often leads to discounts in respect of hardship, although applying the Thomas principles from 2011 by the Tribunal, that if on an appropriate case objective seriousness outweighs those matters and that in any event hardship of itself is often an inevitable outcome of conduct in which a person engaged, and if a penalty is appropriate, then it must be imposed regardless of hardship.

45. The Tribunal will not express a precise figure. It has determined to give a three-year discount for those subjective factors. It would account, very roughly, to about 27 percent, although it is not calculated on the basis of 25 percent plus 2 percent but is taken as an in globo subjective discount.

46. That three years discounted from the 11 years leaves a period of eight years. There is no submission made that that should not be by way of disqualification and with objective seriousness there could be no other outcome than a disqualification.

47. The total penalty considered appropriate for charges 1 and 2 of eight years' disqualification is to be served concurrently. There is no submission to the contrary.

48. The Tribunal sees no reason to redetermine the thinking of the stewards when they felt that a final penalty of five years in respect of charge 3 was otherwise appropriate. Objectively viewed the conduct had the detrimental effect in the particulars and a starting point greater than 5 years appropriate but similarly reduced by subjective factors to give 5 years disqualification

49. Having regard to the provisions of the cumulative Rule 257, the Tribunal is of the opinion that it should be otherwise ordered, as were the stewards.

50. In those circumstances, it has determined that a period of disqualification for that matter of five years be served concurrently with the penalty imposed on charges 1 and 2.

51. Therefore, each of the penalties is to be served concurrently.

52. The effect of that is a period of disqualification of eight years.

53. Whilst it is open to determine that it should not be backdated to 27 May 2013, the Tribunal has determined, as did the stewards, that it operate from that date.

54. Therefore the severity appeal is upheld.

55. An application is made for a refund of the appeal deposit. It was a severity appeal. That has been successful. There is no submission to the contrary. The Tribunal orders the appeal deposit refunded.
