

Northern Territory

RACING APPEALS TRIBUNAL

Chair: Teresa Hall
Secretary: Rejie Humphries

Level 3, NAB House
71 Smith Street
GPO Box 1154
DARWIN NT 0810

DATE: 24 October 2024

TRIBUNAL: Chair: Teresa Hall
Member: James Pratt
Member: Amy Corcoran

REPRESENTATION

COUNSEL: Appellant: Damian Sheales
Respondent: Pat McIntyre

SOLICITOR: Respondent: De Silva Hebron

APPELLANT: Mr Garry Lefoe

IN THE MATTER of an appeal by Garry Lefoe against the decision of the Thoroughbred Racing Northern Territory Stewards (**Stewards**) made on 1 July 2024.

BREACH OF RULE: AR228(b)

DETERMINATION

Background

1. The Appellant, Gary Lefoe (**Mr Lefoe**) is a licensed trainer under the Australian Racing Rules, and is bound by the Australian Rules of Racing (**AR**) pursuant to AR 3.
2. An inquiry was conducted by the Stewards into a complaint lodged by jockey Mark Pegus against Mr Lefoe in respect of an incident at track work on Tuesday, 25 June 2024.
3. Mr Lefoe denied the allegations.
4. Subsequent to the inquiry, on 1 July 2024 the Stewards found Mr Lefoe guilty under AR228(b) which provides:

AR 228 Conduct detrimental to the interests of racing

A person must not engage in:

- (a) *conduct prejudicial to the image, interests, integrity, or welfare of racing, whether or not that conduct takes place within a racecourse or elsewhere;*
- (b) *misconduct, improper conduct or unseemly behaviour;*

- (c) *improper or insulting behaviour at any time towards a PRA, the Stewards, a Club, or any official, employee, contractor or agent of any of them in relation to the relevant person's functions, powers or duties;*
- (d) *publishing or posting on any social media platform or channel any material, content or comment that is obscene, offensive, defamatory, racist, threatening, harassing, discriminatory or abusive to or about any other person involved in the racing industry;*
- (e) *conduct which threatens, disparages, vilifies or insults another person ("other person") on any basis, including but not limited to, a person's race, religion, colour, descent, national or ethnic origin, special ability/disability, or sexual orientation, preference or identity, while the other person is acting in the course of his or her duties in the racing industry.*
5. For this breach of AR228(b), the Stewards imposed a six month disqualification effective immediately.
6. Mr Lefoe has appealed the decision of the Stewards to the Northern Territory Racing Appeals Tribunal, lodging the appeal on 1 July 2024, that is, within seven days of being notified of the decision appealed against. Accordingly, the Tribunal has jurisdiction to hear the appeal and neither party has contended to the contrary.

Grounds of Appeal

7. Section 103(2) of the RWA requires the Appellant, seven days after receiving the transcript or record of the evidence taken at the hearing, to lodge with the Secretary written notice of the grounds of the appeal. The appeal must be limited to those grounds, except with leave of the Tribunal.
8. Mr Sheales notified the Secretary, by way of email on 19 July 2024, that the two grounds of appeal were:
- As to liability: That the Appellant is not guilty of the breach of AR 228(b) as alleged against him.
 - As to penalty: That the penalty is excessive.

Prior to the Hearing

9. Prior to the hearing there was correspondence between the solicitors for both parties and the Tribunal regarding the appeal process, noting that this matter was the first matter to be heard by the Northern Territory Racing Appeals Tribunal (as established by the *Racing and Wagering Act 2024 (RWA)* (and not under the transitional provisions)).
10. The submissions of both parties made a number of comparisons in respect of the legislative powers and the operation of the previous Racing Appeals Tribunal under the now repealed *Racing and Betting Act 1983 (RBA)* and this Tribunal under the RWA.
11. Mr De Silva submitted to the Tribunal that the appeal grounds were unsatisfactory on the basis that the grounds of appeal did not identify any mistakes or errors arising from the Stewards inquiry and that as a consequence, the Stewards may be taken by surprise at the hearing. In the outline of the Steward's submissions, dated 30 July 2024, at paragraph 3 & 4, Mr De Silva submitted that:

Section 103(2) of the Racing and Wagering Act (NT) introduces the concept of written grounds of appeal being lodged as part of the appeal procedure. The language utilised in section 103(2), specifically, the final words: “the appeal must be limited to those grounds,” contemplate that the written grounds of appeal must be particularised.

If it was permissible to merely appeal on general grounds without specificity, those words would not have been used. Section 103(2) is in place to avoid the Respondent suffering prejudice by the procedure to appeal.

12. The appeal procedure under section 103(2) of the RWA and the former procedure under section 145Q of the RBA, in respect of written appeal grounds, is the same (save for some grammatical changes and cross referencing).
13. At the request of the Tribunal, Mr Sheales provided further written submissions in respect of liability and penalty. Mr De Silva also provided written submissions, though they were focused on the lack of particularised appeal grounds from the Appellant.

Hearing

14. Mr Sheales made submissions that appeals to this Tribunal under the RWA should be conducted as *de novo* appeals, that the relevant eye witnesses ought to be called to give evidence and the Tribunal should make its own determination as to whether the rule breach allegation has been proven to the *Briginshaw v Briginshaw* standard.
15. Mr Sheales inquired as to the Stewards intention to call evidence at the hearing, Mr McIntyre confirmed the Stewards did not intend to call any evidence. Mr Sheales then made submissions that without any evidence before it as to the charges against the Appellant that the Tribunal was bound to allow the appeal and dismiss the charge against the Appellant.
16. Mr McIntyre submitted that the appeal was not a *de novo* appeal; that the words ‘grounds of appeal’ by their plain meaning and definition should require the Appellant to particularise the error, procedural inadequacy, or unreasonableness. Further, that to accept Mr Sheales argument would in effect be reversing the burden of proof and the RWA does not prescribe or provide any clear indication that the hearing should be an appeal *de novo* or a merits review.
17. There is no evidence the legislator intended the Tribunal to hear appeals by way of a new hearing and fresh evidence (rather to allow the Tribunal to deal with evidence in a manner it sees fit).
18. Section 110 provides that:
 - (1) *The Tribunal, including a panel of the Tribunal, is not bound by the rules of evidence and may inform itself of any matter in such manner as it thinks fit.*
 - (2) *Evidence is to be given orally at the hearing, unless the Tribunal or panel of the Tribunal directs otherwise.*
19. By email, on 26 August 2024, the Secretary of the Tribunal provided the parties with the evidence and materials to be considered at the hearing, which included the following:
 1. *Garry Lefoe - Notice of Appeal*
 2. *Stewards Report 1 July 2024*

3. *Garry Lefoe Reasons for Decision – 1 July 2024*
 4. *Garry Lefoe Transcript*
 5. *Garry Lefoe exhibits - Community Correction Order and DVO*
 6. *Garry Lefoe disciplinary record*
 7. *Precedent table - breaches of AR228*
 8. *Mark Pegus interview video (link to Dropbox)*
 9. *CCTV footage x 3*
 10. *Garry Lefoe – Grounds of Appeal*
 11. *Stewards Submissions to Grounds of appeal – July 2024*
 12. *Garry Lefoe Outline of Penalty Submissions – August 2024*
 13. *Garry Lefoe Further matters as to Grounds of Appeal – August 2024*
 14. *Submissions TRNT – August 2024*
20. For the avoidance of doubt, Mr Sheales sought leave to amend the grounds of appeal against liability to the grounds contained in L1 and L2 of his written submissions dated 15 August 2024, being:
- L1. That the Tribunal ought not to be satisfied to the requisite standard of proof that the appellant uttered the words “You’re fucked cunt” to Mr. Pegus as alleged.*
- L2. That even if the Tribunal does find that the appellant uttered those words, or similar words, that conduct does not satisfy any of the definitions of:*
- a. Misconduct; or*
 - b. Improper conduct; or*
 - c. Unseemly behaviour.*
21. Mr McIntyre opposed the amended grounds of appeal on the basis that they do not identify any error, for example, that the Stewards failed to take into account certain matters or took into account matters which they should not or that there was an unreasonableness to the findings.
22. The Tribunal considered the amended appeal grounds and determined that, as drafted, they did not amount to proper appeal grounds, rather an indication as to the findings that the Tribunal should make. The Tribunal was of the view that, if supported by the Appellant’s instructions and the evidence, that proper appeal grounds may have been submitted in respect of the Stewards findings.
23. The Tribunal indicated that it would provide Mr Sheales with an adjournment to amend the appeal grounds for further consideration by the Tribunal. Mr Sheales indicated that if the Tribunal was of the view that the appeal grounds should point to an error of fact or law, he would not make further submissions in respect of the finding of guilt and did not propose to call the Appellant to give evidence.
24. In respect of the appeal against penalty the Tribunal was satisfied with the appeal ground that the penalty was excessive, further Mr Sheales had particularised the appeal ground in his submissions dated 14 and 15 August 2024.

Appellant’s Penalty Submissions

25. Mr Sheales submitted that the following errors were made by the Stewards:

- That Stewards erred by considering matters of aggravation when determining the proper penalty to be imposed for the Appellant's breach of AR228(b) each of the Reasons for Decision dated 1 July 2024.
- The Stewards erred by failing to give separate consideration (from the issues generally surrounding the suspended penalty) to the appropriate penalty for the Appellant's breach of AR228(b).
- The penalty imposed by the Stewards as to the Appellant's breach of AR228(b) is erroneous on its face.

26. Mr Sheales submits that the penalty is ludicrous, citing that if the initial physical assault resulted in a suspension of Mr Lefoe, then the uttering of three words should not lead to a disqualification. Mr Sheales outlined the Appellant would not argue with a penalty of three months suspension as a penalty for the breach of AR228(b). Mr Sheales made further oral submissions in support of the written submissions provided to the Tribunal.

Steward's submissions

27. In response to Mr Sheales submissions Mr McIntyre put a number of matters to the Tribunal, including:
- The findings of the Stewards do not indicate their view that the Domestic Violence Order (**DVO**) (between Mr Lefoe and Mr Pegasus) was breached. That the DVO was taken into account as an indication that the two parties have previously been involved in a serious assault and that it rendered this offending as a second assault, albeit verbal.
 - That it was clear that the Stewards gave separate consideration to the breach of the suspended sentence and then to what would be an appropriate penalty as to the verbal assault.
 - The penalty needs to be more than high, and that the question for the Tribunal is not whether it would impose a penalty that is lower, rather, is the penalty beyond any reasonable penalty which could be imposed. The penalty imposed was within the range of penalties for offending against that rule.

Precedent Penalties

28. The Stewards provided the Tribunal with a table of precedent penalties. Mr Sheales submitted that as the regulator the Stewards role was to assist the Tribunal; however, the penalty table provided was not clear. Mr Sheales also provided a number of decisions in respect of AR228(b) and AR228(c).

Determination

Conviction

29. Without further submissions or other evidence at the hearing in respect of liability the Tribunal dismissed the appeal against liability.

Penalty

30. This Tribunal has previously applauded the Stewards in the difficult task of upholding the integrity of the racing industry in the Northern Territory.

31. When considering the range of penalties imposed for a breach of this particular rule the Tribunal considered the table of penalties put forward by the Stewards, the decisions submitted by Mr Sheales and reviewed a number of decisions which were not produced by either party.

32. The penalties for breaches of AR228(b) range from modest fines to lengthy disqualifications. The consideration of the factors which determine penalty must include the words or actions of the offence, any features of aggravation, and the particular circumstances of the offending.

33. In March of 2024, Northern Territory Police charged Mr Lefoe with aggravated assault (against Mr Pegus) and possession of a trafficable quantity of cocaine.

34. On 4 April 2024, Mr Lefoe provided a urine sample to the Stewards at the Alice Springs Turf Club, that sample resulted in Mr Lefoe pleading guilty to a charge under AR140(1)(a). Mr Lefoe had his licence suspended for three months and the Stewards suspended six weeks of the suspension on the basis that Mr Lefoe provide documentation that he has continued with the counselling he commenced prior to the hearing.

35. The particulars of the aggravated assault included Mr Lefoe striking Mr Pegus in the head on multiple occasions. Northern Territory Police made an application on behalf of Mr Pegus (as the protected person) for a DVO . That order was made by the Local Court on 16 May 2024.

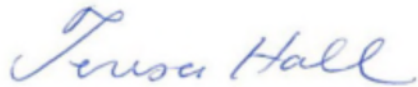
36. The assault resulted in Mr Lefoe being charged with and found guilty of a breach of AR228(a). On 21 May 2024, the Stewards imposed a licence suspension for three months and exercised their discretion to suspend the operation of the penalty for 12 months on the condition that Mr Lefoe was not found guilty of any conduct related breaches under the Australia Rules of Racing.

37. Mr Lefoe had only recently returned to training after being serving his suspension for the breach of AR140(1)(a).

38. In considering the appropriate penalty the Stewards considered the following matters:

- All licensed persons are entitled to participate in the Racing Industry without being concerned for their safety or wellbeing.
- Mr Lefoe has demonstrated scant regard for the fact the Stewards had suspended the previous three-month suspension for a 12-month period.
- Mr Lefoe has further breached a conduct related rule within two weeks of resuming training following a 6-week suspension imposed after Mr Lefoe provided a sample that was positive to a banned substance.

- That there is a nationally recognised DVO in place following the criminal conviction for aggravated assault on Mr Pegus and this highlights the serious nature of the offending.
 - Mr Lefoe's personal circumstances and overall disciplinary record.
 - The penalty must serve as a specific and general deterrent.
39. Mr Lefoe's overall disciplinary record is very poor in recent years; having been found guilty of various breaches of the Australian Racing Rules in 2022, Mr Lefoe was disqualified for 15 months in June of 2022. Within a relatively short time after recommencing training Mr Lefoe offended again.
40. On the basis that this is the second assault against Mr Pegus in a period of four months (albeit that the conduct of the first offending was more serious than the second) the Tribunal is satisfied that a disqualification is an appropriate penalty.
41. The period of the disqualification, having regard to the penalty imposed by the Stewards for the first offence (being, the physical assault), is in the view of the Tribunal manifestly excessive and should be reduced to a disqualification of three months.
42. Section 115 of the RWA provides the determination of the Tribunal, including a panel of the Tribunal is final and conclusive.



TERESA HALL
CHAIR