

DATE: 8 January 2025

TRIBUNAL: Chair: Teresa Hall
Deputy Chair: Alastair Shields
Member: Allan McGill

REPRESENTATION

COUNSEL: Appellant: Damian Sheales

Respondent: David De Silva

SOLICITOR: Respondent: De Silva Hebron

APPELLANT: Garry Lefoe

IN THE MATTER of an Appeal by Mr Garry Lefoe against a decision of Thoroughbred Racing Northern Territory (TRNT) Stewards made on 27 September 2024.

BREACH OF RULE: AR263(1)(k)

DETERMINATION

Background

1. The Appellant, Mr Garry Lefoe (Mr Lefoe), who was at the time a licensed trainer under the Australian Racing Rules, received a 6-month disqualification imposed by the Stewards on 1 July 2024 for a breach of Australian Rule of Racing (AR)228(2). The disqualification period was subsequently reduced to 3 months on appeal.
2. As a disqualified person, Mr Lefoe is bound by the AR.
3. On 10 September 2024, following admissions by him, Mr Lefoe was found guilty by the Stewards of a breach of AR263(1)(d), and his disqualification period was restarted from the date of the breach, namely 17 August 2024.
4. Taking into account the reduction in the period of the suspension as a result of the appeal, Mr Lefoe's suspension was due to expire after 17 November 2024.
5. By letter to Mr Lefoe dated 10 September 2024, the Stewards advised Mr Lefoe that an audit had identified that Mr Lefoe had a betting account with Ladbrokes, and that he had placed 36 bets totalling approximately \$4400 on Australian thoroughbred races between 10 July 2024 and 18 August 2024, during the period of his disqualification, in breach of AR263(1)(k). Mr Lefoe was invited by the Stewards to make submissions on the appropriate penalty to be imposed by the Stewards.

6. On 27 September 2024, the Stewards notified Mr Lefoe that, in the absence of any submissions on penalty, and after considering the circumstances and Mr Lefoe's disciplinary record, the Stewards imposed a disqualification period of 12 months for the breach of AR263(1)(k), to run cumulatively with his existing disqualification, which extended his disqualification period until after 17 February 2026.
7. On 4 October 2024, Mr Garry Lefoe lodged an appeal against the severity of the penalty imposed by the Stewards on 27 September 2024.

Grounds of Appeal

8. Section 103(2) of the *Racing and Wagering Act 2024* (RWA) requires the Appellant, within 7 days after receiving the transcript or record of the evidence taken at the hearing, to lodge with the Secretary written grounds of the appeal. The appeal must be limited to those grounds, except with leave of the Tribunal.
9. On 8 November 2024, Mr Sheales provided the following grounds of appeal:

"Nature of Hearing

1. 2. *The appellant says that the appeal ought to be conducted as a hearing de novo. Noting the reasons delivered by the Tribunal in the appeal of Lefoe, other than observing that the reasons delivered in Lefoe (Lefoe v Stewards of NTRT - Northern Territory Racing Appeals Tribunal - 24 October 2024 at [14] - [24]) are not binding on the Tribunal the appellant does not seek to litigate the issue further in this appeal.*

On the presumption the Tribunal does not accept that the appeal is to be heard de novo, the appellant lodges four Grounds of Appeal.

GROUND OF APPEAL

GROUND 1: That the penalty is manifestly excessive. In that:

(i) The penalty imposed is respectively:

a. more than 3.5 times the penalty imposed in one relevant precedent (Gallagher v Harness Racing NSW - Racing Appeals Tribunal of NSW - 7 October 2020);

b. The only other relevant able to be identified - no penalty was imposed for the breach; the disqualification was re-commenced.

(ii) The penalty of 12 months disqualification is excessive; and/or

(iii) The commencement date of any penalty imposed for the breach of AR 263(k) ought to result in partial concurrency with the disqualification the appellant is currently serving.

GROUND 2: The Stewards erred by finding, and resultantly affording weight in the instant case to, the principle that any breach of AR 263 is properly to be characterised as a "significant threat to the proper control and regulation of racing".

GROUND 3; The Stewards erred by finding, and resultantly affording weight in the instant case to, the principle that any breach of AR 263 is properly to be characterised: as an "emasculatation" [sic] generally of the effectiveness of disqualification and the restrictions it imposes.

GROUND 4: The Stewards erred by finding that the instant breach of AR 263 by the appellant was the second time that the appellant had shown "contempt" for the restrictions imposed upon him by AR 263 and resultantly affording weight to that finding."

Nature of the Appeal

10. As noted above, the Grounds of Appeal state that the appeal should be conducted as a hearing de novo. The written submissions provided by Mr Sheales also state that *“all evidence must be presented orally absentia agreement of the parties or a successful application to the Tribunal to depart from the statutory requirement.”*
11. The submissions further state that, noting the Tribunal’s previous determination on this issue, and the fact that the Appellant would advance identical submissions as advanced in the Appellant’s previous appeal to this Tribunal, the Appellant could see no utility in time being consumed by this issue in the current Appeal. There were no further submissions made at the hearing on this matter.
12. The Tribunal however considers that it may be useful to expand upon the comments concerning the nature of appeals made to this Tribunal that were made in the 24 October 2024 decision concerning Mr Lefoe’s earlier appeal.
13. Having regard to the following factors:
 - a. the absence of any specific provision in the Act concerning the nature of appeals to the Tribunal;
 - b. the fact that there was a hearing before the Stewards and written reasons for the decision by the Stewards;
 - c. section 113 (1)(b) and (c) of the Act are expressed in terms that empower the Tribunal to vary (as well as uphold or reverse, set aside, etc) both the decision and the fine, penalty or other action appealed against;
 - d. section 113(1)(d) of the Act enables the Tribunal to refer the matter for rehearing to the body whose decision is the subject of the appeal;
 - e. the requirement in section 103(1)(c) of the Act for the Secretary of the Tribunal to obtain a transcript or record of the evidence taken at the Stewards hearing and serve it on the Appellant;
 - f. the requirement in section 103(2) for the Appellant to lodge written grounds of appeal within 7 days of receipt of the transcript or record of evidence;
 - g. the terms of section 110 of the Act, which provide that the Tribunal is not bound by the rules of evidence and may inform itself of any matter in such manner as it sees fit;

the Tribunal is satisfied that:

- i. the Tribunal is not restricted to receiving oral evidence at a hearing, whether or not there is agreement between the parties; and
- ii. the Parliament did not intend that hearings before the Tribunal be hearings de novo, therefore the appeal and appeal process require that an error of fact or law in the decision being appealed against must be established in order for an Appeal to succeed.

Appeal Hearing

14. The Tribunal heard the Appeal in Darwin on 11 December 2024. Mr Sheales provided a written submission on behalf of Mr Lefoe, and Mr David De Silva provided a written submission on behalf of the Stewards. Mr Sheales attended the hearing (via Teams) to represent Mr Lefoe (who was present at the hearing), and Mr De Silva attended the hearing in person with Mr David Hensler, Chairman of the Stewards.

15. Prior to the hearing, the Tribunal Secretary provided the parties with the evidence and materials to be considered at the hearing, which included the following:
- a. Notice of Appeal
 - b. Stewards Letters – 10 and 27 September 2024;
 - c. Stewards Exhibits; and
 - d. Written Grounds of Appeal.
16. Both parties made very comprehensive submissions to the Tribunal, and the discussion below is by necessity not an exhaustive summary of each matter raised at the hearing.

Appellant's Submissions

17. Mr Sheales submitted that the penalty imposed by the Stewards was manifestly excessive, having regard to relevant precedents, and case law outlining the meaning of manifestly excessive.
18. Mr Sheales further submitted, in reference to Grounds 2, 3 and 4, that the Stewards erred by finding and giving weight to the propositions that:
- a. any breach of AR263 is to be considered to be a “*significant threat to the proper control and regulation of racing*”;
 - b. any breach of AR263 is to be considered as an emasculation generally of the effectiveness of disqualification and the restrictions it imposes;
 - c. this breach of AR263 by the Appellant was the second time that the Appellant had shown contempt for the restrictions imposed upon him by AR263.
19. It was further submitted by Mr Sheales that the failure of Mr Lefoe to provide any submissions on penalty to the Stewards did not give the Stewards the licence to impose an unjust penalty.
20. Mr Sheales conceded that, given that the Appellant’s period of disqualification had restarted one day prior to the last wager placed by the Appellant on his Ladbrokes account, a further restarting of the period of disqualification would not be a sufficient penalty, and he submitted that a further period of disqualification of two months would be appropriate in this instance.

Stewards' Submissions

21. Mr De Silva submitted that the penalty imposed by the Stewards was reasonable in the circumstances, having regard to relevant precedents and Mr Lefoe’s prior history, and that betting by a disqualified person is a serious breach.
22. Addressing Grounds 2 and 3, Mr De Silva submitted that the comments by the Stewards contained in the 27 September 2024 letter are consistent with the approach adopted in other jurisdictions, and that sentencing principles require consideration of general deterrence.
23. In respect of Ground 4, Mr De Silva submitted that the finding by the Stewards that the Appellant had shown contempt was appropriate, having regard to the multiple undisputed breaches of AR263 within a 1-month period.

Determination

24. The Tribunal remains of the view that the Stewards should be applauded for their performance of the difficult task of upholding the integrity of the racing industry in the Northern Territory.
25. The Tribunal has carefully considered the Stewards' decision, along with the submissions made on behalf of both Mr Lefoe and the Stewards, and the evidence before the Tribunal. The Tribunal has also considered the penalties imposed for other breaches of AR263 in the Northern Territory and elsewhere.
26. Mr Lefoe has an extensive list of prior disciplinary matters since 2021, including periods of suspension, a disqualification of 15 months in June 2022, and the disqualifications listed elsewhere in this decision. The breach the subject of this appeal is the second breach of AR263 during a single 3-month disqualification period.
27. In all of the circumstances, the Tribunal considers that the period of disqualification imposed by the Stewards is manifestly excessive, and that the appropriate penalty is a disqualification for a period of six months. Given this finding, it is not necessary for the Tribunal to make any formal findings in respect of Grounds 2, 3 and 4 of the Appeal.
28. The Tribunal therefore allows the appeal and imposes a disqualification period of six months, commencing from 17 November 2024, and expiring after 17 May 2025.



TERESA HALL

CHAIR