

APPEAL PANEL OF RACING NEW SOUTH WALES

IN THE MATTER OF THE APPEAL OF LICENSED JOCKEY CLAYTON GALLAGHER

Heard at Racing NSW Offices

Appeal Panel: **Mr L. Vellis - Convenor; Mrs S. Skeggs; Mr J. Murphy**

Representatives: **Racing NSW – Mr S. Railton, Chairman of Stewards**

Appellant – Mr T. Crisafi, NSW Jockeys Association

Date of Hearing: **13 August 2024**

Date of Reasons and Orders: **13 August 2024**

REASONS FOR DECISION

1. On 4 August 2024, licensed jockey Mr C. Gallagher (**Appellant**) was involved in two incidents in the weighing room after race 1 at Forbes Racecourse.
2. Mr Gallagher pleaded guilty to a charge of improper conduct under AR 228(b) in that following the running of Race 1, he did use improper language, having said the words, "*This is fucking bullshit*" when present in the weighing room in the vicinity of industry participants and officials. Mr Gallagher's licence was suspended in full for a period of two weeks.
3. Mr Gallagher was also found guilty of being in breach of AR 232(b) for having failed to comply with the direction of the Stewards and an Official. This related to an incident following the running of Race 1 where, after attempting to weigh in, he failed to return to the scales as directed by the Chairman of Stewards of the meeting, Mr Shane Parkinson and Clerk of Scales, Mr Robert Brown, and as a consequence, failed to weigh in correctly. Mr Gallagher's licence was suspended in full for a period of four weeks, with both penalties to be served wholly concurrently.
4. The Appellant has appealed against the severity of penalty imposed upon him for the improper conduct charge under AR 228(b), which is the first charge, and has appealed against both penalty and guilt and severity of penalty for the second charge, which is the AR 232(b) charge. Mr Gallagher was represented by Mr T. Crisafi of the NSW Jockeys Association, while Racing NSW was represented by Mr S. Railton, Chairman of Stewards.
5. The appeal book was tendered and oral evidence was provided by Mr S. Parkinson, Chairman of Stewards at Forbes Racecourse on the relevant date, and Mr Gallagher.
6. Mr Railton submitted that with respect to the second charge, that Mr Parkinson and Mr Brown, both heard Mr Parkinson say to the Appellant "*Clayton, come back*" after the Appellant stepped

off the scales. Mr Railton also noted that in the Stewards' inquiry Mr Gallagher himself also said at 7/290:

"I will say Shane just said, "Clayton, come back" and I just said, "No. I'm going in here." Yes, I was pretty pissed off."

7. With respect to penalty for both charges, Mr Railton noted that Mr Gallagher has had seven other conducted-related charges over the past six years, touching upon both charges being considered today, and submitted that a clear message needed to be sent to Mr Gallagher that such conduct was unacceptable.
8. Mr Crisafi in response submitted that Mr Gallagher vehemently denied hearing Mr Parkinson say, *"Clayton, come back"* despite his comments at the inquiry, which he claims to have made due to frustration. Mr Gallagher in oral evidence again denied having heard the direction from Mr Parkinson.
9. Mr Crisafi also submitted that with respect to the improper conduct charge that Mr Gallagher had been aggrieved over a racing incident that occurred during Race 1 and the comment he made was not directed at any person in particular but said in frustration.
10. Mr Crisafi also spoke of Mr Gallagher's short fuse when in race-day mode and noted that Mr Gallagher has taken steps to redress this issue.

Resolution

11. With respect to the second charge, the Panel prefers the evidence of Mr Parkinson, Mr Brown and Mr Gallagher himself at the inquiry, in that the Panel is comfortably satisfied that Mr Gallagher was told and did hear Mr Parkinson say, *"Clayton, come back"* and refused the direction of the Steward.
12. In his oral evidence Mr Gallagher admitted that when he is angry he can say and do things that he cannot recall. This tends to support the evidence provided by Mr Parkinson and Mr Brown. The Panel unanimously finds the Appellant guilty of the second charge.
13. With respect to penalty, the Panel has considered the Appellant's subjective circumstances, including his considerable financial commitments and family circumstances.
14. Penalties imposed for breach of the rules are entirely projective in nature. They are not imposed to punish people. They have an aspect of deterrence in that they should demonstrate that racing will not tolerate the kind of conduct the Appellant engaged in here.
15. The actual damage done to racing by the Appellant is towards the lower end. Nevertheless, such conduct must be deterred. Equally, any penalties must reflect that while not much serious damage was done, Mr Gallagher has form in this area and such improper conduct and failure to comply with directions must be dealt with.

16. The penalty imposed by the Stewards with respect to the first charge is entirely appropriate and we confirm the penalty of a two-week suspension of license. We differ only slightly with respect to the penalty for the second charge. The Panel is supportive of the Appellant seeking counselling for his anger management and strongly encourages him to continue down this path. Nine conduct related charges in six years suggests a pattern of behaviour that do the Appellant little credit and undermine the accomplishments achieved during his 10-year career.
 17. The Panel considers an appropriate penalty for the second charge is a suspension of license of three weeks rather than four weeks, with both penalties to be served wholly concurrently.
 18. The Panel, therefore, makes the following orders:
 - a. Appeal against severity of penalty for breach of AR 228(b) dismissed.
 - b. Penalty of a two-week suspension of the Appellant's licence to ride for breach of AR 228(b) is confirmed.
 - c. Appeal against guilt for AR 232(b) is dismissed and breach of AR 232(b) is confirmed.
 - d. Appeal against penalty of a four-week suspension of licence to ride for AR232(b) is upheld, with a three-week suspension of the Appellant's licence to ride to be applied in lieu thereof.
 - e. Both penalties are to be served wholly concurrently.
 - f. The Appellant's licence to ride is suspended for three weeks, commencing on Tuesday 13 August 2024 and expiring on 3 September 2024, on which day he may ride.
 - g. Appeal deposit to be refunded.
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