

**APPEAL PANEL OF RACING NEW SOUTH WALES**  
**IN THE MATTER OF THE APPEAL BY JOCKEY SHAE WILKES**

Heard at Racing NSW Offices

Appeal Panel: **Mr A. Leopold SC – Acting Principal Member; Mrs J. Foley and Mr C. Tuck**

Representatives: **For the Appellant - Mr W. Pasterfield**  
**For Racing NSW - Mr M. Cleaver**

Date of Hearing: **21 February 2025**

Date of Reasons and Orders: **21 February 2025**

**REASONS FOR DECISION**

**Introduction**

1. On 20 January 2025 Racing NSW Stewards received a complaint in respect of the conduct of licensed apprentice jockey Ms Shae Wilkes (**the Appellant**). Racing NSW investigators commenced an investigation and seized closed-circuit television footage of the alleged conduct; and an interview was conducted with the Appellant.
2. The Stewards subsequently issued a charge against the Appellant under AR228(b) (*“misconduct, improper conduct or unseemly behaviour”*) to the effect that at 6:32AM on 20 January 2025, during trackwork at Taree racecourse, after the thoroughbred horse *Sigsaly* became fractious and caused her to *“dismount”*, *“she engaged in improper conduct by holding the reins in her left hand and forcibly kicking the horse with her right foot impacting the near side abdominal area”*, as a result of which the horse spun around and moved backwards.
3. The Appellant pleaded guilty and a finding of guilt was made accordingly.
4. The Stewards recorded that the Appellant has shown contrition and remorse and a willingness to accept responsibility for her conduct and took that and her guilty plea into account; and they also took into account her *“personal and professional circumstances”* (without recording what they were). However, the Stewards also recorded that the conduct was objectively serious (which it clearly was); referred to the need for a penalty to reflect both specific and general deterrence and in particular to the need for a message to be sent to the industry in respect of such conduct; referred to the importance of equine welfare for the thoroughbred racing industry; and referred to the function of penalties as a protective measure for the image, interests and welfare of the thoroughbred racing industry.

5. The Stewards imposed an 8 week suspension of the Appellant's licence in full, but reduced it to 6 weeks having regard to her guilty plea "*and other relevant considerations*" and, pursuant to AR283(5), ordered that two weeks of that 6 week penalty be suspended for a period of 12 months on the condition that the Appellant not be found to be in breach of a conduct rule during that 12 month period. Leaving to one side the suspended part of the penalty (two weeks), the immediate impact on the Appellant of the decision of the Stewards was that she could not ride at all, in races or even in trackwork, for a period of 4 weeks. They ordered that the period of suspension commence on 26 January 2025. That suspension has been stayed pending the outcome of this appeal.

#### **Material considered on the appeal**

6. In advance of the hearing of the appeal, the Appeal Panel was provided with the Notice of Appeal; a written outline by the Stewards dated 21 January 2025 outlining the background, the charge, the terms of the relevant rules and the suspension; a transcript of an interview with the Appellant on 20 January 2025 by Ms Nikki Burke (a Racing NSW Investigator); a transcript of the interview of the Appellant by the Stewards which was carried out in the course of the Stewards' inquiry; and two pieces of video footage recording the incident itself. The Appeal Panel was also provided, in advance of the hearing, with written submissions by both sides.
7. Also in advance of the hearing, each side referred the Appeal Panel to prior appellate decisions.
8. The Appeal Panel considered all of that material in advance of the hearing.

#### **Submissions made at the hearing of the appeal**

9. At the hearing itself, Mr Cleaver showed the Appeal Panel the video footage, which the members of the Appeal Panel had already previously viewed. The video shows the Appellant being thrown from a horse with which she was working during trackwork. Importantly, it then shows the appellant walking around the horse and distinctly pausing before kicking the horse, with substantial force, in the near side abdominal area. In the interview of the Appellant by Ms Burke on 20 January 2025 the Appellant admitted (line 211) that it was a "*big kick*".
10. Mr Pasterfield on behalf the Appellant accepted that the conduct on the part of the Appellant was bad for the image of racing and "*not a good look*". However, he submitted that some form of kicking occurs routinely in horse-racing, when a horse is being ridden "*hands and heels*", with the heels striking the horse in or below the ribs. (In the view of the Appeal Panel, the kick with which the Appellant was charged falls into a quite different category from the kick with the heels in which a jockey engages when riding a horse hands and heels.)

11. Mr Pasterfield informed the Appeal Panel that the Appellant was 25 years old and had been a stablehand for about 10 years and subsequently a rider for about 5 years. He stated that the Appellant formerly weighed 82kg, but subsequently worked hard to get her weight down somewhere between 50 and 60kg. Importantly, he submitted that her weight goes up very quickly when not riding. He stated that, when the incident occurred, she had just got back from holidays and had been wasting and was tired and cranky. Mr Pasterfield accepted in the course of his submissions that the image and integrity of racing had to be protected at all times. However, he stated that the Appellant had, due to her significant weight problems, had to engage, amongst others, a dietician (to create for her a healthy and sustainable meal plan for day-to-day application, as well as preparing for race meetings and wasting) and a sports psychologist to assist her with her difficulties. Mr Pasterfield also spoke to what was in effect a reference from the Appellant's father (a horse trainer), stating that she starts trackwork at 4:00AM six days a week and, in addition, on the days she is not race-riding, does afternoon shifts. It was submitted by Mr Pasterfield that the effect of the penalty imposed by the Stewards would be to put the Appellant at risk of gaining weight, to the detriment of her subsequent race-riding at the conclusion of her suspension.
12. Mr Pasterfield relied on the decision of the Stewards in the matter of *Jake Barrett* (March 2021). Mr Barrett pleaded guilty to improper conduct in that he kicked a horse in the stomach region after dismounting from it. A fine of \$2,000 was imposed by the Stewards, \$1,000 of which was suspended on the basis that Mr Barrett did not breach the conduct rules within the following 2 years. However, with respect, a decision of the Stewards is of limited precedential value in a hearing before the Appeal Panel.
13. Mr Pasterfield also referred to the decision of the Appeal Panel in *Madison Waters*, who, following trackwork, had struck the horse she had ridden with a whip several times, including twice in the head, resulting in injury to the horse, requiring some veterinary care and treatment by antibiotics. The penalty imposed by the Appeal Panel was a suspension of two months, but only the first two weeks of that period was to be a full suspension, with the balance of that period being a suspension of her licence to ride in races only. Mr Pasterfield emphasised the fact that in the present matter, unlike the *Madison Waters* case, the horse the subject of the misconduct is not said to have suffered any injury.
14. Mr Pasterfield suggested that an appropriate penalty in the present matter would be a fine of \$2,000 plus a suspension of her licence for two years, which suspension would in turn be suspended for so long as the Appellant did not further infringe the Rules.
15. Mr Cleaver submitted in response that the conduct in which the Appellant had engaged was objectively serious and that, as noted above, the Appellant had accepted that it was a "*big kick*". Mr Cleaver placed considerable emphasis on the fact that the offence occurred in a publicly visible area and was therefore to be regarded as a public act. Mr Cleaver added that, whilst the Appellant is an apprentice jockey, and relatively young, she has a public

profile. Mr Cleaver accepted the submissions made as to the impact on the Appellant of her wasting, but he rightly submitted that the Appellant nevertheless had an obligation to control her emotions, especially when in charge of racehorses. Mr Cleaver submitted that what occurred here was different from a kick in the ribs in a race – rather, here it was done in anger. He stated, as already noted above, that it was clear from the video that the Appellant had paused before proceeding to kick the horse and that, as such, the conduct in which the Appellant had engaged was “*calculated*”. Mr Cleaver correctly submitted that one can always point to differences when looking at precedent because no two cases are ever factually identical. In that regard, Mr Cleaver accepted that the case of *Madison Waters* (referred to above) was different from the present case, but he correctly submitted that what the Appeal Panel had said in that case in paragraph [5(c)] was of particular importance –

*“The purpose of the penalty power in the rules is largely to protect the image and integrity of racing. The prime consideration for the Panel in determining the appropriate penalty here is that it needs to send a message to the public that racing will not condone such acts, and will enforce its rules to deter such conduct, and protect and uphold the image of the sport”.*

16. Mr Pasterfield stated in reply that the Appellant earns approximately \$3,000 per fortnight, but that she is also responsible for the repayment of some debts. He submitted that in that context the penalty imposed by the Stewards should be regarded as imposing an extremely onerous burden on the Appellant.

## **Decision**

17. The Appeal Panel has had regard to all of the submissions made by the Appellant and by Racing NSW, particularly those identified above.
18. Especially in this day and age, the image of racing and the welfare of horses is of critical importance and, accordingly, a breach of AR228(b) must be treated as being very serious indeed. The Appeal Panel has proceeded with those primary considerations in mind. As to the image of racing, it is important that the incident occurred in a public area.
19. Further, the deliberate nature of the conduct in which the Appellant engaged is also of considerable importance. Mr Cleaver rightly identified the significance of the fact that the Appellant paused before launching into what appeared to be a very firm kick to the abdominal area of the horse. The pause is significant because it demonstrates that the kick to the horse’s abdominal area was a considered decision.
20. In those circumstances, a substantial penalty is warranted – indeed, necessary.
21. Nevertheless, the personal circumstances of the Appellant must also be taken into account. The Appeal Panel accepts that not being able to ride at all could well have a significant impact on the Appellant’s battle with weight issues and therefore potentially on her future as

a jockey. Further, the full suspension, for a period of two months, imposed by the Stewards would inevitably have a great financial impact on the Appellant.

22. Having regard to all of the above, the Appeal Panel considers that the appropriate course is to allow the appeal so as to impose the same period of suspension as the Stewards imposed, but to confine the period of suspension to races, thus permitting the Appellant to ride in trackwork.

23. Accordingly, the Appeal Panel makes the following orders:

- (1) Appeal against severity of penalty allowed.
- (2) Order that the decision of the Stewards made on 21 January 2025 be varied so as to suspend the Appellant's licence to ride in races for a period of 6 weeks, **with effect from and including 26 February 2025**.
- (3) Order, pursuant to AR283(5), that the last two weeks of the 6-week penalty referred to in (2) above be suspended for a period of 12 months on the condition that the Appellant is not, during that 12 month period, found to be in breach of any conduct rule of the Rules of Racing NSW.
- (4) Fifty per cent of the appeal deposit to be refunded.

21 February 2025



**Alec Leopold SC**

Acting Principal Member

Appeal Panel of Racing NSW