

SOUTH AUSTRALIAN RACING APPEALS TRIBUNAL

RAT 8/2022

DATE OF HEARING: THURSDAY 28 JULY 2022

TRIBUNAL: PRESIDENT: MR T ANDERSON, QC

IN ATTENDANCE:

MR J PETZER, GENERAL MANAGER INTEGRITY, RACING SA

MR PAUL D'ANGELO, REPRESENTING THE APPELLANT

MR JOHN HICKMOTT, APPELLANT

IN THE MATTER of an Appeal by **MR JOHN HICKMOTT** against a decision of Racing SA Ltd Stewards.

BREACH OF RULE AR 228(e)

A person must not engage in:

(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.

DETERMINATION

Mr John Hickmott has been a successful licensed trainer in South Australia for 44 years and has at the present time about 60 horses in work. He is now 78 years of age.

He appeals from a decision of the Stewards in which he was suspended from training for six months, which suspension was in turn suspended on condition he not reoffend for a period of 12 months.

In addition to the suspension, he was fined the sum of \$10,000. He appeals against both the conviction and the penalty.

At the hearing before the Tribunal, he was represented by his lawyer, Mr Paul D'Angelo.

The incident giving rise to the charge occurred at the Strathalbyn races on 23 March 2022.

The charge against Mr Hickmott was laid pursuant to AR 228(e), which states

A person must not engage in:

(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.

The particulars of the charge were, *that you, Mr John Hickmott, a licensed trainer with Racing SA for the current racing season 21/22 engaged in conduct which threatened Dean Pettit, the Racing SA Jockey Coach on Wednesday, 23 March 2022 at the Strathalbyn Racecourse prior to Race 3 by directing words to the following effect at him; (a) I should punch you in the face; and/or (b) next time you approach my staff you will get hurt.*

Mr Hickmott reserved his plea, and the matter proceeded as a not guilty plea. The Stewards, after considering all the evidence, found the charge proved.

Prior to the hearing before the Stewards, which commenced on 4 April 2022, Mr Hickmott had been provided with a letter which had been sent by email dated 28 March 2022.

The letter set out a complaint against Mr Hickmott.

That letter states:

ALLEGED CONDUCT -WEDNESDAY 23 MARCH 2022 - STRATHALBYN RACECOURSE

I refer to our conversation earlier today.

I confirm that I advised that a report has been received from Mr Dean Pettit, Racing SA Jockey Coach, which alleges certain conduct by you, directed towards him on Wednesday, 23 March 2022 at the Strathalbyn Racecourse.

The report received states the following:

"Prior to Race 3 at Strathalbyn I walked out of the weighing room to stand along the fence to watch the horses parade. I turned around to see if all the Jockeys/apprentices were out and presented with this the following happen

1. John Hickmott spotted me standing along the fence and began to walk my way
2. His first remarks were while raising his voice and pointing towards me "no wonder you didn't sound surprised when I showed you that email" (referring to the resignation of Izzy)
3. He claimed I knew of this email it (I was aware a resignation was presented to the stable cause Izzy text me to say she was doing it and I had it emailed to me via Briony prior)
4. John started accusing me of "Shopping" his staff around and made his first abusive remark that "he should punch me in the face"
5. John continued to be abusive in front of the mounting yard and in front of jockeys and made a very big spectacle of things
6. I remarked to John this was not my intention and said many times "Izzy was not happy working at your stable and approached Briony to look at options
7. John dismissed this and continued to tell me "I Poached staff this was my doing"
8. John also mentioned that I approached and spoke to Matt Seyers to take her on which is false I had no communication with Matt at all
9. John continued to get angry and said "next time you approach my staff you will get hurt"

It was at this stage I told John that perhaps both parties (Racing SA Apprentice Academy and Hickmott Stable) perhaps had been played by Izzy and I said she wanted to leave this is not our problem and walked away."

I advise an inquiry in respect of this matter will be conducted at the offices of Racing SA Limited, 240 Morphett Road - North Plympton on Monday 4 April 2022 commencing at 1.00pm.

You will have the opportunity to call any witnesses on your own behalf at the inquiry. You will also be afforded the opportunity to present any evidence of your own and/or question any evidence presented at the inquiry.

Under the Rules of Racing, as a licensed person, you will be required to be present at the inquiry. Should you have any questions relating to this matter, please contact me to discuss on

***** *** ***

Yours sincerely,

Mr Pettit, who made the complaint, was employed as Racing SA apprentice coach.

The hearing on 4 April 2022 was adjourned to 28 April 2022 to allow Mr Hickmott to call two witnesses regarding the background to the incident.

Very briefly, because the background is not really in issue, Mr Hickmott employed a track rider who wished to leave and go elsewhere. Mr Hickmott believed that Mr Pettit was instrumental in "shopping his staff around". He believed that he had lost his track rider because of Mr Pettit's involvement in speaking to other trainers about the possibility of the rider being available.

That background gave rise to some heated comments by Mr Hickmott in the mounting yard at Strathalbyn.

Mr Hickmott agreed with some of the report provided by Mr Pettit, but he denied the suggestion that he said to Mr Pettit that he “should punch him in the face”. He also denied that he said, “Next time you approach my staff, you will get hurt.”

The Stewards accepted the evidence of Mr Pettit and also the evidence of a Mr Pike, a cameraman who was nearby at the time, and in going about his normal duties, captured the conversation or some part of it on his camera recording device.

It appears that both Mr Pettit and Mr Pike had listened to that recording before they gave evidence before the Stewards, and moreover, Mr Pettit had listened to it before filing his complaint.

Mr Hickmott, on the other hand, knew nothing about the recording until the resumed hearing on 28 April 2022.

At that resumed hearing, the Chairman of Stewards advised Mr Hickmott that there was a recording in existence. He said he had a memory stick of the recording which he had just received. The Chairman stated that he had obtained legal advice and that the recording could be put in evidence if both parties to the recorded conversation consented. He explained that this was covered by the provisions of the Surveillance Devices Act 2016 (the Act).

Mr Hickmott did not consent. He was then asked by the Chairman why he didn't consent. Mr Hickmott declined to give a reason, as was his right. He was again asked what was his reason for not consenting and again declined to give an answer.

Mr D'Angelo argued that the hearing involved a miscarriage of justice and that the whole hearing was tainted and that therefore the conviction should be quashed. Clearly, Mr Hickmott was at a disadvantage because the two key witnesses, crucial to the conversation, had listened to the tape prior to giving evidence. Both Mr Pettit and Mr Pike had clearly refreshed their memory from the tape, but were not subjected to any cross-examination to establish what part of their evidence was from their memory and what part was from hearing the tape.

Mr D'Angelo submitted that Mr Hickmott should have been offered an adjournment so that he could obtain legal advice.

The Stewards argued that Mr Hickmott was not entitled to legal representation before the Stewards. So much is clear from AR 281. However, that begs the question of whether Mr Hickmott was entitled to seek legal advice as to the tape and generally as to the operation of the Act. I do not agree with the submission that an adjournment to obtain legal advice is tantamount to affording legal representation.

Although it is easy to be wise in retrospect, in my view, the proper course for the Stewards, when placed in possession of the tape, was to provide a copy to Mr Hickmott and invite him to seek legal advice. The use of a tape in these circumstances can be a complex matter of law, and indeed the Chairman had sought legal advice for that reason.

The Stewards argued that the Act did not render the evidence of the tape inadmissible. That is not to the point, in my view, when deciding whether the use made of the tape to refresh memory and the failure to provide the tape to Mr Hickmott makes the evidence unfair, and therefore whether a conviction based on the evidence is unsound and should be set aside.

It is my view that the justice of the situation does make the conviction dangerous and it should be set aside.

Apart from the issues arising under the Act, Mr D'Angelo submitted that there was not sufficient proof to make any threat by Mr Hickmott unlawful. He contended that apart from any actual threat being proved, Mr Hickmott must have had the intention of putting Mr Pettit in fear. Both the evidence of Mr Hickmott and Mr Pettit showed that there was no real possibility that any threat, if proved, would be actually carried out.

However, the balance of the evidence as to Mr Hickmott's conduct, without the allegations which he denied, still rendered him liable, in my view, to be charged under AR 228(b) *A person must not engage in:*

misconduct, improper conduct or unseemly behaviour;

It is not appropriate for a senior trainer to abuse publicly an employee of Racing SA in the hearing of anyone who might be in the mounting yard. It is behaviour which should not be condoned, and it is clearly not in the best interests of racing.

Mr Hickmott accepted as much and actually offered to apologise to Mr Pettit for his conduct.

It is my view that the conduct was not as serious as the Stewards contended, and indeed Mr Pettit told the Stewards that Mr Hickmott was "letting off steam" and said that he did not feel

in any type of danger and felt safe in Mr Hickmott's presence. He did not regard Mr Hickmott's conduct as a serious threat.

The facts, as proved and admitted by Mr Hickmott, minus the allegations denied by Mr Hickmott, show that Mr Hickmott was guilty of improper conduct, and I would regard it as conduct at the lower to mid range on a scale of seriousness.

Therefore, in my opinion, the proper charge should have been under Rule 228(b) for misconduct. I would therefore substitute the charge under 228(b) and find Mr Hickmott guilty of misconduct under that Rule.

As to penalty, I consider that the penalty, even based on the findings of the Stewards, was harsh. The combined effect of a suspended sentence and a fine of \$10,000 was manifestly excessive. As I have said, I regard the offence under rule 228(b) at the lower to mid range on a scale of seriousness.

Mr Hickmott was clearly letting off steam. He should have known better and should not have confronted Mr Pettit as he did in the hearing of other members of the racing fraternity and potentially members of the public.

I do not consider a suspension, even a suspended sentence, appropriate in addition to a fine.

Mr Hickmott's good record over many years was acknowledged by the Stewards. I was also provided with two references to attest to Mr Hickmott's good character.

As to the penalty, I believe that justice would be done if Mr Hickmott were fined the sum of \$2,000.

The orders of the Tribunal are, therefore:-

- (1) Appeal against conviction allowed.
- (2) Conviction under AR 228(e) set aside.
- (3) Charge varied to one under AR 228(b).
- (4) The charge pursuant to AR 228(b) proved.
- (5) Mr Hickmott be fined the sum of \$2,000.
- (6) There be an order that Mr Hickmott be refunded the sum of \$400 from the bond which he lodged on appeal.