

**SOUTH AUSTRALIAN
RACING APPEALS TRIBUNAL**

RAT 02/2023

DATES OF HEARINGS:

FRIDAY 28 APRIL 23

TUESDAY 16 MAY 2023

THURSDAY 29 JUNE 2023

DATE REASONS PUBLISHED:

TUESDAY 18 JULY 23

TRIBUNAL:

PRESIDENT: MR. TIM ANDERSON, KC

IN ATTENDANCE:

MR. GARRET LYNCH, APPELLANT

MR. PAUL D'ANGELO, REPRESENTING APPELLANT

MR. TOM PRESS, (assisting P. D'Angelo)

MR. MICHAEL ZARB, SENIOR STEWARD, RACING SA

MR. SIMON WARD, REPRESENTING RACING SA - RESPONDENT

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

BREACH OF RULES: AR104(6), AR105(1)(d), AR231(1)(b)(ii), AR231(1)(b)(iii)

PENALTY: Charge 1 - \$400 fine

Charge 2 - \$1000 fine

Charge 3 - Disqualification of license for a period of nine months

Charge 4 - Disqualification of licence for a period of nine months
(concurrent with Charge 3)

BACKGROUND

Mr. Garrett Lynch is a licensed trainer in South Australia. He has appealed from a decision of the Stewards following an inquiry which commenced on 26 January 2023. He was the trainer of the horse **Up The Stairs** which was scratched after arriving at the racecourse. The horse was scratched after the Stewards received veterinary advice. The Stewards delivered their decision on 27 March 2023 after the matter had been adjourned three times.

Mr.. Lynch was charged with the following breaches

- 1) Contrary to AR104(6) for not making available his treatment record.
- 2) Contrary to AR105(1)(d) for not advising the Stewards as soon as possible of a condition of the horse after acceptance.
- 3) Contrary to AR231(1)(b)(ii) for not taking reasonable steps to alleviate pain.

- 4) Contrary to AR231(1)(b)(iii) for failing to provide necessary veterinary treatment

Mr. Lynch pleaded not guilty to all four charges, but was found by the Stewards to be guilty of all four. He has appealed against each decision and against the penalties imposed on him.

The penalties imposed were as follows:

- Charge 1 - \$400
- Charge 2 - \$1000
- Charge 3 - Disqualification for nine months
- Charge 4 - Disqualification for nine months

Both disqualification periods were ordered to be concurrent.

THE EVENTS OF 26/1/23

One of Racing SA Stewards, Mr. A. Hayles, went to Mr. Lynch's stable at about 7am on the morning the horse was due to race at Murray Bridge. Mr. Hayles asked for the treatment book for **Up The Stairs**, but was told it had been misplaced during a house move.

Up The Stairs was sighted by Mr. Hayles in the paddock and then later in the yard. Mr. Hayles spoke to Mr. Lynch and told him that the horse looked lame. Mr. Lynch agreed. Mr. Lynch said that if it was his horse he would not run it, but the owner wanted the horse to race.

The horse was transported by float to the Murray Bridge racecourse. The Stewards had arranged for Dr. Koenig, Racing SA Veterinarian, to examine the horse on arrival at the track.

Dr. Koenig found the horse to be lame and advised the Stewards that the horse should be scratched. Dr. Koenig found on his examination at the course that there was an active soft tissue injury in the region of the near fore fetlock.

Mr. Lynch told the Stewards that in his track work the horse was usually a bit lame when starting up, but after warming up and then cantering he was fine. Two track riders called by Mr. D'Angelo for Mr. Lynch confirmed this. Mr. Lynch told the Stewards that two weeks prior to the 26 January 2023 the horse had run and won a 2000m race at Oakbank. He said his condition was the same then as it was on this occasion and that the horse after that run at Oakbank showed no ill effects.

EVIDENCE IN THE TRIBUNAL

The appeal centres around expert veterinary evidence. The two track riders I have mentioned also gave evidence. The issue of the missing treatment book was the subject of new evidence. I allowed fresh evidence on these topics.

I did not allow Mr. Lynch to give fresh evidence to explain his evidence before the Stewards.

Mr. D'Angelo tendered reports by the Stewards of recent meetings where the horse ran without incident. These reports showed that the horse had not come to the attention of either the Stewards or the veterinary surgeon on track either before or

after racing on these occasions. Mr. D'Angelo also called Dr. Marmion, an expert veterinarian, to challenge some of Dr. Koenig's evidence.

Finally, Mr. D'Angelo tendered a farrier's certificate of competence for Mr. Lynch and three character references. These references showed that Mr. Lynch was a person of good character and a respected figure within the racing industry. He was an experienced horseman. None of this was challenged by the Stewards.

CHARGE 1

Submissions were made to the Tribunal both in writing and orally regarding Charge 1.

It was apparently accepted by both Mr. D'Angelo and Mr. Ward for the Stewards that the Tribunal should deal with this charge.

However, during final oral submissions in reply Mr. Ward raised the question of whether the Tribunal in fact had jurisdiction to deal with Charge 1.

The constitution of Racing SA Limited read together with the Deed which established the Tribunal creates the jurisdiction of the Tribunal. The Deed confers jurisdiction pursuant to clause 11.1.2 in relation to fines greater than \$499. It is noted that the Local Rules of Racing of Racing SA Limited makes provision in similar terms - see Local Rule 33.1(b). The fine appealed against in this matter is \$400. Although the starting point in the Stewards consideration was \$500 they reduced the fine to \$400 because of Mr. Lynch's good record. Therefore the fine appealed against on the face of it is less than the amount allowed for in the jurisdiction clause in the Deed and similarly in the Local Rules.

Jurisdiction cannot be conferred by consent. Regrettably this means that the Tribunal has no jurisdiction. It is most unfortunate that this point was not raised earlier.

The Tribunal notes that for matters involving a penalty of \$499 or less, the Local Rules of Racing SA provides for an alternative avenue of appeal directly to the Board of Racing SA - see Local Rule 33.2. In the circumstances this would be the appropriate course for the appellant to pursue. While the Local Rules of Racing stipulate that a Notice of Appeal to the Board should be lodged within a period of two days after the decision which is the subject of the appeal - see Local Rule 33.2.2, the course taken by the appellant in the first instance, acting in good faith, in lodging his appeal to the Tribunal instead of the Board of Racing SA should in my view not work against him from being able to lodge an appeal in this regard to the Board of Racing SA. For practical purposes it may be appropriate to allow the appellant a period of two days from today's date to lodge an appeal to the Board if he wishes to pursue an appeal in respect of Charge 1.

Further, Local Rule of Racing 33.3 deals with the material/evidence which the Board of Racing SA may have regard to, to hear and determine an appeal. It is not for this Tribunal to prescribe which option the Board should take in the event an appeal is lodged by the appellant in respect of Charge 1, however, the Tribunal considers that the whole of the evidence before the Stewards and the evidence given to this Tribunal in respect of Charge 1 may be useful and appropriate for the Board to consider.

Grounds 2, 3 and 4 all relate in different ways to the actual condition of the horse at relevant times and that requires an analysis of the expert evidence.

EXPERT EVIDENCE

I have had the benefit of comprehensive expert reports and I have heard detailed expert evidence from both Dr. Koenig and Dr. Marmion.

It is possible that the issue of “lameness” has become confused in argument. It seems that the lameness spoken about by Mr. Lynch together with the evidence of the track riders referred to earlier possibly relates to a pre-existing condition, whereas the specific lameness observed by Dr. Koenig on race day was attributable to a specific condition unrelated to the pre-existing condition.

Up The Stairs was nine years old and x-rays taken after the event, in fact some three months later, showed longstanding osteoarthritis in the joints. This would explain the “scratchy” nature of **Up The Stairs** when trotting before warming up and moving normally.

Dr. Marmion never physically examined the horse, which gave Dr. Koenig an obvious advantage in forming his opinion. Dr. Marmion does not challenge Dr. Koenig’s finding and opinion regarding the horse’s condition on race day. The horse was lame when examined on race day. The question is when did that lameness develop and manifest itself.

Dr. Marmion suggests it was possible it occurred after loading at the stables of Mr. Lynch and before or during unloading at the track. Dr. Koenig rejects this on the basis of his physical examination and experience. He considers that the lesion which he observed was at least 24-48hrs old and maybe anytime between the horse running at Oakbank on 11 January 2023 and the 26 January 2023.

CHARGE 2

I find that the horse was lame before it left the stables on race day. I have accepted Mr. Hayles’ evidence to the Stewards and the acknowledgement by Mr. Lynch that the horse was lame. Mr. Lynch may have been speaking of its general lameness, but that really doesn’t matter because the fact is that on all of the evidence the horse was lame before it left for the course. I find that Mr. Lynch did accept that it was lame in his discussions with Mr. Hayles.

In terms of AR105(1)(d) I find that on the day of the race the horse **Up The Stairs** had a condition, namely lameness, and that this should have been reported to the Stewards. The horse should not have been presented to race.

I find that the horse had been treated for pain by Mr. Lynch previously by the use of ice boots and by the administration of the drugs Meloxicam and Phenylbutazone.

I find that the particular condition observed by Dr. Koenig, namely, a soft tissue injury in the region of the near fore fetlock had been present for at least 24 hours and did not occur during transportation of the horse to the race course as put forward by Dr. Marmion as a possibility.

CHARGE 3

This charge relates to the obligation on a trainer to take reasonable steps to alleviate pain. Mr. D’Angelo submits in the first instance that there was no pain, and that in any event Mr. Lynch took all reasonable steps to alleviate pain if there was

any. On all of the evidence before me the lameness in itself was an indication of pain.

The horse was given pain relief over a period of time, including the treatment with ice boots and the drugs I have mentioned earlier. The pain was alleviated to some extent by the combination of treatments given by Mr. Lynch.

Very simply the pain relief that Mr. Lynch provided was not sufficient. The horse was in pain when manipulated by Dr. Koenig on 26 January 2023.

In the terms of AR231(1)(b)(ii) I do not consider that the steps taken by Mr. Lynch to alleviate pain were reasonable. The horse had a known propensity to be a little lame when starting his work and whilst trotting. Mr. Lynch did not know the condition of his joints at that time, because there had been no x-rays taken. In my view he should have been concerned to find a cause of the pain. I will deal with the need for veterinary advice when I deal with Charge 4.

In coming to my conclusions in relation to this Charge I have taken into account the evidence of the track riders, the fact that the horse was old, his record of racing leading up to 26 January 2023 and his apparent healthy appearance. Despite all of that I find that the failure to further enquire into the cause of the horse's lameness was critical, it was in my view an unreasonable failure by Mr. Lynch not to seek advice.

CHARGE 4

The question in relation to this charge is, were the treatments provided by Mr. Lynch sufficient, and if not should veterinary advice have been sought? I have already answered that to some extent in dealing with Charge 3.

Mr. Lynch found himself in a difficult position. He had an owner who did not wish to spend money, but wanted the horse to continue racing. The horse was running well and appeared healthy. As I have said, he did provide treatment for the relief of pain.

But something occurred between 11 January and 26 January 2023 over and above the natural progression of the osteoarthritis later observed on x-ray.

From the whole of the expert evidence I am able to conclude as follows:

- (1) the horse was never subject to a veterinary examination.
- (2) x-rays taken three months after the event showed chronic arthritic or degenerative joint disease
- (3) this was unrelated to Dr. Koenig's findings of 26 January 2023
- (4) on 26 January 2023 there was marked pain on manipulation and obvious swelling
- (5) the decision to run the horse on 26/01/23 after it was observed to be lame, with the potential to cause injury to either of the horse, its rider and other horses and riders was unreasonable, and
- (6) the Meloxicam and Phenylbutazone administered by the stable was done without veterinary consultation and was not effective in alleviating the pain.

I have found earlier that the treatments provided by Mr. Lynch were not appropriate in all the circumstances of this matter and that in the terms of Charge 4 Mr. Lynch did fail to provide veterinary treatment where I have found such treatment was necessary.

PENALTIES

I will deal now with the penalties imposed in relation to Charges 2, 3 and 4, because as I have said earlier Charge 1 should be dealt with as suggested. It is in the hands of the appellant.

In my view, the fine of \$1000 for a breach of AR105(1)(d) was reasonable on the basis of my findings and I would not interfere with that penalty.

Breaches of AR231(1)(b)(ii) and AR231(1)(b)(iii) are always serious. A severe penalty is required having regard to the welfare of the horse, the public image required to maintain the integrity of the racing industry and the health and wellbeing of riders and other horses.

In my view the offending on this occasion does require a period of disqualification. However, this must be tempered with the fact that a long period of disqualification can potentially force someone out of the industry.

Mr. Lynch is a valued member of the racing community. I have received testimonials to that effect which have not been challenged by the Stewards.

Factors of both personal and public deterrence must play a part in any consideration of penalty, although in this matter I believe that the aspect of personal deterrence is not so important. I also consider that in terms of seriousness that this offending is at the lower to mid-range on a scale of seriousness.

The Stewards started with a disqualification of twelve months and reduced that to nine months because of Mr. Lynch's good record.

As I have said earlier, I think that Mr. Lynch, to some extent, was the victim of circumstances. He should have ignored his owner's request to continue to race the horse and not spend any money on veterinary treatment. I think Mr. Lynch believed that the pain relief he provided was sufficient, but I have found that it was not. I have also found that he should in those circumstance have sought veterinary advice.

In all the circumstances I have decided that that starting point used by the Stewards, namely, twelve months disqualification was too high. I would therefore start at five months. For Mr. Lynch's good record and contribution to the industry I would apply a larger discount of approximately one third rather than the 25 percent used by the Stewards. That means a period of disqualification on both Charges 3 & 4 of 15 weeks. These disqualification periods in relation to both Charges 3 & 4 should be served concurrently as ordered by the Stewards.

Because I have substantially reduced the penalties on two charges I order the refund of \$400 of the \$500 bond lodged with the appeal.

The orders of the Tribunal are therefore as follows:

- Charge 1 – the Tribunal has not dealt with this because of a lack of jurisdiction
- Charge 2 – appeal dismissed against conviction and penalty
- Charge 3 – appeal on conviction dismissed. Appeal on penalty allowed
- Charge 4 – appeal on conviction dismissed. Appeal on penalty allowed

On Charges 3 & 4 penalties of three and a half months disqualification for each to be served concurrently.

\$400 of the \$500 bond lodged should be refunded.

The starting period of disqualification will be Tuesday, 25 July 2023 at midnight and terminate at midnight on Tuesday, 7 November 2023..