

**SOUTH AUSTRALIAN**  
**RACING APPEALS TRIBUNAL**

**RAT: 02/2024**

**DATE OF HEARING: 8 April 2024**

**TRIBUNAL: President – Mr T Anderson KC**

**APPELLANT: Todd Balfour**

**Assisted by – Mr T Kavanagh**

**IN ATTENDANCE: RacingSA Gen Manager Integrity – Mr J Petzer**

**DETERMINATION**

**In the matter of an Appeal by T Balfour against a decision of the RacingSA Stewards brought under Rule AR228(b) which states; “A person must not engage in: (b) misconduct, improper conduct or unseemly behaviour;”**

**BACKGROUND:**

Mr Todd Balfour is registered with RacingSA as a stablehand/trackwork rider for Season 23/24.

Following an incident at the Kangaroo Island racecourse on Friday 16 February 2024, the Stewards took evidence and then charged Mr Balfour during an adjourned Inquiry on 29 February 2024.

He was charged with a breach AR228(b) with improper conduct.

The particulars given by the Stewards were; *“that Mr. Todd Balfour, a licensed Stable Employee/Track Rider for the racing season 2023/24, engaged in improper conduct at the Kangaroo Island racecourse on Friday 16 February 2024, the improper conduct being that;*

*At approximately 7.00pm that day, while the Racing SA Compliance Officer was conducting breathalyser testing at the request of a number of participants present at the racecourse, he approached the Racing SA Compliance Officer from behind and without his consent pulled his pants down and in doing so fully exposed him from the waist down to numerous parties present.”*

Mr Balfour pleaded “guilty” to the charge. The penalty imposed on him was disqualification for a period of five (5) years. Mr Balfour now appeals against the severity of that sentence.

Mr J Petzer represented the Stewards before the Tribunal and Mr T Kavanagh represented Mr Balfour. Mr Petzer was the chairperson of the four-person Panel which conducted the Inquiry and imposed the penalty on Mr Balfour.

## THE INCIDENT:

The facts surrounding the incident are not in dispute. The evidence shows that Mr Balfour did pull down the pants of the Official and exposed him. There were several persons present at that time. They were members of the racing fraternity. There were no members of the general public present. The incident occurred at about 7.00 pm on a Friday evening when most of those present had consumed alcohol to excess.

Mr Balfour, because of his consumption of alcohol is in no position to dispute the facts alleged by The Stewards and does not do so. He has admitted the facts, from the evidence of bystanders and the Official, that he has pulled down the Officer's shorts. He says that he cannot remember the incident.

Likewise, Mr Balfour did not dispute that he had breached Rule AR 228(b). He was frank in his admissions before the Stewards and before the Tribunal.

## INVOLVEMENT IN RACING INDUSTRY:

Mr Kavanagh on behalf of Mr Balfour emphasised the Appellant's background in the racing industry. He submitted the penalty in this case was crushing and effectively removes Mr Balfour from the industry which he has been involved with for most of his life. I will deal with his background shortly.

Mr Balfour was born into a racing family. His grandfather was a jockey, and his father was a jockey and a trainer. He moved around the world with his father's commitments and began riding trackwork in Adelaide at an early age. He then attended an apprentice jockey school in Singapore where his father was based at the time. Back in Adelaide he became a jumps rider having his first ride at the age of seventeen. He rode over jumps in Victoria as well as South Australia, also in several countries in Europe.

He stopped riding in 2008. He then broke-in and schooled horses. He returned to Victoria as a Trainer and had considerable success. Since that time, he has been a stablehand and trackwork rider.

His income is now derived from his own horse transport business, strapping horses and work on a local thoroughbred property. He estimates that since his disqualification commenced income of at least \$2000 purely from strapping duties had been lost.

## THE SUBMISSIONS:

Mr Balfour returned a "blood alcohol" concentration reading of 0.40% on a breathalyser which is very high indeed. Mr Kavanagh submitted that reading could not be accurate, because if it were, Mr Balfour would have been in a coma, at least. He produced a fact sheet regarding readings of that nature. It is not in dispute that a reading obtained immediately after consumption of alcohol is likely to be inaccurate. For whatever reason, Mr Balfour immediately before he voluntarily took the

breathalyser test had taken a drink of straight whiskey and no doubt that contributed to the high reading. I agree that the reading could not have been as high as 0.40%, but the fact is that it was high enough for Mr Balfour not to have recall of the incident. He had been drinking all through the day.

In relation to the penalty, as I have already indicated Mr Kavanagh submitted that the effect of the five-year disqualification was to rule Mr Balfour effectively out of the racing industry. He submitted that this incident was not at the worst or most serious end of the spectrum of conduct. He said in his submissions that it was a prank or a practical joke. I cannot agree with that view, it was certainly more than that.

Mr Kavanagh referred to the case of a former rider Nikolic who was disqualified in Victoria for conduct which was at the most serious end of the spectrum. I do not intend to go into the details of Mr Nikolic's conduct, but it was extreme. He received a disqualification of two years and Mr Kavanagh argued that therefore the five-year disqualification imposed by the Stewards was completely out of balance with what would be regarded as a reasonable penalty in the circumstances.

Mr Kavanagh also submitted that in these circumstances a fine was the appropriate penalty. I will deal with that later, but it is sufficient for me to say at this stage that I do not agree with that submission.

The Stewards made detailed written submissions and orally through Mr Petzer. The points emphasised by Mr Petzer were that the Stewards in determining penalty did have regard to many factors in favour of the Appellant. These include his previous offence record, his forthrightness at the Inquiry, his long-standing involvement in the industry, his personal circumstances, the fact that he showed remorse for his conduct, that he had apologised to the RacingSA Officer and finally the fact that he had pleaded guilty.

Mr Petzer said these matters were outweighed by the aggravating factors which he said included the serious nature of the conduct, the conduct being significantly below the standard expected of a licensed person, the resultant distress caused to an Official, and finally that on any objective view by any reasonable person would result in the conduct being considered reprehensible and inappropriate and/or offensive.

Mr Petzer then relied on general sentencing principles including individual and general deterrence, and that punishment was a relevant factor in determining penalty.

Mr Petzer emphasised that the conduct was unheard of in the thoroughbred racing industry. I accept that this maybe so, but that does not make it such that it needs to be considered an aggravating factor in considering penalty. Mr Petzer made submissions regarding the effect of intoxication and referred to recent decisions of the Supreme Court of South Australia.

As a matter of law, statutory enactments have clarified in criminal matters the way in which self-induced intoxication is to be considered. Here I am dealing with an incident involving an assault and self-induced intoxication. I must find a balance between competing factors in the exercise of my discretionary judgement when imposing a penalty.

Clearly, alcohol was an aggravating factor in the conduct of the Appellant. As I said, it was self-induced, and foolhardy. I take that into account. However, I must also take into account, the fact that the incident occurred with only seven persons present in an informal gathering.

#### PENALTY:

Mr Kavanagh submitted that the penalty of a five-year disqualification was crushing and contended that a fine would have been appropriate. I have already indicated that I do not consider a fine was appropriate, in the circumstances.

I have also considered a combination of both a fine and a period of suspension as an alternative to disqualification. In the end, it is my view that a key factor in considering this matter is that Mr Balfour actually assaulted the RacingSA Officer whilst he was performing some form of official duty, albeit in unusual circumstances. In those unusual circumstances the gathering took on rather an informal atmosphere. Because it was an assault of an Official, I consider the disqualification was warranted.

It is true that only seven people witnessed the “dakking” as it was termed, and they were affected by alcohol to varying degrees as ascertained by the breathalyser readings obtained. It was only a limited section of the public, but it did consist of persons both male and female who were all associated with the racing industry. The occasion was during the Kangaroo Island Cup Carnival and between the Thursday and Saturday racing programmes.

The RacingSA Officer may now regret taking the readings which he was asked to do. He did so in the spirit of assisting those present so that they could decide who was capable of driving into Kingscote.

Mr Kavanagh, as I have indicated, characterised Mr Balfour’s action as a prank or practical joke. I reject that submission outright. It was the action of someone grossly affected by alcohol who says he could not remember the incident. It was totally disrespectful of someone in authority and caused the Official considerable embarrassment.

Mr Balfour is forty-six years of age and has been involved in the racing industry in various capacities since he was fourteen. His whole life has been around the racing industry. A five-year disqualification is a crushing penalty in my view and is not warranted in the circumstances I have outlined.

The element of general deterrence is important. The conduct indulged in by Mr Balfour, and its effect, is serious. Those associated with racing must respect the Officials appointed to control the industry. The image of racing is also relevant.

Personal deterrence, in my view, is also important. I consider that whatever the penalty be by way of disqualification I feel it unlikely that Mr Balfour will do anything like this again. He is genuinely remorseful for his foolish behaviour.

He has been disqualified since 29 February 2024 and that has cost him considerable income. He relies on the racing industry for his livelihood. A five-year disqualification would basically see him out of the industry. His family connections with the industry are also important to him. A disqualification means that he can

have nothing to do with his family in a racing capacity during the period of his disqualification.

It is my view that the disqualification of Mr Nikolic in Victoria bears no real comparison with this isolated incident. Nikolic had shown a complete disregard for those in authority on many occasions and had actually threatened Officials. As I have indicated he was disqualified for two years.

I disagree with Mr Petzer's submission that "an objective view, by any reasonable person, would react to such conduct as being considered reprehensible." I agree it was inappropriate and offensive, but not reprehensible.

In my view too much emphasis was placed by the Stewards on the fact that the conduct was unheard of in the industry.

Within the spectrum of serious conduct warranting disqualification, I place it at the lower end of the spectrum.

In those circumstances I consider the starting point should have been nine (9) months disqualification as distinct from the ten years starting point used by the Stewards.

For the reasons given by the Stewards, as I set out earlier, I consider the reduction of fifty percent appropriate. That would then make the nine-month disqualification become a four-and-a-half-month disqualification.

Mr Balfour has already served one and a half months of that period and therefore the disqualification shall terminate at midnight on 13 July 2024.

I think it important to remind the Stewards that they must judge at all times on an objective basis. In retrospect, I believe the Stewards may have taken such a strong view on penalty because the assault was perpetrated on one of their own. This should not have affected their decision-making. In saying that, as is apparent from my reasons, no right-minded person could have regarded Mr Balfour's behaviour as anything but serious and certainly improper.

Whilst a disqualification was appropriate, a five-year disqualification was manifestly erroneous.

I order the refund of \$250 of the fee lodged.

**Mr T Anderson KC**  
**President SARAT**

Dated 16 April 2024.