JUDICIAL CONTROL AUTHORITY
FOR RACING
TE MANA WHAKAHAERE Ā-TURE MŌ TE PUREI

Appeal S Lawson v RIU - Decision of Appeals Tribunal dated 18 June 2021 - Chair, Hon J W Gendall QC

Rules:

Repondent(s)/Other parties:

Name(s):

Decisions:

JUDICIAL CONTROL AUTHORITY

BEFORE APPEALS TRIBUNAL

IN THE MATTER of an application under Rule 1205 of the NZ Harness Rules of Racing by SIMON LAWSON

Between Simon Lawson

Applicant

And Racing Integrity Unit

Respondent

Hearing held at Hamilton on 15 June 2021

Appeals Tribunal: Hon J W Gendall QC (Chair)

Mr L N McCutcheon (Member)

Present: Mr R Lawson – Lay Advocate

Mr M Hodge - Counsel for RIU

Mr N Grimstone - RIU

DECISION OF APPEALS TRIBUNAL

1. This was an application by Mr S Lawson seeking an order for the cancellation of a disqualification imposed upon him by the Appeals Tribunal on 10 May 2019. The disqualification was for a period of 2 years and 6 months commencing on 11 May 2019 and to end on 11 November 2021.

2. The background to the offending on 2 charges by Mr Lawson and which resulted in the disqualification, is fully set out in its decision. It involves 2 charges of Serious Misconduct with dishonest behaviour in placing successful bets on 2 horses in Harness races in which Mr Lawson was driving other horses, which were unplaced. The offending struck at the heart of the integrity of the Code and damaged its reputation within the community and was seriously dishonest.

3. **RULE 1205**

Where relevant it provides:

(1) A person who has been disqualified for more than 12 months or who owns a horse that has been disqualified for more than 3 months may apply inwriting to the Appeals Tribunal for a cancellation of the remainder of the disqualification.

(2) An application under sub rule (1) shall not be considered by the Appeals Tribunal until the expiration of

(a) 5 years from the date the disqualification was imposed where the person was disqualified for life.

(b) 12 months from the date the disqualification was imposed where the person was disqualified for more than 12 months.

(3) On 10 May 2020, when 12 months elapsing from the date of the disqualification, Mr Lawson sought to have his disqualification cancelled. In a decision of the Tribunal dated 29 May 2020, that application was declined. The written reasons are recorded in the decision dated 29 May 2020.

(4) Rule 1205 (3) provides that where an application seeking to cancel the balance of a disqualification is dismissed, a subsequent application may “not be made for a period of 12 months from the date the preceding application was dismissed”. That meant that until 29 May 2021 a further application could not be made under Rule 1205. The Lay Representative of Mr Lawson lodged this application

on 28 May 2021 and recorded that it was “to be effective from 29 May 2021.

(5) Although the application was accompanied by comprehensive written submissions of the Lay Representative, the Tribunal convened a face to face hearing to enable the Applicant to be heard, and for him and his Representative to answer any questions the Tribunal might have. At no stage in the proceedings before the Judicial Committee, Appeals Tribunal has Mr Lawson attended or given any statements or evidence or submit himself to answer any questions. There has been a Lay Representative and Counsel, but they could only make submissions, and not give evidence. We wished to have the benefit of seeing and hearing directly from Mr S Lawson. He has not attended. He forwarded, today, a letter, through the Lay Representative, in which he said that “ it was not possible …to take a day’s leave from [his] employment.

SUBMISSIONS ON BEHALF OF APPLICANT

4. Mr R Lawson filed comprehensive written submission encompassing 5 pages with previous decisions relating to the Applicant and an Australian decision (but this related to a Jockey who bet on horses he himself rode or on races where he did not ride). We have endeavoured to distil Mr Lawson’s submissions to the following.

5. The Applicant, and his family have been seriously affected by the disqualification, and his life shattered. He referred to the fact that over 80% of the disqualification term has been served without blemish, that the Applicant had rehabilitated himself and had done all that he could to change his life. He referred to sentencing principles (punishment, deterrence, disapproval, or denunciation), by the JCA and rehabilitation of an offender - and contended that that last principle had not been addressed. He said the focus had to be on the Applicant’s rehabilitation. He said that the Applicant had completed his own rehabilitation of a Salvation Army anti-gambling course and had severed or excluded himself from any contact with participants or those within the Harness Racing Industry. He relocated to the Waikato and has been employed by Waikato Stud since January 2020, before his last application was made. He said that the Applicant had completed an Equine Massage Course and would like to supplement his income by having access to properties of horse trainers. He said that the Applicant would like to have the opportunity to attend race meetings when his employer is promoting its product as “it is customary for staff to be present to create report [sic rapport]”.

6. It was further contended that cancellation of the disqualification now would have no affect on public perception of the industry and would not undermine the deterrent effect on others in the Racing Codes. He said that the “penalty cannot scar him for life” and that he must have the opportunity to prove that he is able to be part of the “horse fraternity” at some stage. He advised that the Applicant would not be returning to the Harness Racing Industry.

7. A further submission was made to the effect that in recent times more licence holders have been subject to disqualification “and therefore it is highly likely that after time more applications will forthcoming”. We comment that it is difficult to see how such a possibility can, even if correct, provide any support to the application.

8. Lastly, it was submitted that the Applicant has shown “good behaviour” and “dutifully complying with the disqualification requirements ought to lead to an expectation of some “potential reduction” in its term. We take that submission to be that obedience to the order, which is required under the Rules and the Racing Act 2003, should be rewarded by a reduction of the length of the term in some cases, and that this is one of those cases.

THE RIU SUBMISSIONS

9. The RIU opposed the application. Counsel submitted that the offending that led to the disqualification was serious and that the Appeals Tribunal had carefully considered all aggravating factors and personal circumstances of Mr Lawson. It deducted 15 months from the appropriate starting point of 3 years 9 months and generously removed the fine of $8,000 that had been imposed at first instance. Counsel contended that there had been no material change of circumstances or Mr Lawson’s position since the last application was declined so as to justify cancellation now. She said that the Tribunal had then taken into account and evaluated all material facts and circumstances. There was no fresh evidence or significant new material put before the Tribunal to show how the serving of the remainder of the disqualification (4 months) would unduly affect Mr Lawson. The only real change of circumstance since the dismissal of the last application, Counsel submitted, was that the time specified in the Rule had elapsed, which was not a change in the Applicant’s circumstance but rather simply another attempt to have a proper penalty reduced. A wish to have access to trainers’ properties to perform equine massage did not compromise a persuasive reason to cancel the disqualification order.

10. Counsel submitted that the integrity of the penalty system of the Code, and the risk to the Industry, would be compromised if a totally discretionary decision simply because an Applicant has complied with the Order, and the Rules do not provide for penalties to be reduced (cancelled) simply because of that. She summarised by saying that as a matter of principle, applications such as this are not to be seen by those in the Industry and the public, as a way of reducing otherwise appropriate penalties in lieu of an Appeal (although in this case the penalty had been fixed by the Appeals Tribunal – but not cancelled at the first application).

OUTCOME

11. As this Tribunal said in its decision of 29 May 2020 when declining the previous application, whilst Rule 1205 provides the jurisdiction for an application to be made after 12 months (and thereafter a further 12 months) it is entirely a matter for the discretion of

the Appeals Tribunal whether or not to cancel the balance of a disqualification term. As was said in our previous decision, The Tribunal has the task of "evaluating all the material facts and circumstances and reaching a considered decision. The exercise of that discretion …cannot be arbitrary or capricious, but a proper evaluation and consideration of all the relevant circumstances is required. These will vary widely, depending on the particular individual, the offending, the length of the disqualification, the period of time remaining to be served, the interests of the Profession or Code and the community, and the purpose of the sanction and any matters of compassion – and there may be infinite other factors relevant to the exercise of a discretion such as this – there can be no limitation in advance of matters to be taken into account. It will all depend on the particular or unique circumstances that exist at the time of the application".

12. When the previous application was made, and declined, Mr Lawson had obtained employment with Waikato Stud Ltd in Matamata, had a stable relationship with his partner, had acquired a home subject to a mortgage, and his personal circumstances has taken a turn for the better. The decision noted that this was to his credit and the continuation of the disqualification would not impact on those matters. There has been a change in the Applicant's personal relationship with his former partner, but it is unrelated to his disqualification or does not have any relevance to this application.

13. There is some force in the contention of the RIU that the only relevant change in circumstance is the passage of one year. Mr Lawson's employment has continued and is sound and he has presented a reference from the employers signifying support for him. Cancellation of his disqualification is not required for this employment to continue to be maintained. He says that he wishes to attend race meetings at which Waikato Stud might be a sponsor or have some involvement so as to illustrate staff presence and support. Such a desire does not provide a compelling reason to require cancellation of the disqualification. He says he has completed a course in Equine Massage and would wish to supplement his income by a secondary occupation and having access to properties of horse trainers. We have not heard from him as to any details of this other than a wish or formative aim in its early stages which we take into account. But we note that the consequences of a disqualification order are far wider than restricting access to trainers' properties, yet all would be removed with any cancellation. (And there exists in any event the power of the Board of HRNZ to consent to certain activities otherwise prohibited by a disqualification).

14. The Lay Advocate has impressed upon the Tribunal the argument that Mr Lawson has "totally rehabilitated himself" and this justifies cancellation. It is to Mr Lawson's credit that he has sought and done well in his new life. But the removal of a proper disqualification does not automatically follow as a reward for a period of good behaviour, which is a little over 2 years. Rehabilitation from past wrongful behaviour, is seen as the restoring of oneself to a normal life and reputation and remedying or overcoming past afflictions or dishonest proclivities. He has, he said, undergone counselling for what he told Investigators was a "gambling problem" but we would have been helped if he had presented a report as to the length or success of that because, at the May 2019 hearing his Counsel said to the Appeals Tribunal that "he was still gambling but not as much". Of course, having a bet now is totally permissible, and those comments are made only in the context of the claim to total rehabilitation from an acknowledged past affliction and the serious dishonest activities to flout the Rules that he twice took. The essence of the disqualification was because of the dishonest actions.

15. Where a professional disciplinary body (such as medicine, accountancy, law, teaching, and the like) consider an application for reinstatement to the roll after a considerable period, where a practitioner has been struck off – removed for life – the Tribunal will consider total rehabilitation as one of many features to take into account. But it does not follow, as the Lay Advocate argues, that Mr Lawson's gambling counselling and pursuit of a new career, will lead, without more, to a cancellation of the finite order. There are much more factors which may come into play – including the deterrence of others, the interests of the Industry and community, the reputation for the integrity of the profession's judicial and regulatory process.

16. We set this application down for a face to face hearing so that the Tribunal could hear first hand from and address some questions to Mr Lawson. That was because, as we have said, he has never appeared before a JCA Committee on these matters, so neither the Judicial Committee nor the Appeals Tribunal has heard from him, other than through submissions of Counsel or the Lay Representative. He has invoked, as is his right, the provisions of the Rules to make the 2 applications for cancellation. It is his obligation to satisfy the Tribunal that it should exercise its discretion in his favour. It is rarely the case that a professional person seeking the indulgence of a return to the profession, Code, or sport, following disqualification, would seek to do so without attending. We would have been helped if we had seen, and heard, some genuine expression of remorse or insight into what were dishonest actions. As the Appeal decision observed, attempts "to resile from statements he made to the police and investigators…does not sit well with claims to remorse and insight" (see paragraphs [44] – [46] of the Appeals Tribunal decision".

17. The decision to impose a disqualification of 2 years 6 months was generous. The Tribunal took as a starting point 3 years 9 months and the initial deduction of 25% would not have been given but for the RIU suggesting that such be applied. Had that benevolent concession not been made any concession for a guilty plea and other factors could not, in line with the Supreme Court decision in R v HESSELL have exceeded 10%. The actual concession afforded to Mr Lawson also took into account that by reason of the former suspension he had been unable to drive for 4 months. It was a generous total of 15 months, being one third, and the quashing of the fine of $8,000 represented a further significant benefit to him. Cancellation, so as to provide a further reduction, is not supported by the personal circumstances of the Applicant, or any other factors. To do so would undermine the purpose of the sanction to deter others and would reflect adversely on the Industry and public perception and confidence in the disciplinary process.

18. Mr Lawson has not demonstrated any relevant change in circumstances since his last application, or that any hardship will follow from his serving the remaining 4 months of what was a modest penalty.

19. We add the following comments The impediments that are required to flow from a disqualification are far more extensive than just been excluded from racecourses. They are much wider and include not racing horses in which an interest is held or being involved in any capacity in breaking in or gaiting or the preparing or presentation of a horse or entering on any stable are of a licensed person - and there are more. But The Rules provide that the Board (of NZ Harness) may in proper cases give its consent to some activities if it thinks fit to do so, (as Mr Lawson says that he has forsaken the Harness Racing Industry this might not avail him). And the Rules attached to the Racing Act 2003 contain a provision relating to persons prohibited from admission to racecourses where they may apply to an Exemptions Committee to be exempted wholly or in part from such prohibition. Such an “Exemption Committee” is said by the Rule to comprise of the Chief Executive of each of the Racings Code and a Chairperson appointed by each of the Codes. That may highlight the importance the Racing Industry comprising the three Codes is required to place on the integrity of the consequences of disqualification when it comes to admission on to a racecourse. Indeed the preamble to the Statutory Regulation say it is “for the purpose of maintaining public confidence in the conduct of racing and the integrity of race betting.

20. The application falls far short of persuading the Tribunal to exercise its discretion to cancel the balance of the term of disqualification. It is declined.

COSTS

21. Rule 1205 (5) provides that the Appeals Tribunal may order that all or any of the reasonable costs and expenses of a party to the proceeding, the RIU, JCA, HRNZ and Appeals Tribunal be paid by such person or body as it thinks fit. Counsel for the RIU submitted that a sum of $1,000 should be paid towards the expenses that the RIU have incurred.

22. Although no order for costs was made when the first application was declined, we consider that some contribution to the expenses of both the RIU and JCA is proper given that a second application, brought without persuasive foundation, has been unsuccessful.

23. The Applicant is ordered to pay $750 towards the costs of the RIU and $500 towards the costs of the JCA.

Dated at Wellington the 18th day June 2021

Hon J W Gendall Q C (Chair)

Addendum to Written Reasons dated 15 June 2021

1. Mr R Lawson, lay advocate for the Applicant has contacted the JCA to raise or query two matters contained in the reasons – although not the decision itself.

2. These are:

(a) The reference in the Tribunal’s reasons to the Applicant not having attended or appeared before the initial Committee and the three hearings before the Appeals Tribunal is incorrect, as he said the Applicant did in fact appear before the Judicial Committee on 19 February 2019.

(b) The reference (para 14) that “It would have helped if he have had presented a report to the length and success of that (Salvation Army Gambling Course)” was incorrect as “the completed report was given to the Appeals Tribunal at the original Appeal hearing.”

3. As to the first point. The Tribunal regrets any error over this. The statement arose only because the written decision of the Judicial Committee does not record Mr Simon Lawson as being present. The procedure usually adopted by Judicial Committees is that they record as present the Applicant, Respondent, respective Counsel/lay representative. The Appeals Tribunal specifically checked to see that Mr S Lawson was recorded as present, and he was not recorded as such. The Tribunal based its comment on that. The Tribunal’s written reasons will be corrected to remove the reference to non-attendance before the original Committee.

4. As to the second point:

(a) The Tribunal was well aware of the fact that a counselling course occurred. That is referred to in several decisions. Also it had a letter which was tendered by Counsel at the May 2019 Appeal hearing saying that Mr S Lawson was referred for treatment (it seems that may have been after the Judicial Committee hearing, but obviously before the Appeal hearing). The Salvation Army letter read:

“I can confirm that I received confirmation that Mr Lawson attended the course and completed this to the satisfaction of the facilitators”.

What the remark in para 14 was intended to convey was that it would have been helpful to the Tribunal (in assessing remorse and insight) if a report as to the length, content and continued success, of the course, as the letter lacked any detail. And his Counsel, at the Appeal hearing had advised that “he was still gambling, but not as much”.

(b) The reasons given in our decision will be expanded to read:

“Whilst the Salvation Army had, in 2019, provided a letter stating that Mr S Lawson had completed a gambling course to the satisfaction of a facilitator, the Tribunal felt that this did not contain sufficient detail as to length and content, which might have been helpful to it.”

Hon J W Gendall (Chair)

Penalty: