

Non Raceday Inquiry RIU v J Waddell - Decision dated 4 June 2021 - Chair, J Lovell-Smith

Rules:

Repondent(s)/Other parties:

Name(s):

Decisions:

**BEFORE A JUDICIAL COMMITTEE
OF THE JUDICIAL CONTROL AUTHORITY
UNDER THE RACING ACT 2003**

**IN THE MATTER OF THE NEW ZEALAND
THOROUGHBRED RACING INC.
RULES OF RACING**

BETWEEN RACING INTEGRITY UNIT

Informant

AND JASON WADDELL, Class A Jockey (Disqualified)

Respondent

Hearing: On the papers

Judicial Committee: J H Lovell-Smith, Chair - S Wimsett, Member

Appearances: S Symon and E Smith for the Informant

No appearance by Respondent

Decision: 4 June 2021

RESERVED DECISION ON PENALTY

[1] In a decision dated 5 May 2021, the Judicial Committee found Mr Waddell had committed acts detrimental to the interests of racing namely:

- (a) by making the threatening phone call to Andrew Castles stating, "You're dead ****, watch your back." A7523
- (b) by posting an insulting message on social media about (Name withheld) and also threatening him via a phone call – A7524.

[2] Section 801(2) of the Rules provides:

A person who commits a Serious Racing Offence shall be liable to:

- (a) be disqualified for any specific period or for life; and/or*
- (b) be suspended from holding or obtaining a licence for a period not exceeding 12 months. If a licence is renewed during the time of suspension, then the suspension shall continue to apply to the renewed licence; and/or*
- (c) a fine not exceeding \$50,000.*

Application for Rehearing by the Respondent

[3] A preliminary matter has now arisen as Mr Waddell has applied for a rehearing. The hearing was held on the papers as at no stage did Mr Waddell engage in the proceeding. However, the Judicial Committee gave him the opportunity to make submissions on penalty or to request a rehearing within 21 days from the date of the decision.

[4] Mr Waddell made no submissions on penalty, but in an email dated 21 May 2021, he now seeks to defend the charges. He has requested a hearing no earlier than August 2021, when he expects to be "well." Mr Waddell's application is opposed by the RIU.

[5] Rule 923(i)(c) provides that the Judicial Committee may direct a rehearing if it is satisfied that a miscarriage of justice might result because of a material mistake or omission in the conduct or determination of the proceedings, or in the presentation of evidence or submissions, or any other similar reason. Rule 924 provides that the Committee's decision whether or not to direct a rehearing is final.

[6] Mr Waddell has been given every opportunity to engage in these proceedings:

- (a) He never responded to the JCA Executive Officer's email on 12 January 2021 having been served with the Information.

- (b) The Executive Officer advised Mr Waddell that a teleconference with the Judicial Committee, Mr Waddell and Counsel for the RIU would be held on 6 February 2021. Mr Waddell did not participate in that teleconference, but emailed the Executive Officer later that day stating that he had not been connected due to an administrative error. A further teleconference was scheduled for 11 February 2021 to enable him to attend. He declined to participate in the rescheduled teleconference when contacted on 11 February 2021.
- (c) Mr Waddell has not responded to the RIU's affidavits and submissions which were filed and served on him in early March 2021.
- (d) On 30 March 2021, this Committee issued a further Minute which was sent to Mr Waddell by the Executive Officer advising that the matter would be dealt with on the papers if Mr Waddell did not wish to participate. Mr Waddell was advised that he should respond by 23 April 2021 if he wished to take part. Mr Waddell did not respond. The Committee then delivered its decision on 5 May 2021.

[7] Mr Waddell has provided no grounds in support of his application for a rehearing. He has not given any explanation for not taking part in these proceedings nor provided any information in support of any claim he has a defence. He has not made any submissions as to penalty.

[8] The Committee is satisfied that there is no basis on which a miscarriage of justice has resulted and declines Mr Waddell's application for a rehearing.

Penalty Decision

[9] Jason Waddell, is the holder of a Class "A" Jockey licence issued by New Zealand Thoroughbred Racing. On 19 November 2020, Mr Waddell pleaded guilty to one charge of failing to provide a urine sample for analysis. The penalty decision was reserved and the written decision of the Judicial Committee was officially published on 5 December 2020 at 7:00 pm. Mr Waddell was disqualified from racing for 22 months.

RIU Submissions

[10] The only appropriate penalty in this case is a further period of disqualification, the most severe penalty under the Rules.

[11] The timing of this offending is significant. The day after Mr Waddell was disqualified, he threatened Mr Castles who had observed his aggressive behaviour which prompted the attempt to drug test him at the Te Rapa Racecourse on 17 September 2020. A few days later Mr Waddell maligned (Name withheld) on social media and then made a threatening phone call to him.

[12] This "aggressive and vengeful behaviour" by Mr Waddell is detrimental to the Racing Industry and to threaten an Official charged with maintaining the integrity of the Industry is a particular aggravating feature.

[13] Mr Waddell's history of serious previous breaches of the Rules includes:

- (a) 2006 – suspended for eight weeks and fined \$500, plus costs of \$500, for careless riding.
- (b) 2006 – fined \$1,500 for misconduct, including sending threatening, obscene and insulting text messages, unlawfully entering a residential premises and interfering with a vehicle parked there.
- (c) 2006 – suspended for 18 days for directing his mount at another rider.
- (d) 2009 – suspended for seven weeks for misconduct, including using insulting, offensive and obscene language towards the President of Racing Rotorua while in the Sponsor's room without a ticket.
- (e) 2010 – disqualified for 14 months for testing positive for methamphetamine.
- (f) 2012 – suspended for four days for careless riding.
- (g) 2015 – disqualified for 12 months for improper riding and doing an act detrimental to the interest of racing.
- (h) 2020 – disqualified for 22 months for refusing to supply a sample.

[14] The RIU submissions also included statements made by Judicial Committees in 2015 and 2020:

(a) In respect of the 2015 disqualification, the Committee referred to Mr Waddell's record as demonstrating "a wholly unacceptable pattern of behaviour" that involves anger and abuse [and] demonstrates a marked lack of self-discipline."

The Committee said that Mr Waddell had "a most unattractive record of breaching the Rules of Thoroughbred Racing".

(b) In 2020, the Committee referred to Mr Waddell's expressed willingness to self-impose a lifetime ban on riding in races and trials.

[15] Mr Waddell has been in the Racing Industry for approximately 20 years. His record must be seen as significantly aggravating.

[16] RIU submits that a substantial period of disqualification is called for. Given his continued and blatant disregard for the Rules, a starting point of disqualification for life may be appropriate.

Reasons for Penalty

[17] The Appeals Tribunal for the Judicial Control Authority in *RIU v Lawson* held:

Proceedings under the Rules, as is the position in all cases involving professional disciplines are designed not simply to punish the transgressor, but crucially are to protect the profession/public/industry and those who are to deal with the profession/public/industry and those who are to deal with the profession. Disciplinary sanctions are designed for some important different purposes, and although

guidance can be gained from the criminal jurisdiction, there are broader considerations. The Thoroughbred racing 'industry' is a profession where key participants are required to be licensed in order to practice in various ways within that sphere. Comprehensive rules of practice, behaviour procedure and the like are set down in extensive detail in the Rules which govern the codes and behaviour. As with most professions, a careful internal disciplinary and regulatory process is set up. Those who practice within the professions (whether law, accountancy, medicine, teaching, real estate, and the like) are subject to breaches of standards of conduct of rules designed to protect members of the profession as well as the public. Such sanctions can be at the highest end include removal from a profession for serious breaches of professional rules and standard involving dishonest or immoral conduct. Such behaviour if unchecked may greatly harm the reputation of the profession and "bring it into disrepute" – that is, the public loses confidence in it. For a Serious Racing Offence under Rule 1001, the sanctions are fine, costs, suspension or disqualification. Clearly, the latter is the most severe sanction.

In many professions, it is frequently imposed where the professional has acted dishonestly, unethically, or so far outside the standards required of him/her as to forfeit the privilege of working within the profession. Although naturally severe sanctions will "hurt" the transgressor, the primary purpose of sanctions by a regulatory body is not punitive in nature, but is to:

- protect members of the public,
- maintain public confidence in the profession,
- declare and uphold proper standards of conduct, performance and behaviour.

The aggravating factors relating to Mr Waddell's offending

[18] The words used by Mr Waddell in his phone call to Mr Castles amounted to a threat to kill him. The threat was made within hours of the Judicial Committee's decision disqualifying him for one year and 10 months to run from 17 September 2020 to 16 July 2022. In his capacity as CEO of the Waikato Racing Club, Mr Castles had observed Mr Waddell's aggressive conduct which prompted the drug testing at Te Rapa Racecourse on 17 September 2020. As a result of Mr Waddell's threat, Mr Castles was extremely concerned for his personal safety and had to revise his personal security.

[19] Mr Waddell's actions in posting incorrect and abusive allegations about (Name withheld) on social media followed by a threatening phone call were deliberate attempts to seriously damage (Name withheld) reputation and cause him and his family serious emotional harm and fears for their own safety.

[20] Mr Waddell has previously breached the Rules with obscene, abusive and threatening behaviour in 2006 and 2009. However, the current offending is a significant increase in seriousness, further aggravated by the fact it was committed within a matter of days after being disqualified from racing for 22 months by a Judicial Committee.

[21] There are no mitigating factors relating to this offending.

Mitigating factors personal to Mr Waddell

[22] With regard to mitigating factors, we take into account Mr Waddell's Counsel's submissions referred to in the Judicial Committee's decision *RIU v Waddell* dated 3 December 2020, at paragraphs 13(h) and (i) and 24. Mr Waddell suffers from depression and donates 10% of his earnings to the Mental Health Foundation of New Zealand. Mr Waddell had voluntarily cancelled his rider's licence. In the course of the hearing, Mr Waddell told the Committee that Cannabis was a big part of his life and he would like help to address his use of the drug.

[23] Because the current breaches of the Rules occurred within days of the Judicial Committee's decision of 5 May 2021, the Committee regards these mitigating factors as relevant to this decision on penalty.

Conclusion

[24] The threatening of an Official by Mr Waddell was a direct attack on an Official charged with maintaining the integrity of the Industry. The insulting media post was a direct attack on a member of the Industry designed to harm the member and his reputation and bring the Industry into disrepute.

[25] No previous sanctions have deterred Mr Waddell from committing further breaches of the proper standards of conduct, performance and behaviour.

[26] Having regard to the Appeal Tribunal's decision in *RIU v Lawson*, this is a case where the interests of the Industry and its participants outweigh the issue of rehabilitation and reintegration.

[27] A disqualification is the only proper sanction to denounce Mr Waddell's conduct and to reflect the fact that he is not "a fit and proper person to be involved in the racing industry".

[28] This Committee adopts a starting point of a disqualification for 12 years for both charges which reflects the gravity of the offending, the interests of the industry of Thoroughbred Racing as a whole and the need for denunciation both specific and general.

[29] We take into account the mitigating factors referred to in the Judicial Committee's decision of 3 December 2020 and allow a discount of 2 years from the starting point to reflect those personal mitigating factors.

[30] We order that:

(a) Mr Waddell is disqualified for 10 years from 17 September 2020 until 16 September 2030 concurrent with Mr Waddell's disqualification of 22 months imposed by a Judicial Committee on 3 December 2020.

(b) Mr J Waddell is to pay \$2,000 towards the costs of the RIU and \$500 towards the JCA costs incurred in these proceedings.

J H Lovell-Smith

Penalty: