

Non Raceday Inquiry RIU v M Hamilton and S Robinson - Decision as to Penalty and Costs dated 22 March 2018 - Chair, Prof

G Hall

Rules:

Repondent(s)/Other parties:

Name(s):

Decisions:

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

AND IN THE MATTER of the New Zealand Rules of Racing

BETWEEN RACING INTEGRITY UNIT (RIU)

Informant

AND MURRAY HAMILTON

Unlicensed

Respondent

BETWEEN RACING INTEGRITY UNIT (RIU)

Informant

AND SHAE ROBINSON

Licensed Trackwork Rider

Respondent

INFORMATION NOS: A6645 and A6646

COMMITTEE: Prof G Hall (Chairman)

Mr V Munro (Member) until 20 February

APPEARING: Mr C Lange, for the Informant

Ms M Thomas, for Mr Hamilton

Ms S Robinson in person

DECISION OF JUDICIAL COMMITTEE AS TO PENALTY AND COSTS

[1] In its decision of 19 December last the Committee found Mr Murray Hamilton to be in breach of r 1104(1)(b) of the NZ Thoroughbred Rules of Racing.

[2] The charge was that “[o]n the 27th and 28th of September 2017 at Glassford Road Omakau, Murray William Hamilton whilst disqualified did assist in the training, care and control of thoroughbred horses.” (An issue with the wording of this charge was addressed in the earlier decision at [146].)

[3] The relevant penalty provision is r 1104(3), which states:

A person who contravenes this Rule shall, in addition to any other penalty which may be imposed under any of these Rules, be disqualified for an additional period of not less than six months to commence at the end of the period of the current disqualification. For every second or subsequent breach he shall, in addition to any other such penalty, be disqualified for a period of not less than 12 months to commence at the expiry of the immediately previous period of disqualification.

[4] In addition, the decision of that date found Ms Shae Robinson to be in breach of r 801(1)(z) of the NZ Thoroughbred Rules of Racing.

[5] The charge was that “[o]n the 27th and 28th of September 2017 Shae Marie Robinson being a licensed person namely a Class B Trackwork Rider, did assist and associate with a disqualified person namely Murray William Hamilton for the purposes of the care and training of a registered horse.”

[6] The relevant penalty provision is r 801(2), which states:

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

be disqualified for any specific period or for life; and/or

be suspended from holding or obtaining a Licence for a period not exceeding 12 months. If a Licence is renewed during a term of suspension, then the suspension shall continue to apply to the renewed Licence; and/or

a fine not exceeding \$50,000.

[7] The Committee required the parties to provide written submissions as to penalty. These have now been received.

[8] On 20 February 2018, Mr Munro, the Member of this Committee, resigned from the JCA. Rule 901(5) provides: “... all appointed members of a Judicial Committee shall, if practicable, determine any matter, information or proceeding submitted for the determination of that Committee but one member shall constitute a quorum.” While we discussed the matter briefly after our receiving written submissions in late January, Mr Munro has had no role in the preparation of this written decision and thus in determining penalty. That task has fallen to the Chairman of the Judicial Committee.

[9] Ms Thomas in her written submissions on behalf of Mr Hamilton requested that she be given the opportunity to make oral submissions. A teleconference was called and Mr Lange said that as Ms Thomas had come into the case late, he would not object to this, in the interests of fairness and natural justice. Mr Lange filed a further written submission in response to those from Ms Thomas.

[10] A teleconference was held on 26 February at which both Ms Thomas and Mr Lange made submissions. The Committee inquired whether Ms Thomas had spoken to Ms Robinson. She stated she had not but believed Mr Hamilton had done so. She undertook to contact Ms Robinson and convey any further submissions Ms Robinson might have to the Committee. Ms Thomas did so by correspondence dated 15 March.

Informant’s submissions as to penalty

(a) Submissions common to both respondents

[11] The RIU submitted that “the current proceedings are a sporting code’s disciplinary proceedings akin to professional disciplinary proceedings” and that “the expectations and behaviour of the industry participants is essential to uphold the integrity of the racing industry.”

[12] The Committee was referred to the decision in *Z v Complaints Assessment Committee* (2009) 1 NZLR 1 where the Supreme Court held that the purpose of disciplinary proceedings was not to punish but to ensure appropriate standards of conduct were maintained in the occupation concerned. Mr Lange noted that Elias CJ remarked that punishment was the “responsibility of the criminal justice process”, stating at [70]:

The professional standards are properly the focus of the disciplinary inquiry. Where a distinct finding that a conviction reflects adversely on fitness is made, the Tribunal cannot exercise its usual powers to fine [in this case the dentist]. Again, this seems to me to be recognition that punishment is the responsibility of the criminal justice process. What remains are the professional sanctions for public protection: removal from the register, suspension of registration, the requirement to practise only under supervision, and censure....

[13] The informant’s submissions continued by noting, “the purposes of protection of the public and the maintenance of high professional standards percolate the remarks of the Supreme Court Justices.” More specifically, the RIU submitted that when the principles of professional disciplinary proceedings were applied to a disciplinary proceeding in a sport the purposes were to: enforce a high standard of propriety to maintain the high standards and good reputation of those involved in the sport; and to protect the betting public and others involved in the sport from future breaches by the individual or others who might be likeminded to breach the Rules.

(b) Submissions as to penalty for Mr Hamilton

[14] The RIU stated that Mr Hamilton had been licensed with NZTR since 2003. He had also been licensed in the Harness Racing industry from 1972.

[15] Mr Hamilton had been disqualified from holding or obtaining a Trainer’s Licence from 30 June 2017 up to and including 6 October 2017. Mr Hamilton was currently unlicensed.

[16] The RIU identified cases which were believed to be of assistance:

RIU v Lynch 14 March 2016. Mr Lynch was disqualified for four years in relation to an administration rule breach. Mr Lynch was located on a licensed trainer's premises. Mr Lynch was disqualified for a further twelve months on two charges (six months each) plus \$1,000 costs to the RIU and further \$1,000 costs to the JCA.

RIU v Walker 27 March 2016. Mr Walker, a jockey, was disqualified for a period of five and a half years for serious offending in July/August 2014. Mr Walker was located at a stable riding horses in work and was disqualified for a further six-month period plus \$450 costs to the RIU and \$250 costs to the JCA.

[17] The RIU identified an aggravating feature was that Mr Hamilton had several previous rule breaches since December 2014.

3 March 2015 r 801(1)(s)(ii), which was laid as a serious racing offence in December 2014, where Mr Hamilton received a \$350 fine for language he used to a NZTR official by phone.

11 July 2016 Mr Hamilton was fined \$500 when Mr Hamilton made an abusive and offensive phone call to another industry participant.

11 July 2016 Mr Hamilton received a suspended \$500 fine for writing offensive language on a racecourse sign in relation to another racing participant.

18 October 2016 Mr Hamilton was suspended from holding or obtaining a trainer's licence for a three-month period from 18 October 2016 up to and including 17 January 2017 in relation to an offensive phone call he made to an industry participant. Mr Hamilton was also fined \$750, which included the \$500 suspended fine from his previous misconduct charge. This charge was deemed serious enough that the complainant also made a complaint to the Police. As a result, Mr Hamilton was fined \$450 plus \$130 court costs after appearing in the Alexandra District Court on 20 September 2016.

15 June 2017 Mr Hamilton was disqualified for 14 weeks from 30 June 2017 up to and including 6 October 2017 with respect to both Thoroughbred Racing and Harness Racing. The two disqualifications were imposed concurrently. Mr Hamilton had been observed training thoroughbred and standardbred horses at the Omakau Raceway by RIU staff whilst the suspension was in place.

[18] Mr Lange noted that the NZTR Integrity Committee had warned off Mr Hamilton from racecourses due to what they described as: "Persistently and wilfully failed to comply with the Rules of Racing; Continued to act as though he was licensed even though he has not been licensed by NZTR since 31 July 2016; Demonstrated a lack of respect for the JCA and for racing officials, in breach of the Rules of Racing; The behaviour was repeated deliberately over a considerable period, indicating it was wilful and calculated."

[19] Mr Lange emphasised that the RIU had sought a suspended penalty on both the initial breaches of the Rules that Mr Hamilton was charged with in an attempt to assist him to abide by the Rules through the early stages of the events that had ultimately led to his suspension. The JCA subsequently suspended one of the \$500 fines as an incentive for Mr Hamilton to comply with the Rules.

[20] Despite previous penalties being imposed, including the suspended fine on Mr Hamilton by the JCA, Mr Hamilton, the RIU submitted, had continued to breach the Rules and had "blatantly breached his disqualification without any consideration for the consequences." The breaches of the Rules had been deliberate and continuous over a lengthy period.

[21] Mr Hamilton, it was alleged, had shown a lack of respect towards the JCA decisions and racing officials.

[22] When initially spoken to by Racing Investigators, Mr Lange observed, Mr Hamilton was evasive about his involvement in the training of the horses and had denied gearing them up. He later admitted he had been involved after the Racing Investigators advised him they had been watching his actions.

[23] Mr Hamilton was said to be an experienced industry participant who knew the expectations and requirements in relation to his behaviour and the Rules of Racing. Mr Hamilton's actions were also noted to have put Ms Robinson in a vulnerable position and she had been charged with associating with and assisting a disqualified person.

[24] Mr Hamilton had denied the charge despite strong evidence obtained by the RIU.

[25] The mitigating circumstance identified was that Mr Hamilton eventually admitted his actions when he was advised that Racing Investigators had observed him assisting with the training of the horses.

[26] The RIU described the current environment at Omakau as "volatile with other licence holders becoming incensed at Mr Hamilton's total disregard for his previous penalties, which have been imposed."

[27] The purpose of the penalty in this case was identified as being to support the racing community's endeavours to ensure that all their participants act within the code's rules. The RIU were said to "strongly believe a precedent of a severe penalty should be invoked due to the unique circumstances of Mr Hamilton's continual snub of previous penalties imposed by the JCA."

[28] Despite the previous JCA decisions the RIU had listed, they believed there were no previous cases that compared to the continuous, intentional failure to comply with the Rules of Racing, as Mr Hamilton had demonstrated.

[29] The RIU thus requested a further disqualification for a period of four years taking into account the numerous aggravating features, which were said to far outweigh the mitigating circumstances.

[30] The RIU also made application for costs. The RIU costs incurred were:

Airfares Mr Cruickshank \$366; airfares Mr Irving \$393; accommodation Messrs Allison, Cruickshank and Irving at \$135 each night \$405.

Photocopying \$209.05; legal costs \$3937.12.

Sum: \$5310.17

[31] The JCA Executive Officer had indicated to the RIU that their costs were \$2455.

[32] The RIU submitted that r 920(3) provides the Committee with a discretion to order that all or any of the costs and expenses of any party, the JCA, and the Judicial Committee, be paid by such person as it thinks fit. This rule was noted to provide an unfettered discretion to award costs. The Appeals Tribunal in *Butcher v RIU* 21 December 2011 had referred to *Walker v Law Society* [2008] WLR 426 which held that while the Solicitors' Disciplinary Tribunal had wide and important disciplinary responsibilities for the legal profession, it also had a very wide discretion as to costs. Disciplinary proceedings initiated by the Law Society supervised the proper discharge of solicitors' obligations and sought to ensure the maintenance of high professional standards. The Court of Appeal observed that the Law Society when performing that function was in a wholly different position from a party to civil litigation and that the ordinary rules that properly incurred costs generally followed the event did not apply to disciplinary proceedings against a solicitor. The RIU submitted that these general principles apply to racing disciplinary proceedings.

[33] In *Butcher* it was noted that the JCA are funded by allocations from the NZ Racing Board, and partly from fees and levies. Those funds are utilised to meet expenses incurred whenever it becomes necessary to take proceedings against those bound by the Rules who breach them. Unless adequate and effective steps are taken to recover those expenses, the utilisation of funds for disciplinary purposes is inevitably at the expense of the JCA's and the code's other activities in relation to racing. Costs unrecovered are a loss of funding to other aspects of the sport.

[34] This was identified to be the sixth hearing involving Mr Hamilton since March 2015. A Judicial Committee in June 2015 commented:

We are led to the conclusion that Mr Hamilton decided the Rules of Racing did not apply to him and he would continue with his day to day involvement with the horses, as if no suspension had been imposed. Thus, we believe a further suspension is inappropriate and there is a distinct possibility it too would simply result in a further breach.

We acknowledge that disqualification will cause inconvenience for Mr Hamilton. This is part and parcel of the imposition of this form of penalty. He will have to divest himself of the ownership of a number of horses (we understand this number to be just into double figures). However, a short sharp shock is necessary in the interests of deterrence and, in particular, in order to uphold and maintain the high standards expected of those participating in the sport of racing, to protect the good reputation of the racing industry and, most importantly in this case, to reinforce the integrity of the Rules of Racing.

Significantly, we do not believe a period of six months' disqualification, as submitted by the RIU, is necessary to bring home to Mr Hamilton the error of his ways and his need to comply with the Rules of Racing. We are fortified to some extent in this belief by his contributions to the telephone conference on 1 June, which exhibited contrition, by his ready admission of the breaches, his cooperation with the RIU Investigator, and by Ms Thomas' written and oral submissions. We emphasise as well, that had Mr Hamilton not had such a long history of service and commitment to both racing industries, as demonstrated by the letters supporting Mr Hamilton that have been placed before us, we would have imposed a period of disqualification at the length sought by the RIU, if not longer.

[35] Mr Lange observed that this approach by the Committee recognised that Mr Hamilton's mindset was that the Rules did not apply to him but, due to purported contrition, had adopted a short sharp shock approach. Despite that, the racing code had again incurred costs in investigating and bringing disciplinary proceedings for Mr Hamilton's continuing breaches of the Rules and the additional costs of meeting an unmeritorious defence. The RIU thus invited the Committee, following apportionment of costs between Mr Hamilton and Ms Robinson, to order Mr Hamilton to pay full costs.

Mr Hamilton's submissions as to penalty

[36] Ms Thomas commenced Mr Hamilton's submission by stating it was clear that there was no longer any place for him within the industry. Mr Hamilton was aware that the industry was not one in which he was welcome nor one he was suited to anymore and, therefore, he did not challenge the four-year disqualification.

[37] In any event, Ms Thomas observed, the actions by the NZTR Integrity Committee in warning off Mr Hamilton from racecourses had largely resulted in his being disqualified indefinitely. Additionally, the fact he was unlikely to be ever granted a licence made the issue of disqualification largely "moot."

[38] Ms Thomas submitted it was difficult to understand why such a significant amount of money had been spent by the RIU requesting a further disqualification for a further period of four years when the NZTR Integrity Committee could effectively accomplish the same

thing without any cost at all. Therefore, her submission was that “this man be entitled to return to the industry that he had decades of his life positively supporting”. It was clear from the attitude taken by the NZTR Integrity Committee that it had an ability to apparently do whatever it wishes to do irrespective of what rules have been broken by the respondent.

[39] The submission was thus that the choice by the RIU to spend \$5,310.17 should lie with the RIU and not the respondent. He was retired and his effectively being warned off racecourses by NZTR had severely restricted him in any attempt to supplement his superannuation. Further action by the RIU was unnecessary and costs should lie where they fall.

[40] NZTR had received a recommendation from the RIU that Mr Hamilton be warned off under r 659 of the Rules of Racing. This rule reads: "NZTR may warn a person off Racecourses if it considers, on reasonable grounds, that the presence of that person on a Racecourse may have an undesirable impact on the conduct or integrity of racing. A person warned off by NZTR may not enter any Racecourse when a Race Meeting, trial or jump-out is being held." NZTR had declined to renew Mr Hamilton's trainer's licence in 2016 because it was not satisfied that he owned or occupied appropriate trainer's premises as required under r 304(1)(e). Mr Hamilton was still not a licensee.

[41] Ms Thomas submitted that, as stated by the NZTR Committee, under the Rules NZTR may determine in relation to a particular person at any time without any triggering event that the presence of a person on a racecourse may have an undesirable impact on the conduct or integrity of racing. No breach of the rules is required. The Committee had concluded that the “plain wording of the Rules is that warning off is available at any time”. The Committee went on to say that “the Committee reiterates that Mr Hamilton is not a licensee. The Committee does not agree with [counsel for Mr Hamilton's] submission that the JCA is the appropriate judge of the behaviour of a licensee (at 18.20 of his submission). This proposition, Ms Thomas contended, was “simply inconsistent with the plain wording of the rules. However, Mr Hamilton's unlicensed status would suggest that NZTR was the appropriate body to deal with him.”

[42] Mr Hamilton was warned off under r 659 with effect from 1 July 2017 to be reviewed on 1 August 2018. The current proceedings were brought, therefore, when Mr Hamilton did not have a licence. His ability to have a licence was in the hands of the NZTR who had warned him off. What then occurred was that even though he was unlicensed and clearly unlikely to ever receive another licence, he was charged with being unlicensed but training.

[43] Ms Thomas submitted: “The Respondent is unlicensed. It is clear that he is unlikely to ever be licensed again even if he wanted to be. The Respondent is unable to enter onto a racecourse. The Respondent must be able as an unlicensed “Joe Bloggs” to be involved with horses.”

[44] Mr Hamilton did not accept that to achieve its end, ie remove him from the industry for a significant period of time, it was necessary to go through the JCA. It was clearly available to the RIU to simply continue with its ban on him going onto racetracks and to refuse to give him a licence.

[45] It was therefore submitted, “the fact that the RIU sought to undertake this course was inappropriate and Mr Hamilton should not have to pay for the fact that the RIU chose to go via this route.”

[46] Ms Thomas in her oral submission queried what involvement Mr Hamilton was able have with horses if he was both disqualified and warned off. Mr Lange responded the answer was in the Rules. He could have involvement with horses provided it was not related to racing. A horse that had been retired from racing, for example, was “okay”. He agreed there was no definition of “train” or “training” in the thoroughbred rules, as there was in harness racing. Ms Thomas speculated that there would be a number of people working horses regularly without a licence.

[47] Ms Thomas questioned the amount (\$5300) spent by the RIU with respect to these charges when Mr Hamilton was already warned off. She believed this was “overkill”. She said if Mr Hamilton was being “expunged from the industry”, why would he pay. She said she opposed his paying costs in principle; not the actual amount.

Decision re Mr Hamilton

[48] The starting point, as Mr Lange has emphasised, has to be that the Committee's function is not to punish Mr Hamilton but to uphold and maintain the high standards expected of those participating in the racing industry, to protect its good reputation, to reinforce the integrity of the Rules of Racing, and, especially in this case, their enforcement by the JCA.

[49] Mr Hamilton has over an extended period of time made it clear the penalties that have been imposed upon him by the JCA do not apply to him. He has continued on regardless to have involvement with thoroughbred horses, and the Committee found, in this instance, he was involved in the training of the four horses identified in the decision of 19 December.

[50] It is both puzzling and sad that the genesis of the charges that Mr Hamilton has faced has arisen out of disputes with the various local racing clubs, and in particular with the equestrian club, which was formed to manage the Omakau racetrack. The Committee is well aware of the voluntary work Mr Hamilton has done over the years and this was reflected in the penalties previously imposed, even to the extent that one penalty was suspended pending Mr Hamilton being of good behaviour. But eventually that penalty was activated when Mr Hamilton continued in his abusive behaviour of those individuals who have riled him, despite his giving an undertaking to the contrary.

[51] Ms Thomas has been very open and forthright in her submissions. As she states, Mr Hamilton is unlikely to want to return to an industry that he views as having rejected him. The thrust of her submission is thus directed principally to the issue of costs.

[52] Despite Mr Hamilton acknowledging that the four-year disqualification that the RIU submits to be the appropriate penalty will not be resisted, the Committee has to make its own assessment as to what is the appropriate penalty in the circumstances of this particular case.

[53] The Committee first has regard to the reason for the disqualification. There is no suggestion of any underhand or corrupt practice on the part of Mr Hamilton. It was simply an inability to control his temper, which led to a suspension, which in turn resulted in the disqualification when this suspension was disregarded.

[54] The Committee has then looked at the actions it found proved. This was involvement in the training of four horses on two consecutive days in September last.

[55] Mr Marcus Hamilton, Mr Hamilton's son, has said that Mr Hamilton's involvement was usually limited to his undertaking farm work and child minding duties. On this occasion, he was absent from the property, so Mr Hamilton helped Ms Robinson saddle and work the horses.

[56] Ms Robinson has said that usually she did all the work with the horses, as Mr Hamilton knew he was not allowed to go near them and his role was to mind her children while she rode the horses, and to be there should anything go amiss and there be a sudden emergency.

[57] Mr Lange states the surveillance operation was the result of information received to the effect that Mr Hamilton was failing to abide by his disqualification. This may be so, but no witnesses have been called to this effect, other than the RIU Investigators who have given evidence only as to his actions on the two days in question.

[58] The Committee limits its finding to the events on these two days (27 and 28 September 2017) and imposes penalty on that basis.

[59] The integrity of the Rules of Racing must be upheld. Denunciation and deterrence, both general and specific, are clearly relevant despite the Committee's function being, as highlighted, not to punish Mr Hamilton. The Committee does not believe a disqualification period of four years is necessary to achieve these goals.

[60] There is little precedent to guide the Committee. Rule 1104(3) requires the mandatory imposition of six months' disqualification commencing at the end of the disqualification period. Further repeated breaches require only one-year disqualification periods. The four-year period of disqualification for which the RIU contends, sits uncomfortably, in the Committee's view, alongside these mandatory periods. These periods are mandatory minimums, of course, and any further period of disqualification that is imposed is within the discretion of the Committee.

[61] Similarly, the four-year period does not accord with the 12 and six months imposed in *Lynch* and *Walker*, respectively. Nonetheless, a point of difference in those cases is that already lengthy periods of disqualification had been imposed and were current at the time of the imposition of the further periods of disqualification. In addition, in neither of these cases is there to be found the element of dogged determination that Mr Hamilton has displayed to continue with his activities unabated despite warnings from RIU and, an incentive from, and an undertaking to, the JCA.

[62] We can understand the frustration of the code and the RIU with Mr Hamilton's continued determination to "thumb his nose" at the penalties imposed upon him. This is clearly a relevant factor. However, the Committee also has regard to the advanced age of the respondent and his long and previously distinguished role in the industry. Both these matters must be reflected in the penalty that is imposed.

[63] The period of disqualification is required under the Rules to start at the end of the disqualification period to which the respondent was subject at the time of the breach. A period of two and half years' disqualification backdated to 5 October 2017, the date the previous period of disqualification ended, is the appropriate penalty. Mr Hamilton is disqualified up to and including 4 April 2020.

[64] With reference to the matters identified at [16.3] in Ms Thomas' submission, these are better addressed to the RIU and to NZTR.

RIU's submissions as to penalty for Ms Robinson

[65] The RIU observed that the respondent, Ms Robinson, is aged 30. She resides in the rural location of Becks near Omakau in Central Otago. Ms Robinson has been licensed with NZTR since 2014. She has assisted Mr Hamilton since that time.

[66] The following cases were identified as being of assistance to this Committee:

RIU v Screen 20 May 2016 Mrs Screen was fined \$1000 and ordered to pay costs of \$1,800 to the RIU and \$1,900 to the JCA, on appeal. Mrs Screen allowed a disqualified person to be present on her licensed harness training premises and to assist with the care of horses.

RIU v Kenny 4 March 2016 Ms Kenny was fined \$500 after allowing a disqualified jockey ride a horse at her training premises. Ms Kenny admitted the breach, which was lodged pursuant to r 327(1) of the Rules of NZTR.

[67] Ms Robinson's breach of the Rules is a serious racing offence. When questioned by Racing Investigators, Ms Robinson was said to have been evasive in her answering, and her replies were not consistent with what had been observed. The RIU said she was "well aware of the ongoing issues which have been occurring in the Omakau Racing Community". Ms Robinson had denied the breach despite strong evidence being provided by the RIU.

[68] Ms Robinson has no previous breaches of any rules. She had previously been co-operative with other inquiries the RIU had conducted in the Omakau District. The RIU acknowledged that the breach might have arisen from "misguided loyalty".

[69] The RIU submitted, "The current environment at the Omakau Racing Community is much divided after several incidents and rule breaches now involving several licence holders." The purpose of the penalty upon Ms Robinson was identified as being "to support the racing community's endeavours to ensure all their participants act within the code's rules."

[70] The RIU sought a suspension of Ms Robinson's Class B Trackwork Rider's Licence for a period of three months/or a fine of \$750. The RIU also made application for costs. (The costs incurred have previously been set out in this decision with respect to Mr Hamilton.)

[71] The RIU acknowledged that the Committee might apportion the costs between Mr Hamilton and Ms Robinson and, after doing so, award costs at the rate of 60 per cent of the costs actually incurred.

[72] Mr Lange reiterated in his oral submission that Ms Robinson had no previous breaches of the Rules and, as the Committee had observed, had become involved as a result of "misguided loyalty". It was appropriate that the Committee take this into account.

Ms Robinson's submission as to penalty

[73] Ms Robinson in her brief penalty submission made reference to the fact that any penalty imposed on her would be "extremely harsh, given that she had not received any previous warnings and had never been in trouble with NZTR or the police, for that matter." She believed that the RIU had been "extremely unfair, charging [her] for something [she] was unaware of". She added she "understood that anyone can pre-train horses", and "of this only [she was] guilty". She was "simply trying to assist [herself] in the racing world." She concluded her submission by stating she could only afford to pay off a small fine and could not afford to have a suspension.

[74] Ms Thomas in a written statement to the Committee on 14 March said with respect to Ms Robinson that her instructions were that she was still riding so a period of suspension/disqualification would be harsh and Ms Robinson repeated her earlier personal submission to the Committee that she was in a financially impecunious position.

Decision re Ms Robinson

[75] Again, the starting point, as Mr Lange has emphasised, has to be that the Committee's function is not to punish Ms Robinson but is to uphold and maintain the high standards expected of those participating in the racing industry, to protect its good reputation, and to reinforce the integrity of the Rules of Racing.

[76] The committee has some sympathy for the plight of Ms Robinson. The decision of 19 December stated at [159]:

We agree with Mr Lange that her breach of this rule appears to be out of misguided loyalty to Mr Hamilton. With respect to her concern as to the welfare of the horses, they were Mr Marcus Hamilton's responsibility. They were on his farm. There is no evidence before us that indicates he was shirking his responsibilities, but rather that Ms Robinson continued to care for them as she had done prior to their coming to 881 Glassford Rd. We have some sympathy for her plight, although clearly it was in her financial interests to continue to work and feed the horses. However, we note her recompense or wages appear to be sporadic and minimal, at best.

[77] Mr Lange in his penalty submissions reiterated this, stating Ms Robinson's breach "may have arisen from misguided loyalty".

[78] Ms Robinson is not in a strong financial position. She has two young children and is currently working, as the Committee understands it, outside the industry.

[79] Despite the seriousness of the nature of the charge, in the particular circumstances of this case the gravity of the conduct is far from high and Ms Robinson's culpability is clearly at the lower end. She has no previous breaches of the Rules and had previously co-operated with the RIU investigation into incidents within the Omakau racing community.

[80] Ms Robinson's denial of the breach is not an aggravating factor. It is simply the absence of a mitigating one.

[81] The Committee imposes a fine of \$350. Again, the Committee emphasises the need to uphold the integrity of racing. This is a penalty tailored to the particular and quite unusual circumstances of this case. It should not be regarded as setting a precedent.

Costs

[82] The Rules simply provide in r 920(3) for the imposition of all or any of the costs and expenses of any party, the JCA and the Judicial Committee be paid, as it thinks fit. There is no further guidance. The accepted approach is that these must be just and reasonable and should not be an attempt to indemnify the successful party.

[83] Ms Thomas has questioned whether the RIU should have mounted such an extensive investigation with respect to Mr Hamilton. The RIU have stated that they had received complaints about Mr Hamilton's continued involvement with horses despite his being both disqualified and warned off. There had also been breaches involving other licence holders that they believed could be linked to the general unrest in the local area. The RIU should not be criticised in choosing not to ignore but to follow up on these complaints. It is understandable that they regarded Mr Hamilton's behaviour as contemptuous.

[84] The RIU's expenses total \$5310. The JCA costs total \$2455. An award in the sum of 60 per cent is appropriate for Mr Hamilton. This figure is rounded to \$4650. These costs are apportioned \$3150 to the RIU and \$1500 to the JCA.

[85] Ms Robinson was involved in these charges as a consequence of Mr Hamilton's actions. She has ridden on Mr Hamilton's "coat tails", as it were, with respect to this hearing. Her financial position is far from strong. Any award is likely to cause hardship, possibly undue hardship.

[86] When the reason for Ms Robinson being in breach of the Rules is addressed, and regard is had to the comparatively short amount of time that was spent proving the case against her, as opposed to that against Mr Hamilton, an award of costs is not appropriate.

[87] We make no award of costs by Ms Robinson to the RIU or the JCA.

Dated at Dunedin this 22nd day of March 2018.

Geoff Hall, Chairman

Penalty: