

**Non Raceday Inquiry RIU v M J Robertson - Decision dated 3 May 2018 - Chair, Mr R G McKenzie**

**Rules:**

**Repondent(s)/Other parties:**

**Name(s):**

**Decisions:**

**BEFORE A JUDICIAL COMMITTEE**

**OF THE JUDICIAL CONTROL AUTHORITY**

**IN THE MATTER** of the New Zealand Rules of Harness Racing

**IN THE MATTER** of Information No. A10226

**BETWEEN N M YDGRN**, Chief Stipendiary Steward for the Racing Integrity Unit

**Informant**

**AND MITCHELL JOHN ROBERTSON**, Owner

**Respondent**

**Judicial Committee:** Mr R G McKenzie, Chair - Mr S C Ching, Committee Member

**Venue:** Addington Raceway, Christchurch

**Present:** Mr N M Ydgren, the Informant

Mr M J Robertson, the Respondent

Mr S P Renault, Stipendiary Steward (Registrar)

**Date of Hearing:** 26 April 2018

**Date of Decision:** 3 May 2018

**RESERVED PENALTY DECISION OF JUDICIAL COMMITTEE**

**The Charge**

[1] Information No. A10226 alleges that Mr Robertson "wrote and directed insulting and abusive words towards Racing Secretary Richard Bromley" in breach of Rule 1001(1) (v) (ii) of the New Zealand Rules of Harness Racing.

**The Rules**

[2] Rule 1001 of the Rules of Harness Racing provides as follows:

*(1) Every person commits a serious racing offence within the meaning of these Rules, who, in New Zealand or in any other country:-*

*(v) either by himself or in conjunction with any person:*

*(ii) at any time writes or causes to be written, publishes or causes to be published, or utters or causes to be uttered, any insulting or abusive words with reference to a Judicial Committee, Appeals Tribunal, an official of HRNZ, the Chairman, the Vice-Chairman, the Board, a paid official, or any person engaged by a Club or by HRNZ in a professional capacity and/or as an independent contractor.*

[3] The penalty Rule is Rule 1001 (2) which provides as follows:

*(1) Every person who commits a serious racing offence shall be liable to the following penalties:*

*(a) a fine not exceeding \$30,000.00; and/or*

*(b) suspension from holding or obtaining a licence, for any specific period or for life; and/or*

*(c) disqualification for a specific or for life.*

[4] Mr Ydgren presented a letter signed by Mr M R Godber, General Manager of the Racing Integrity Unit, pursuant to Rule 1108 (2) authorising the filing of the information.

### **The Plea**

[5] Mr Robertson had signed the Statement by the Respondent on the information form indicating that he admitted the breach. He was present at the hearing of the information. The charge and relevant Rules were read to him, after which he confirmed that he admitted the breach.

[6] The charge was found proved.

### **Summary of Facts**

[7] Mr Ydgren presented the following written submissions to the hearing:

"Mitchell Robertson is a licensed owner with HRNZ and as such is captured by Rule 102 (1) (d).

(Rule 102 provides:

*(1) These Rules shall apply to all Races and Race Meetings and shall apply to and be binding on:*

*(d) all Owners and all persons entering or nominating any horses for any race whether such Owners, trainers or persons in charge be resident in New Zealand or otherwise)*

He currently has an interest in 17 registered horses. He assists in training responsibilities with his father Peter Robertson who trains in Templeton. Mr Robertson also acts as a bloodstock agent.

On the 14th of March 2018, Mr Mitchell Robertson nominated the horses AIN'T NOTHING BETTOR and CALENDAR GIRLZ for the Waimate TC meeting which was to be held on the 25th. This was done via the HRNZ computer login.

On the 19th of March, he further nominated TOM RULE and GUNPOWDER for that same meeting. Again, this was done via the HRNZ login. This was done as a job that Mitchell regularly undertook on behalf of his father.

The fields were assembled by the Waimate Racing committee on the 21st of March. This committee comprised of Richard Bromley, Gareth Murfitt, Lex Williams and the handicapper Andrew Morris.

Soon after the fields were released, Mitchell Robertson noticed his horses GUNPOWDER and AIN'T NOTHING BETTOR had not gained starts but had instead been placed on the ballot. This upset Mr Robertson as he believed the horses had the necessary credentials to gain a start and were entitled to be drawn into the field.

Mr Robertson immediately contacted Richard Bromley by cell phone to voice his displeasure. This phone call was made at approximately 1.40pm. The conversation contained comments from Mr Robertson such as "this is f..... bullshit".

Mr Bromley was returning from Waimate at the time of the call and was troubled by poor reception and resultantly the phone call was disconnected. Immediately Mr Robertson reconnected the call and continued to question Mr Bromley on the non-selection of their horses. This call was again disrupted by reception issues and was also disconnected.

At 1.47pm Mr Robertson began a series of text messages. The first read "You c.... have no f..... idea no wonder the industry falling apart (sic)" The second, which was sent at 1.48pm, one minute later said, "Don't f..... hang up". (Mr Ydgren produced a screen shot of Mr Bromley's phone confirming those text messages).

Mr Bromley did not respond to these messages."

### **Informant's Penalty Submissions**

[8] Mr Ydgren presented the following written penalty submissions to the hearing:

"Richard Bromley was serving in his first year as Racing Secretary for the Waimate Trotting Club. He has 12 years' experience working for other clubs in this role, primarily NZMTC, and enjoys an outstanding reputation as a thorough and efficient staff member within the industry who is extremely well thought of.

Stewards' inquiries have confirmed that Mr Bromley and his colleagues were only employing standard practices that have been used for a number of years.

When assessing this incident the Committee should be mindful that no person should be subjected to this kind of treatment when undertaking their formal duties. A person of Mr Bromley's standing in the industry should reasonably expect that he can go to work and fulfil such duties without receiving such abuse. The direction of such language towards any official is intolerable.

Rule 1001 (v) (ii) is a serious racing offence. The maximum penalties in relation to a breach of a serious racing offence are as follows,

- A fine not exceeding \$30,000

- Suspension from holding or obtaining a licence for life
- Disqualification for life

Mr Robertson has not appeared before the Stewards in regards to a breach of this or any similar rule. As a young man attempting to forge a career in Harness Racing he finds himself in a less than ideal position on that path. Mr Robertson should be aware of the importance of conducting himself in a professional manner and maintaining integrity in racing.

He has admitted the breach at the earliest opportunity and conducted himself in a professional manner throughout the inquiry at all times.

Mr Robertson has shown remorse and accepted that his comments were not acceptable. To date, however, he has not apologised.

That the comments were in written form does show a degree of premeditation. Along with the language used and the personal nature of them this is an aggravating factor.

On this occasion he has made a serious error and the penalty imposed should reflect the nature of that. It should also act as a strong deterrent to any other individual who may feel that addressing any person in a similar manner is acceptable.

Other penalties which may assist this Committee are attached. They are that of;

- RIU v T Vince 2014 Rule 1001(v)(ii) – Mr Vince fined \$1000.
- HRNZ v S Dickson 2017 Rule 303(2) Misconduct – Mr Dickson fined \$850.

The following is a list of misconduct charges which may also assist the Committee.

- S LETHABY (12.10.2010) – HR Open Horseman - swearing in the Stewards room and failed to remain when ordered to do so. \$650 fine (guideline starting point \$500)
- R NYHAN (21.07.2009) – HR Open Horseman - insulting language to a Steward. \$400 fine
- A PYERS (12.03.2013) – HR Open Horseman - offensive and abusive text messages and phone calls to Racecourse Inspector. \$850 fine
- G VILE (25.06.2014) – TR trainer - abusing a NZTR Handicapper during a telephone conversation. \$350 fine
- M WALKER (28.03.2009) – Jockey - used insulting and threatening language to another jockey in the weighing area post inquiry. \$2,000 fine.

A breach of this Rule brings with it a penalty starting point of \$1,500 in the JCA guide.

Stewards say the appropriate penalty is that of a monetary fine and that the level of that fine should be in the vicinity of \$750”.

### **Respondent's Submissions**

[9] Mr Robertson confirmed that he accepted the accuracy of the Summary of Facts presented by Mr Ydgren.

[10] Mr Robertson said that he was apologetic for his actions and explained that he had acted “in the heat of the moment”. In reply to a question from the Committee, he said that had not made a personal apology to Mr Bromley. He went on to say that he felt angry that the horses had not gained starts as he felt they were each deserving of a start. GUNPOWDER was the highest rated horse in the field. Mr Bromley had explained to him that the selection committee had given preference to horses that had not started in the last week. The Emergency 1 horse was also racing for the second time in a week and it was a one-win horse with approximately \$14,000 stakes won and a lower rating, whereas GUNPOWDER, at the time, was a five-win horse with earnings around the \$90,000 mark and a better-credentialed horse to have gained a start, Mr Robertson said.

[11] Mr Robertson said that he had spoken to Stipendiary Steward, Mr Scott Wallis, the day before the fields came out enquiring as to whether he could leave GUNPOWDER in the nominations for the Wairio TC at Winton on 24 March as a contingency of not getting into the Waimate field. He was advised by Mr Wallis that to do so would involve a breach of the Scratching Penalties Regulation. On the basis that there was no chance that GUNPOWDER would not get a start at Waimate, he withdrew the horse from Wairio. The horses were based at Oamaru, all four (including AIN'T NOTHING BETTOR and CALENDAR GIRLZ) having raced at Forbury Park on 22nd March

[12] Mr Ydgren explained that the Waimate selection committee had used discretion to ensure that a wider pool of horses was given the opportunity to race that week. Obviously, Mr Robertson did not agree with that policy but the policy has been in force for some time and in areas such as Canterbury where there is a large horse pool. Mr Robertson's horses had been accepted at another meeting that week so it was the committee's decision to place Mr Robertson's horses on the ballot and horses that had not started elsewhere would thereby be given the opportunity to race.

[13] Mr Robertson replied that that did not explain why the first ballot horse, which was also “backing up”, was given preference over GUNPOWDER when the latter had better credentials.

[14] In relation to penalty, Mr Robertson told the Committee that they had arranged accommodation in anticipation of the horses racing at the Waimate meeting. This resulted in a “monetary loss”, he said. He had phoned Mr Bromley seeking an explanation on behalf of one of GUNPOWDER’s owners who had phoned him when the fields were published.

[15] The conversation with Mr Bromley could have “gone a lot smoother” had it not been for the “reception issues” which created tension when neither he nor Mr Bromley could make himself understood, Mr Robertson said. Mr Bromley had declined to give an explanation, he said.

[16] In reply to a question from this Committee, Mr Robertson acknowledged that he was aware of the policy of some Clubs to give preference to horses having their first run for the week but was not aware, at the time, that the Waimate Club was observing that policy. He did not agree that the policy was a fair one.

[17] Finally, Mr Robertson said that it was his intention to make a personal apology to Mr Bromley, not for the policy adopted by the Club but for his conduct. The reason that he had not done so before now, he explained, was that he thought it might prejudice this hearing.

### **Reasons for Penalty**

[18] This charge came about as a result of two horses, TOM RULE and GUNPOWDER, nominated by Mr Robertson for the Waimate TC meeting to be held on 25 March 2018 being denied starts by the fields’ selection committee of the Club. Mr Robertson was particularly upset that one of those horses, GUNPOWDER, had been balloted out with second right of re-entry.

[19] Mr Robertson told the Committee and in no uncertain terms that, in his view, GUNPOWDER was deserving of a start based on its compelling “credentials” and, in particular credentials superior to those of the first emergency. The fields for the meeting were posted on the HRNZ website on the Wednesday prior to the Sunday meeting. He noticed that GUNPOWDER was the second emergency in its race.

[20] Mr Robertson then acted very precipitously and contacted Mr Bromley, the Secretary of the Club, by cellphone. Mr Bromley was in his car returning to Christchurch. The precise details of the telephone conversation are not before us but Mr Robertson admitted that he used the expression “this is f..... bullshit” during the initial conversation. Reception difficulties were experienced during the telephone conversation. Mr Robertson thought that Mr Bromley had hung up on him.

[21] Not wishing to leave the matter there, Mr Robertson then sent following text messages to Mr Bromley’s phone. The relevant text messages, one minute apart, are set out in the Summary of Facts (above).

[22] Mr Robertson has now, quite properly in the Committee’s view, admitted the charge of using insulting or abusive words to Mr Bromley, Secretary of the Waimate TC, in breach of Rule 1011 (v) (ii) of the New Zealand Rules of Harness Racing.

[23] The Committee accepts that Mr Robertson believed, rightly or wrongly, that he had legitimate grounds to be upset at the exclusion of GUNPOWDER. We refer to that horse specifically because the exclusion of that horse, in particular, seemed to have been the catalyst for Mr Robertson’s behaviour. Whether that is correct or not is not strictly relevant. In any event, his subsequent behaviour towards Mr Bromley was completely unacceptable and cannot be condoned. While Mr Robertson may have felt aggrieved, there were no doubt more acceptable options by way of questioning the committee’s decision.

[24] Mr Bromley is, the Committee was told, a well-respected Club official of many years standing who was simply performing his duties, we accept, in good faith and to the best of his ability. We have not lost sight of the fact that Mr Bromley was only one of a committee of four on this occasion, but he has been the one who was subjected to Mr Robertson’s abuse. He should not be expected, and neither should any other official in a similar position be expected, to be subjected to such a barrage of insult and abuse from a disaffected owner.

[25] Mitigating factors to take account of in considering penalty in this case are Mr Robertson’s early admission of the breach, his cooperation throughout the course of the investigation and his previous good record. The Informant, in his penalty submissions, said that Mr Robertson had shown remorse for his conduct. The Committee is not satisfied that such remorse is total, supported by the fact that, by his own admission, Mr Robertson had not made a personal apology to Mr Bromley in the more than one month between the date of the offence and the hearing of this charge. We believe that, had his remorse been total, he would have made such an apology in that time. The Committee does not give Mr Robertson credit for showing remorse.

[26] We do not identify any particular aggravating factors – they are mainly elements of the offence itself and we have touched upon these earlier in this decision.

[27] Mr Ydgren referred the Committee to a number of previous cases in both the harness racing and thoroughbred codes. These are of only limited assistance to us as the fact situations are very different, which will nearly always be so and, furthermore, nearly all of those cases preceded the introduction of the Penalty Guide starting point.

[28] The Committee is more inclined to consider the facts of this particular case in the light of the Penalty Guide starting point and the particular aggravating and mitigating factors that have been referred to.

[29] The Penalty Guide starting point is a \$1,500 fine. That starting point was only included for the first time in the Penalty Guide effective from which renders the cases referred to us by Mr Ydgren of limited assistance. That is the starting point for a mid-range breach of the Rule which. We believe, the present case is in the low-to-mid range.

[30] Accordingly, to reflect that, we take a fine of \$1,300 to be the appropriate starting point in this case. Applying the mitigating factors to which we have referred, we have come to the conclusion that those factors warrant a discount of 25 per cent from the starting point that we have adopted. Therefore, the Committee imposes a fine rounded down to the sum of \$950.

[31] The Committee is satisfied that a fine of \$950 will suffice to satisfy the general purposes of sentencing which are well-established – to hold the offender accountable for his actions, to promote in the offender a sense of responsibility, to denounce the conduct of the offender and to deter the offender or other persons from committing the same or a similar offence. The Committee has also had regard, as always, to the important consideration of the need to maintain integrity and public confidence in Harness Racing.

**Penalty**

[32] Mr Robertson is fined the sum of \$950.

**Costs**

[33] No order for costs was sought by the Informant and, since the hearing of the information took place on a raceday, there will be no order for costs in favour of the JCA.

R G McKenzie

(Chair)

**Penalty:**