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

**Non Raceday Inquiry RIU v M P Breslin - Decision as to Penalty, Name Suppression and Costs dated 25 July 2017 - Chair, Mr M McKechnie**

**Rules:**

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

**Name(s):**

**Decisions:**

**BEFORE A NON-RACEDAY JUDICIAL COMMITTEE**

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

**BETWEEN THE RACING INTEGRITY UNIT (RIU)**

**INFORMANT**

**AND MICHAEL PATRICK BRESLIN**

Class A Licensed Horseman

**RESPONDENT**

**Non Raceday Judicial Committee:** Mr Murray McKechnie Chairman & Mr Alan Harper

**Present:** Mr Brian Dickey and Mr Steve Symon counsel for the Racing Integrity Unit

Mr Paul Paino counsel for Mr Breslin

Mr Michael Breslin

Mr Nigel McIntyre Registrar

**DECISION AS TO PENALTY, NAME SUPPRESSION and COSTS OF**

**NON-RACEDAY JUDICIAL COMMITTEE**

**DATED THIS 25th DAY OF JULY 2017**

**1. INTRODUCTION**

1.1 By a reserved decision dated 3 day of July 2017 the Committee found Mr Breslin had committed a breach of Rule 801(1)(s)(i). At the conclusion of that reserved decision the Committee gave directions as to the filing of submissions as to penalty, the issue of name suppression and costs.

1.2 There has been in place a name suppression order in respect of Mr Breslin and all witnesses who appeared at the hearing save for Mr Grimstone who is the Investigations Manager of the RIU.

1.3 Submissions have now been received from the RIU through Mr Symon (Mr Dickey being on leave) and on behalf of Mr Breslin from his counsel Mr Paino. The Committee will deal first with the question of penalty and later in this decision with the issues of name suppression and costs.

**2. THE POSITION OF THE RIU ON PENALTY**

2.1 The RIU seeks a disqualification of Mr Breslin's trainer's licence for a period of nine (9) to twelve (12) months. Rule 801(2) is the relevant penalty provision. It is as follows:

**Rule 801**

(2) 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 a term of suspension, then the suspension shall continue to apply to the renewed Licence; and/or

c) A fine not exceeding $50,000.

2.2 The submissions for the RIU draw attention to the principles and purposes of sentencing set out in the Sentencing Act 2002. That of course relates to criminal proceedings. The Committee is here concerned with disciplinary proceedings under the New Zealand Thoroughbred Rules of Racing. The matters to which the RIU draws particular attention by reference to Section 7 of the Sentencing Act are as follows:

a) The need to hold the offender accountable for the harm done to the victim;

b) To promote in the offender a sense of responsibility for and an acknowledgment of that harm;

c) To deter the offender or other persons from committing the same or similar offence; and

d) To denounce the conduct in which the offender was involved.

2.3 It is said that there are a number of aggravating features in the conduct of Mr Breslin. These can be summarised as follows:

a) The indecent touching was invasive and went on for something like 30 or 40 seconds and was on the inner thigh of the Complainant;

b) That the Complainant was only 18 years old and Mr Breslin is aged 54. It is said that in those circumstances the victim was vulnerable and that there was an imbalance of power between a senior trainer and a youthful stable-hand;

c) That the victim suffered emotional harm. The Committee has carefully read her Impact Statement;

d) That Mr Breslin knew that he was acting in a way that was unacceptable and that he had no genuine belief that what he was doing was permissible or that the victim had consented;

e) That there is a significant public interest in deterring conduct of the kind found to have occurred here, the more so when the racing industry is trying to encourage the participation of young people.

2.4 The RIU submissions advise that no comparable cases have been located.

2.5 How the period of 9 to 12 months disqualification is arrived at is not explained. Nor is there any submission as to why disqualification is advanced as an appropriate penalty rather than a period of suspension.

**3. MR BRESLIN'S POSITION**

3.1 Mr Paino has filed detailed submissions together with reports and references. This material demonstrates Mr Breslin's position as a senior and successful trainer. His position in the industry is well known to the Committee.

3.2 The submissions set out Mr Breslin's circumstances that have arisen since the event which led to charge being preferred by the RIU. Significant matters to which attention is drawn are as follows:

a) Mr Breslin has been horse trainer since 1994. He currently has 30 horses in work with 60 on his books. There are over 100 owners, some in syndicates and some living abroad;

b) There are 4 full-time staff members and three part-time staff;

c) Mr Breslin and his partner have 2 children. His partner works part-time in the administration side of the racing industry;

d) Mr Breslin's financial position is not strong despite his hard work and the success of the stable;

e) That there are no previous convictions or disciplinary offences recorded against Mr Breslin.

3.3 By reference to the conduct of Mr Breslin it is submitted as follows:

a) That there were tensions in his personal life, that he had been physically unwell and that from time to time he drank excessively;

b) That Mr Breslin apologised immediately after the incident;

c) That he was fully cooperative with the RIU investigation;

d) That the conduct of Mr Breslin did not have direct reference to the racing of horses and did not threaten the integrity of horse racing.

3.4 As to the appropriate penalty it is submitted for Mr Breslin as follows:

a) That there was a police investigation. This did not result in a prosecution. The case has been before the Judicial Control Authority for almost 9 months and this has caused considerable uncertainty and stress to Mr Breslin, his family and staff;

b) That the victim was previously unknown to Mr Breslin and therefore the state of her health is not an aggravating consideration. Reference is made to Section 9(1)(g) of the Sentencing Act 2002 which refers to the issue of vulnerability "known to the offender";

c) It is not accepted that there was an imbalance of power between Mr Breslin and the victim. They met in a social context. It was not an employment relationship. Mr Breslin did not know that the victim was licenced under the Rules of Racing;

d) As to the RIU submission that a deterrent penalty needs to be imposed this is disputed. It is said that there is no evidence of other conduct of this kind. That is accepted by the Committee. It is said in mitigation that Mr Breslin's good record, his apology and not seeking to question the Complainant about her emotional state at the defended hearing are matters to be accounted for;

e) The submissions for Mr Breslin advise the Committee that he met with NZTR following a complaint to it by the RIU after the incident. This was on 9 December 2016. As a result conditions were imposed upon Mr Breslin's trainer's licence. These included:

• That he was to attend counselling by a counsellor approved by NZTR; and

• That no female industry participant was permitted to be alone with him. It is said that this has caused considerable expense and inconvenience;

Mr Breslin has attended counselling. He has met the cost of that. The Committee was furnished with reports from the counsellor which confirm the position

f) It is said that the Committee's finding that Mr Breslin had brought racing into disrepute is itself a punishment and that any publicity that may follow will be a further punishment;

g) As to disqualification or suspension it is submitted that either of these penalties would have a devastating effect upon Mr Breslin's stable and his future in the industry. The qualifications and experience of his staff are set out in the submissions and it is said that none of these persons would be in a position to take up the position of trainer in the event of a period of suspension or disqualification;

h) Numerous references were placed before the Committee. All appear to have been prepared in December 2016 soon after the events at Riccarton. These have been carefully considered by the Committee. They can be shortly summarised as follows:

• Prominent owners. These speak of Mr Breslin's dedication and his integrity in the conduct of dealing with owners. The Committee recognises some of the authors as prominent persons owing thoroughbred horses;

• The Chief Executive RACE Incorporated. This organisation runs the racecourse and stabling area at Awapuni where Mr Breslin is based;

• A leading female jockey;

• A jockey in his employment;

• Mr Breslin's accountant.

i) As earlier noted there is written confirmation of Mr Breslin having undertaken counselling following the imposition of the NZTR conditions;

j) A detailed letter from Mr Breslin's partner;

k) An extended letter from Mr Breslin himself running to more than 3 pages.

**4. DISCUSSION**

4.1 The Rules of Thoroughbred Racing are primarily designed to ensure integrity in the conduct of racing and to uphold proper conduct by those licenced under the rules. These rules are not designed for the primary purpose of punishing offenders. The function of the criminal law is to ascertain if a crime has been committed and if so to impose criminal consequences. The essential function and purpose of professional disciplinary bodies are different. As Gresson P pointed out in the Court of Appeal judgment in re *A Medical Practitioner* [1959] NZLR 784 at 800…

*The exercise by the Medical Council of its powers is not by way of punishment but rather to enforce a high standard of propriety and professional conduct.*

In the same case Cleary J, writing for himself and North J stated…

*When the Medical Council becomes concerned with conduct which constitutes an offence it is not for the purpose of punishing that conduct as an offence against the public, which is the purpose of the criminal law, but because it is conduct which may show that the practitioner concerned is no longer fit to continue to practice the profession.*

4.2 The conduct of Mr Breslin which was entirely unacceptable was not an indecent act at the most serious level. The touching was not prolonged. Mr Breslin desisted immediately he was challenged.

4.3 While acknowledging that this is not a criminal proceeding some assistance can nevertheless be gained by reference to how persons who offend in a similar manner are treated by the criminal law. A contemporary judgment of the High Court is of some assistance. The decision is *Bees v NZ Police* CRI-2016-425-000031 [2017] NZHC 272, High Court Invercargill, Nation J. There the

High Court upheld a fine of $1,000 for an indecent assault where the Appellant had approached a shop assistant from behind and placed his hand on her left buttock. Before that happened there had been some conversation between the Complainant and the Appellant during which the Complainant had made it clear that she was not interested in engaging with the Appellant.

4.4 The Sentencing Act 2002 requires that the least restrictive penalty be imposed. In as much as the criminal law gives a guide the Committee now sets out Section 13 of the Sentencing Act 2002.

*If a court is lawfully entitled under this or any other enactment to impose a fine in addition to, or instead of, any other sentence, the court must regard a fine as the appropriate sentence for the particular offence unless –*

*a) The court is satisfied that the purpose or purposes for which sentence is being imposed cannot be achieved by imposing a fine; or*

*b) The court is satisfied that the application of any of the principles in* ***section 8*** *to the particular case make a fine inappropriate; or*

*c) Any provision applicable to the particular offence in this or any other enactment provides a presumption in favour of imposing any other sentence or requires the court to impose any other sentence; or*

*d) The court is satisfied that a fine, on its own or in addition to a sentence of reparation, would otherwise be clearly inadequate in the circumstances.*

4.5 Further Mr Breslin at the defended hearing on 26 & 27 June 2017 gave evidence that he had taken meaningful steps to address alcohol consumption.

4.6 The Committee has had regard to the penalty decision of the Non-Raceday Judicial Committee in *NZTR v Dyke* 1 August 2008. It has also had regard to the decisions set out in paragraph 4.2 of that decision of 1 August 2008. The Dyke decision is relevant in as much as the conduct there was not directly related to the conduct of horse racing.

4.7 The RIU sought a period of disqualification of 9 to 12 months. The Committee does not believe that disqualification or suspension of Mr Breslin's trainer's licence is warranted. There are a number of considerations which have led the Committee to this view. These are:

a) These events occurred late in the evening in a social context when all the persons involved were affected by alcohol;

b) It was an isolated incident;

c) While the conduct found to have been proved was unacceptable it was not an indecent act of the most serious character;

d) Mr Breslin chose to defend the charge. Nevertheless the Committee believes that Mr Breslin genuinely regrets his conduct;

e) Mr Breslin has some insight into his circumstances and has undergone counselling;

f) The offending does not, in the Committee's view, warrant the loss of livelihood which would result from either a period of disqualification or the suspension of Mr Breslin's trainer's licence.

4.8 The Committee believes that the imposition of a meaningful financial penalty, having regard to both the fine and the costs payable to the RIU and the JCA is an appropriate response to Mr Breslin's objectionable conduct. For reasons later explained in paragraph 5 below Mr Breslin's name is to be published. Given the nature of the charge found proved that publication will in itself constitute a significant element of the penalty.

4.9 In the Committee's view the appropriate fine having regard to the costs orders which follow is the sum of $8,000.

**5. NAME SUPPRESSION**

5.1 As noted in the introduction suppression orders have been in place in respect of Mr Breslin, the Complainant and all witnesses involved in the racing industry save for Mr Grimstone.

5.2 The rules of open justice require that persons found guilty of misconduct shall have their names published unless there are compelling reasons why that should not happen. Mr Breslin's conduct is plainly known to many within the industry. That is apparent from the numerous references to which reference has been made. The Committee has studied the cases referred to in the submissions for the RIU. Importantly one of those, *M v Police* 8 CRNZ p.14 had to do with an application for interim suppression before trial. The Committee's view is now that the charge against Mr Breslin has been found proven it would not be appropriate to continue his interim name suppression order which has been in place.

5.3 One of the reasons for ordering publication is to avoid suspicion falling upon other persons within the industry and to put a stop to speculation and rumour.

5.4 In considering the name suppression issue the Committee has had regard to the provisions of Section 14 of the New Zealand Bill of Rights Act 1990. That section stresses the value of the freedom to receive and impart information. Regard has also been had to the leading Court of Appeal judgment *R v Liddell* [1995] 1 NZLR 538 at p.546.

5.5 Name suppression will continue for the victim and all witnesses other than Mr Breslin who gave evidence before the Committee save for Mr Grimstone.

5.6 The interim name suppression which has been in place for Mr Breslin will continue until the period for lodging an appeal has expired. The position is governed by Rules 1001 and 1002. By Rule 1002(2) there is a period of fourteen (14) days after and exclusive from the day in which this decision was given in writing to file with the JCA any Notice of Appeal against all or part of the decision of the Non-Raceday Judicial Committee. If a Notice of Appeal is not lodged with the JCA within the time frame (this by either party) the interim name suppression for Mr Breslin will lapse and the JCA will publish the decision of 3 July and this decision on penalty, name suppression and costs.

**6. COSTS**

6.1 The RIU advises that it has incurred costs of around $10,300. The RIU seeks indemnity costs. The general rule is that a party will only receive indemnity costs – that is all its costs – if the position of the other party to the proceeding has been completely without merit or if the party seeking the indemnity costs has been put to unreasonable expense. We do not consider that either of those circumstances is present here.

6.2 The costs of the JCA are a not dissimilar figure of around $10,300.

6.3 In fixing the costs to be ordered to be paid to the RIU and the JCA the Committee has had regard to what is sometimes referred to as the “totality of penalty”. Both the RIU and the JCA have incurred significant costs in part because the hearing was required to take place in Christchurch, that being where the offending occurred. This necessarily involved significant travel. An appropriate figure to be paid as a contribution towards the costs of the RIU is $6,000. With reference to the JCA the same figure is approximately the same $10,300. Orders are made that costs be paid to those 2 parties each in the sum of $6,000.

6.4 In fixing the level of the costs awards the Committee has had regard to the level of the fine and thus the totality of the penalty that will require to be met.

DATED this 25th day of July 2017

Murray McKechnie

Signed pursuant to Rule 920(4)

**Penalty:**