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

**Non Raceday Inquiry RIU v S Lawson - Reserved Decision on Penalty (Reasons) dated 5 March 2019 - Chair, Prof G Hall**

**Rules:**

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

**Name(s):**

**Decisions:**

**BEFORE A JUDICIAL COMMITTEE OF**

**THE JCA AT HAMILTON**

**UNDER THE RACING ACT 2003**

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

**BETWEEN RACING INTEGRITY UNIT (RIU)**

**Informant**

**AND MR SIMON LAWSON**

Open Horseman/ Licensed Public Trainer

**Respondent**

**Informations**: A8707 and A8708

**Judicial Committee:** Prof G Hall, Chairman

Mr D Jackson, Member

**Appearing:** Mr S Symon, and Ms E Smith, for the Informant

Mr R Lawson, for the Respondent

**RESERVED DECISION OF THE JUDICIAL COMMITTEE ON PENALTY (REASONS)**

[1] At a hearing at Te Rapa racecourse on Tuesday 19 February Mr S Lawson confirmed his earlier admission of two breaches of r 505(1) of the New Zealand Rules of Harness Racing. Rule 505(2) declares these breaches to be serious racing offences.

[2] Information No A8707 alleges “on Friday the 25th May, 2018, at the Auckland Trotting Club race meeting, held at Alexandra Park, being a horseman (Open Driver) you did bet on a horse, namely MR NATURAL in a race, namely Race 10, the “Book An ATC Bus to The Jewels” Mobile Trot, in which you drove the horse MY ROYAL ROXY having placed a futures option win bet for $50 @ $35 and place bet for $50 @ $6 earlier on the 25th May 2018, on MR NATURAL in breach of Rule 505(1) and (2) which is declared to be a Serious Racing Offence and you are therefore liable to the penalties which may be imposed in accordance with Rule 1001(2)(a)(b) and (c) of the New Zealand Rules of Harness Racing.”

[3] Information No A8708 alleges that “on Friday 20 July 2018, at the Auckland Trotting Club race meeting, held at Alexandra Park, being a horseman (Open Driver) you did bet on a horse, namely MADAM CONNOISTRE in a race, namely Race 1, the “Owners Night 10th August @Alex Park” Mobile Pace, in which you drove the horse ZIYAD having placed a futures option win bet for $100 @ $21 and place bet for $100 @ $3.50 on the 19 July 2018, on MADAM CONNOISTRE in breach of Rule 505(1) and (2) which is declared to be a Serious Racing Offence and you are therefore liable to the penalties which may be imposed in accordance with Rule 1001(2)(a)(b) and (c) of the New Zealand Rules of Harness Racing.”

[4] The penalty for such an offence is to be found in r 1001(2) which provides: (a) a fine not exceeding $30,000; and/or (b) suspension from holding or obtaining a licence, for any specific period or for life; and/or (c) disqualification for a specific period or for life.

[5] Authorisation dated 14 January 2019, by Mr N McIntyre, General Manager of Stewards, to lodge the two informations was before us.

[6] After receiving written submissions and hearing from counsel for the RIU and the lay advocate for the respondent we reserved our decision as to penalty and indicated that we would deliver a result decision that would be followed in due course by a full written

decision.

[7] This result decision was delivered on 21 February. As there was a related matter still to be heard, we ordered that this decision be disseminated only to the parties in the respective cases.

[8] Mr Lawson's Open Horseman's licence was suspended from 15 January 2019 (the date upon which he was stood down by the RIU from race driving pursuant to r 226) up to and including 31 July 2020. He was also fined the sum of $8,000. These are the reasons for that decision.

**Summary of facts**

[9] A summary of facts was placed before us. There was disagreement with respect to a number of matters and these were addressed by the parties at the commencement of the hearing.

[10] We set out the summary of facts as prepared by the informant and identify the matters in dispute.

The Respondent Mr Simon Lawson is a Licensed Public Trainer and Open Horseman under the Rules of New Zealand Harness Racing. He is 27 years of age and has been involved in the racing industry his entire life. Mr Lawson trains in partnership with his father Mr Rob Lawson.

Last year the RIU had cause to investigate Race 10 at the Auckland Trotting Club meeting on 25 May 2018. The indications were that the result of this race may have been fixed.

A detailed investigation into betting records was undertaken by the RIU Betting Analyst. This analysis confirmed that there were some potential betting irregularities.

At the time police were undertaking a covert operation involving various HRNZ licence holders. This operation has subsequently become known as Operation INCA.

The following are details obtained from the betting analyst investigation.

24 May 2018

At 2.02.29pm on 24 May 2018 at the Patumahoe Hotel a $100 cash bet was placed. Any 3, all 5 multi @ $9.09

Manawatu Harness on 24 May 2018

Race 1 Final Field Win #1 @ 6.00

Race 2 Final Field Place #9 @ 3.50

Race 4 Final Field Win #2 @ 6.80

Race 7 Final Field Win #7 @ 3.70

Race 8 Final Field Place #4 @1.95

Result Race 1 #1 12th

Race 2 #9 3rd

Race 4 #2 1st

Race 7 #7 1st

Race 8 #4 4th

Bets on races 2, 4 and 7 were winning bets. There was a late scratching in race 7 which resulted in deduction from $9.09 to $8.45 for a winning payout of $744.40.

At about 12.58pm on Friday 25th May 2018 the Respondent Mr Lawson and licensed Harness Racing Public Trainer and Trials Horseman Mr Gareth Dixon went to the Pukekohe TAB in Auckland.

Between 1.00:14pm and 1.06:53pm they made the following transactions.

**Pukekohe TAB**

1.00:14pm

Mr Lawson collected the Manawatu multi bet from the previous day via a self-service terminal. He created a *voucher for $744.70* (There was a 30 cents credit outstanding in this terminal).

1.04:43pm

Mr Gareth Dixon used the voucher via a self-service terminal to place $40 2 leg Multi on the Auckland Trotting Club meeting later that evening.

Race 6 Final Field Place #9 @ 3.80 #9 *"La Prix"*

Race 10 Final Field Place #8 @ 6.00 #8 *"Mr Natural"*

*Voucher returned for 704.70*

1.05:29pm

Mr Lawson then used the voucher via a self-service terminal to place the following bets at the Auckland Trotting Club meeting later that evening.

Race 6 $50 Final Field Place #9 @ 3.80 #9 *"La Prix"*

Race 6 $50 Final Field Win #9 @ 18.00

Race 10 $50 Final Field Place #8 @ 6.00 #8 *"Mr Natural"*

Race 10 $50 Final Field Win #8 @ 35.00

*Voucher returned for 504.70*

1.06:53pm

Mr Dixon via self-service terminal used $50 cash to place the following bets at the Auckland Trotting Club meeting later that evening.

Race 10 $20 Final Field Win #8 @ 35.00 #9 *"Mr Natural"*

Race 10 $30 Final Field Place #8 @ 6.00

**Patumahoe Hotel – 25 May 2018**

At 3.57:12pm Mr Dixon used the voucher to place the following bets at the Auckland Trotting Club meeting later that evening.

Race 10 $25 Final Field Place #8 @ 4.50 #9 *"Mr Natural"*

Race 10 $25 Final Field Win #8 @ 25.00

*Voucher returned for 454.70.*

At the time all bets were placed on *"Mr Natural"* Mr Lawson had accepted an offer from Licensed Trainer Mr Ival Brownlee to drive *"My Royal Roxy"* in Race 10. Mr Dixon was also fully aware that Mr Lawson was driving *"My Royal Roxy"* in Race 10…. *[Disputed]*

**26 May 2018 - Pukekohe TAB**

At 11.53:14am Mr Dixon using a self-service terminal collected the winning bets from the previous day as follows

Race 10 $50 Final Field Win #8 @ $35.00 amount paid $1330

Race 10 $50 Final Field Place #8 @ $6.00 amount paid $237

Race 10 $25 Final Field Place #8 @ $4.50 amount paid $112.50

Race 10 $25 Final Field Win@ #8 @$25.00 amount paid $625.0

Note: The odds differ due to a late scratching in Race 10.

The Patumahoe Hotel *Voucher for $454.70* was added to these wins and a new *voucher for $2759.20* was created.

At 11.54:44am Mr Dixon via a counter transaction collected the following bets made the previous day. He had to wait for the operator to unlock the central cash storage to collect these winnings.

Race 10 $20 Final Field Win #8 @ 35.00 amount paid $532.00

Race 10 $30 Final Field Place #8 @ 6.00 amount paid $142.20

Total paid in cash $674.20.

**1 June 2018 – Alexandra Park**

At 6.38pm the above voucher of $2759.20 was used in a self-service terminal at Alexandra Park to place a $200 futures bet on New Zealand Thoroughbred Racing.

The bet was on Wiremu Pinn to win the Winter Apprentice Challenge @ $3.50. This ran from 1 June to 31 August.

*Voucher was then $2559.20.*

At about 12.40pm on Tuesday 5 June 2018 Mr Lawson entered the Pukekohe TAB. He presented the voucher for $2559.20 to the operator and collected this amount in cash.

Mr Lawson then split the money evenly with Mr Dixon, each receiving approximately $1279.00.

At about 5.39pm on Thursday 19 July 2018 Mr Lawson went in to the Pukekohe TAB. He saw licenced Stable-hand Mr Johannes (Jon) Habraken who was also present.

Mr Lawson approached Mr Habraken and said, "Can you back one for me tomorrow night? Don't tell anyone". Mr Lawson explained that he was unable to place the bet as he was driving another horse in the same race. *[Disputed.]*

Mr Lawson gave Mr Habraken $200 cash and at 5.40:36pm Mr Habraken, with the assistance of Mr Lawson, placed the following bet on one of the self-service terminals.

Auckland Trotting Club meeting on 20 July 2018

Race 1 $100 Final Field Win #8 @ $21.00 #8 *Madam Connoistre*

Race 1 $100 Final Field Place #8 @ $3.50

At the time the bets were place Mr Lawson had accepted an offer from Licensed Trainer Matthew Salaivao to drive #1 *"Ziyad"* in Race 1.

*"Madam Connoistre"* finished second in the nine-horse field. Mr Lawson collected $350.00 for this bet.

As a result of the information obtained in the initial RIU investigation the file was forwarded to Police for consideration regarding possible race fixing. This was to be assessed along with their ongoing Operation INCA inquiry.

On Thursday 6 December Mr Lawson was formally interviewed by the Police. As a result of that interview and other enquiries the Police returned the file to the RIU. This matter is now separate and distinct from Operation INCA and can be treated as a stand-alone prosecution and can proceed on its own merits.

On Tuesday 18 December 2018 Mr Lawson was interviewed by RIU investigators. Mr Lawson admitted he was aware of the betting rules in relation to races that he was driving in. He admitted to placing the fixed odds bets at the Pukekohe TAB on 25 May 2018 in relation to *"Mr Natural"* after having already accepted a drive on *"My Royal Roxy"* in the same race.

He also admitted to asking Mr Habraken to place the fixed odds bets on "*Madam Connoistre"* at the Pukekohe TAB on 19 July 2018 after having already accepted a drive on *"Ziyad"* in Race 1 on the 20 July 2018.

Mr Lawson admitted that he had been jubilant at the completion of Race 10 on 25 May 2018. This jubilance was observed by the driver of the winner *"Mr Natural",* Mr Ben Butcher who, whilst still on the track, asked Mr Lawson if he had backed *"Mr Natural"* to which Mr Lawson replied "Yes".

Mr Lawson also admitted that if his horse *"My Royal Roxy"* had won the race that he would have won approximately $450.00 including driving fees and a share of the stake money, but that when *"Mr Natural"* won the race he won approximately $1300.00 being a half share of the joint bets made with Mr Dixon.

Mr Lawson stated that the betting voucher he created was for the benefit of himself and Mr Dixon and they usually bet together *[disputed].* He also stated that Mr Dixon has previously placed bets for him when he was unable to as he was driving in a race *[disputed].* However, he stated that the bet placed by Mr Habraken was the first time that he had asked Mr Habraken to place a bet on his behalf.

Mr Lawson was adamant that despite placing bets on horses that he was not driving, that he always drove his horses as best he could and gave them the best opportunity in the race.

Mr Lawson also stated that he has a gambling problem and was now seeing a Counsellor.

Mr Lawson is a Licensed Public Trainer and Open Horseman. He has no previous betting related rule breaches.

[11] We have identified the facts that are disputed. Despite Mr Symon submitting some of these matters added another "layer of deception" (involving others while withholding information) to Mr Lawson's culpability, we are satisfied that none of the disputed facts would impact to such an extent on our assessment of the appropriate penalty to require a disputed facts hearing. The allegation that Mr Dixon had previously placed bets for Mr Lawson when he was unable to as he was driving in a race was not pursued by the informant and we approach penalty solely on the basis of the two charges that have been admitted.

[12] Ultimately, we concluded that the differences were not material to our conclusion as to the appropriate penalty, that is to say they did not impact on the culpability assessment or otherwise involve aggravating or mitigating factors, and we make no findings with respect to the facts in dispute.

[13] We received written and oral penalty submissions from each party.

**Informant's submissions**

[14] The informant in both their written and oral submissions sought the disqualification of Mr Lawson for a period of three years, expressing their belief that this was the only penalty available to the Committee that met the interests of both specific and general deterrence. The RIU stated in its written submission that disqualification was necessary to deter not just Mr Lawson but also others who might contemplate committing similar offences, because this kind of conduct has the potential to undermine the entire racing regime. Mr Symon, in his oral submission, emphasised the need for general deterrence, stating this was "very serious misconduct" and was "at the high end".

[15] The informant identified the following aggravating features of the respondent's offending.

*Knowing and deliberate breach:* Mr Lawson is an experienced horseman who was aware of the betting rules in relation to races in which he was driving. He acknowledged that Mr Dixon placed bets for him, as he was unable to do so when he was driving in the same race. He had already accepted drives in the relevant races by the time of each bet.

*Number of breaches:* This aggravating factor is reflected in the fact there are two charges. Mr Lawson's breaches of the betting rules were deliberate and repeated.

*Motivation:* Mr Lawson had a significant financial interest in the offending. In respect of the race on 25 May 2018, he collected a half-share of $2,559.20, whereas if the horse he was driving had won he would have won approximately $450.

*Procuring offending by others or involving others in offending:* Mr Lawson has also involved two others, who are also involved in the harness racing industry, in his offending. As a result, both Mr Dixon and Mr Habraken have been charged with serious racing offences.

*Damage to public confidence in the racing industry:* Mr Lawson's actions have severely compromised the integrity of the harness racing industry and the confidence the public can have when betting on races

[16] The RIU anticipated that Mr Lawson would say that, despite having bet on other horses, he still drove his horses as best he could and gave them the best opportunity in the race. The informant believed it was relatively easy for a driver to make such a claim, but where the Committee is faced with a person who has admitted to betting on other horses in the race, where that person stands to gain much more from those other horses winning than from their own, such a claim should not be readily accepted. Mr Lawson was observed to be jubilant when the horse MR NATURAL won the race in May 2018 and he admitted to another driver on the track that he had bet on MR NATURAL — clearly, the financial benefits of his not winning were on his mind at the time of the race. The detrimental effect on the integrity of racing was not any less just because a driver who had bet on another horse had not obviously taken steps to ensure he or she did not win.

[17] The informant relied heavily upon the decision of *Walker v RIU*, 10 December 2014 in the submission that disqualification was appropriate and we should adopt a four and a half year starting point. Mr Symon noted that in *Walker* an Appeals Tribunal said that "other than in the most exceptional circumstances", offending of this type will attract a substantial period of disqualification. The Tribunal additionally stated that this type of offending:

[G]oes in a very fundamental way to the heart of the integrity of horse racing, upon which participants and the industry and those associated with it rely. The description of it as match-fixing, in context, is not entirely inapt. On that basis alone such offending must call for a condign response.

[18] Mr Walker faced two charges and was found to be in breach of two rules of Thoroughbred Racing. He deliberately rode his horse to finish behind another horse in two races. The two horses were subject to a head to head bet by the TAB, and Mr Walker had bet on the opposing horse. Mr Walker took the matter to a hearing and was found guilty in respect of one race, and pleaded guilty in respect of the other race at the hearing. Mr Walker collected approximately $2,050 from the two bets. The two occasions were little more than a fortnight apart and Mr Walker's conduct was calculated, which the Committee treated as an aggravating factor. The Committee found this to be at the highest level of seriousness, and disqualified Mr Walker for a total of seven years. On appeal, the penalty was revised to five and a half years, on the basis of further material adduced on appeal (that such a lengthy disqualification period would cause hardship to Mr Walker as he would not be able to earn an income over that period).

[19] Mr Symon argued that on the basis of a seven-year starting point in *Walker*, after allowing for the fact this included the more serious charge of race fixing, that a four and a half year starting point was appropriate for Mr Lawson and was "a fair comparison". This starting point had regard to the deliberateness of Mr Lawson's conduct despite his knowledge of the Rules, his involving other persons, and the additional layer of deception (the failure to advise Mr Habraken and Mr Dixon that he had a drive in the race on which he had requested them to place a bet for him). He did not believe the fact that in *Walker* it was a head to head bet was significant. Whether it was X v Y or X v field made little difference, as it was the public perception that mattered. It was a fundamental proposition that sports men and women did not bet on the opposition. As the RIU stated in their reply submissions: "The issue is what someone would think about his driving in a race in which he has a bet on another horse. That is, if the public were aware that Mr Lawson had bet on an opposing horse, would they think he would drive his horse as well as he could."

[20] A further case highlighted by the informant was *RIU v Bull*, 4 November 2013. Mr Bull, an amateur horseman, admitted three charges arising from a harness race in April 2013. The charges were that: he was driving the horse KELLYROX, and placed bets on other horses entered in the same race; he then made a false statement to a Steward, denying that he had placed bets on the race; and then intentionally failed to drive KELLYROX on its merits. The Committee disqualified him for a total of 14 months and ordered costs of $350 to be paid to the Committee. This was upheld on appeal.

[21] The RIU noted that the Appeals Tribunal in *Walker* referred to *Bull* and said that the penalty appropriate for his offending was likely substantially greater than the 14 months imposed, and explained this on the basis that Mr Bull was not charged with a serious racing offence.

[22] The final New Zealand case was *RIU v Rasmussen*, 18 December 2015. Ms Rasmussen bet on two horses in races in which she was driving and on one occasion she drove a horse other than the one on which she had placed the bet. She was also prohibited from accepting that drive without the approval of a Stipendiary Steward, given that she had bet on the race. The Committee found her actions were the result of an oversight — she placed one of the bets at a time when she did not plan on participating in the race, and forgot to notify the Stipendiary Stewards after she accepted the drive, and she acted in ignorance when she placed a second bet on the horse she was driving in another race. Ms Rasmussen was fined $3,750 in total.

[23] We did not find the circumstances in the further case cited by the informant, *British Horseracing Authority: Eddie Ahern,* to be relevant to the case before us in that Ahern was part of a conspiracy to provide information and to place bets, and on one occasion he was found to have ridden his mount deliberately to lose. We note the informant's observation that the British Horseracing Authority disciplinary panel in this case stated that "all must understand that potentially career-ending penalties will follow from serious breaches".

[24] The RIU submitted that Mr Lawson's case was similar to *Walker.* Although there was no evidence that Mr Lawson deliberately drove badly, the two cases were comparable as both Mr Walker and Mr Lawson had offended for the purpose of financial gain, and both had offended in a calculated manner. As with Mr Walker, there were two occasions where Mr Lawson had others bet for him on races in which he was driving, and the occasions were just two months apart.

[25] This case was more serious than that of Mr Bull, which involved an amateur horseman rather than an experienced one like Mr Lawson, who should be held to a high standard of conduct. Further, Mr Lawson placed bets on races in which he was driving on two occasions, whereas *Bull* involved only one. It was also relevant that Mr Bull was not charged with a serious racing offence; as noted above, an Appeals Tribunal had previously accepted that had Mr Bull been charged with such an offence, the penalty imposed on him would likely have been substantially greater.

[26] Mr Lawson's breaches were said to be significantly more serious than those in *Rasmussen*, which involved an oversight and ignorance of the rule. Unlike Ms Rasmussen, Mr Lawson placed bets after he had accepted drives in the races in question. The RIU stated that *Rasmussen* was included in their submissions to illustrate the range of penalties available. The informant submitted that a relatively more stern penalty was appropriate in the present case.

[27] Furthermore, the RIU submitted that a period of disqualification was necessary to preserve public confidence in racing. It would look poorly to the public if Mr Lawson was to appear at further New Zealand race meetings, immediately after he was found guilty of a charge based on him betting on races in which he was driving. It might give the public the impression that a race in which he was driving was fixed. A period of disqualification would prevent public confidence eroding further.

[28] The informant also referred to *McDonald v Racing NSW,* 22 December 2016. Mr McDonald, a jockey, on one occasion had someone else place a bet on his behalf on the horse he was riding. He admitted the breach and was disqualified from racing for 18 months. He appealed unsuccessfully to the Racing Appeals Tribunal (*McDonald v Racing NSW*, 10 April 2017) and sought (unsuccessfully) to judicially review the Tribunal's decision (*McDonald v Racing NSW* [2017] NSWSC 1511).

[29] The RIU submitted that the outcome in *McDonald* was consistent with the other authorities it had cited. It further illustrated the importance of deterrence in imposing a penalty for race betting offences. The Appeals Tribunal in *McDonald* cited the following passage from *Smith v Racing NSW* 15 August 2014 at [6]:

[T]he Tribunal in determining what order is appropriate has regard to what message is to be given to this individual trainer to ensure that in the future this type of conduct is not repeated, but to ensure that there is an appropriate penalty imposed to indicate the response of the community to integrity and welfare issues. In addition, it is a question of what general message is required to be sent to the community at large to indicate to those who might be likeminded to engage in such conduct, what the likely consequences are, and, secondly, to indicate to the broader community who are not likely to engage in the type of conduct that, should it be detected, they, whether they be wagerers or people just generally interested in the individual code, will know that it is operating at the highest possible standards.

[30] The Tribunal also noted that the industry relies on betting for its existence, and so the public's confidence in the integrity of racing was to be maintained.

[31] The RIU observed that New South Wales had recognised how serious this type of offending was by having a mandatory minimum disqualification period of two years. That is, a first-time offender with no aggravating features would receive a two-year disqualification. (Mr McDonald was given a six-month discount due to special circumstances, namely lack of previous breaches, low prospects of reoffending, remorse as demonstrated through making a donation to charity, and his early admission of the breach.)

[32] The Appeals Tribunal also referred to the fact that Mr McDonald had someone else place the bet for him, noting that "the use of agents is obviously part of a subterfuge to avoid detection" and that "once a jockey starts to use an agent ... others may become involved and other integrity issues enlivened".

[33] The RIU submitted that Mr Lawson's culpability was greater than that of Mr McDonald. Mr McDonald had backed his own horse, so had a financial interest in ensuring it performed to the best of its ability and that he gave it every opportunity to do so. In contrast, Mr Lawson had an interest in the horses he was driving not winning. The Appeals Tribunal in *McDonald* discussed this, noting that a person betting on his or her own horse "increases his predisposition to ride outside the rules and disregard his duty of care to fellow riders", but that betting on another horse is more serious as it means that the person is not complying with the rules requiring that they use their best endeavours to achieve the best possible position.

[34] The RIU concluded their supplementary submission that had addressed *McDonald* by stating when considering that the race betting offending in New South Wales was met with a minimum disqualification of two years, reduced to 18 months in Mr McDonald's case to reflect that his was a one-off bet on his own horse, betting on another horse, on two occasions, and using two other people to place bets, was substantially worse offending. Accordingly, Mr Lawson's disqualification should be commensurately longer than that imposed on Mr McDonald.

[35] Mr Symon concluded his oral submission by stating Mr Lawson had made the choice to place a bet in the full knowledge that it was prohibited by the Rules of Harness Racing and with knowledge of the likely consequences for his livelihood were his actions to become known.

[36] The RIU thus submitted that the appropriate end sentence from a four and a half year starting point, taking into account the gravity of the breaches, mitigating factors personal to Mr Lawson (10%), his early admissions (25%), and the need for deterrence, was a period of disqualification for three years.

**Respondent's submissions**

[37] Mr R Lawson, lay advocate for Mr Lawson, identified the four accepted principles of sentencing (as commonly used by the JCA) to be:

Penalties are designed to punish the offender for his/her wrong doing.

They are not meant to be retributive in the sense that the punishment is disproportionate to the offence, but the offender must be met with a punishment.

In a racing context it is extremely important that a penalty has the effect of deterring others from committing a similar offence.

A penalty should also reflect the disapproval of the JCA for the type of offending in question. The need to rehabilitate the offender should also be taken into account.

[38] All of the above principles, he believed, should be considered equally.

[39] Mr R Lawson emphasised that the respondent had pleaded guilty to two breaches of r 505 only. He had not been charged with race fixing, race team driving, colluding with any other driver to manipulate a result, or diminishing the chances of his own horse or making the run of an opposing horse better. These were important issues. He added that the respondent was adamant that he drove both horses to the best of their ability and within the Rules of Harness Racing. He submitted that these races would have been well scrutinised by RIU racing experts and no abnormality had been found.

[40] Mr R Lawson then addressed the cases identified by the informant

(a) *Walker* case This case involved head to head betting and Mr Walker was found guilty of not running his horse on its merits to facilitate a bet he had on the opposition horse. He had manipulated how the horse had raced. This was a major point of difference compared to Mr Lawson's case. In *Walker* there was a betting rule charge in association with a "merits" charge, which put that case in a different league to Mr Lawson's.

(b) *Bull* case. Again the significant point of difference was that Mr Bull again was convicted of a "merits" charge. In combination with the betting charge it made this much more serious than Mr Lawson's case. Mr Bull also did not co-operate with the RIU, which did not help his cause. Mr Bull was given a disqualification which had the effect of curtailing approximately 11 drives only. He was not full-time in the industry and therefore the consequential effects on Mr Bull were not as severe as they could be to other licence holders.

(c) *Ahern* case. This case was part of a major conspiracy by a large unscrupulous group to profit by again not running horses on their merits. This case bore no resemblance to the case before us.

(d) *Rasmussen* case. Ms Rasmussen drove MESSINI in the New Zealand Cup and bet on a stablemate SMOLDA to win. SMOLDA ran 2nd in the race. Ms Rasmussen's driving of MESSINI in the race was not questioned – she was not charged under any merits rule, as the drive was deemed acceptable. Ms Rasmussen did plead ignorance of the rule which obviously was not a defence. (We note this was in respect of the charge of betting on the horse she was driving in a later race.) Ms Rasmussen received a $3000 fine for the betting rule breach. This case, the respondent submitted, was by far and away the most similar case to the one before this Committee. It should be used as the benchmark.

(e) *McDonald* case. Sentencing in Australian racing jurisdictions varies considerably from New Zealand. In the first instance the Stewards make the penalty which can be appealed to an Appeals Authority. This makes the penalties in Australia (and it varies State to State) quite different to New Zealand. For instance, a prohibited drug charge in Australia attracts a disqualification penalty. In New Zealand it attracts a fine. This is quite a distinct difference and has been tested over some time. The respondent submitted it was is extremely dangerous and unjust to mirror New Zealand penalties on those of Australia. It had not been done in the past and there was no reason to do so in this case. The penalty in the *Macdonald* case was manipulated by the legislation that NSW Racing had that a breach of this rule was a *mandatory penalty* of two years' disqualification. Despite NSW Racing declaring this penalty to be mandatory, they took 25% off it.

[41] The respondent accepted aggravating features were that Mr Lawson breached the rule twice. On one occasion the horse won and created a substantial payout. He asked another person to place the bet for him (Mr Habraken). It was not accepted that knowing this was a breach was an aggravating factor. All horsemen were expected to know the rules – yet the rules got breached regularly. Ignorance of the rule may be considered a mitigating factor and had been used by respondents in other cases – but that was for the JCA ultimately to determine.

[42] Mitigating features identified by the respondent were that Mr Lawson pleaded guilty in the first instance – he did not lie about the offending. Mr Lawson had co-operated at all times with the RIU (and the NZ Police). Mr Lawson is young (27 years). Prior to this case he had had an excellent reputation in the industry. He had been a successful junior driver, winning the Championship twice, and had driven a Group 1 winner as a senior reinsman. He was and still is extremely remorseful.

[43] The respondent wanted to continue in the industry both as a freelance driver and as a licensed trainer. He had up to eight horses in work at any one time. Messrs R and S Lawson would usually both go to the yearling sales and make a couple of purchases. The respondent had had 60 drives this season, principally for the Brownlee and Dixon stables, which were both relatively small.

[44] The respondent submitted his presence in the industry was no threat to the integrity of the industry. This was his first offence and his overall judicial record is excellent. No other owner, or punter was disadvantaged by his breach. Mr Lawson had quite clearly stated on a number of occasions that he drove the horse to the best of his and the horse's ability. In the absence of facing a charge under the merits rule (r 868), Mr R Lawson said that that had to be accepted.

[45] The respondent had identified and accepted that he might have a gambling problem. He was currently undergoing therapy. He did not use this as an excuse for the offending and was not using it to diminish the seriousness of the breach.

[46] The respondent submitted that the case was similar to that of *Rasmussen*, although he accepted his breaches were more serious and that the penalty should be more significant than that in that case.

[47] Mr R Lawson submitted that the respondent should receive a penalty that was a substantial fine in the $5,000 to $10,000 region to hold him accountable and to send a deterrent message to the industry. He said it would be reasonable for the JCA to take into consideration when settling on the final figure to consider that Mr Lawson realised that he had to take this as a serious "wake-up" call and had sought the assistance of the Salvation Army Racing Services. This was an accepted pathway for offenders, and he believed the respondent should be afforded some concession for acknowledging his gambling issue. He had attended four sessions by the time of the hearing. In addition, Mr Lawson was subjected to the implications of r 226 and had been suspended from driving for one month (15 January to 18 February). This had impacted upon his income considerably (some 15 to 20 drives).

[48] Mr R Lawson continued by stating that the JCA must consider the effect a disqualification would have on any participant and must consider the principle of rehabilitation. Keeping the respondent in the harness industry (when he would be extremely closely scrutinised by the RIU throughout all his activities) would allow that rehabilitation. If disqualified he would have no job, no income, and no ability to pay any fines or costs arising from this case. His business would close, and the horses dispersed. This was his first serious offence. He had made a stupid mistake twice. He deserved a penalty for his stupidity, but he should not be disqualified. A severe fine would be seen by the industry as a significant penalty. Mr Lawson would struggle to get outside drives from other trainers as a consequence of this case and would have to display a high level of professionalism to regain trust. He would have to live with this black mark for the rest of his life. Disqualification would result in his being lost to the industry. Any disqualification would impact upon many suppliers to his business, eg: Auckland Trotting Club $1,100 per month; Dunstan Feeds $3,000 per month; and farrier $650 per month.

[49] Mr Lawson appended a list of all previous charges and penalties under this rule in New Zealand. He noted not one person, charged only under r 505, had received a disqualification under that rule. He submitted that consistency of judicial penalties was a

cornerstone of the judicial system in New Zealand. Mr Lawson emphasised that "[p]enalties should not be given to use as a method of giving authorities ammunition for cases that may occur in the future. A respondent should receive a penalty that is relative to their particular breach based on the facts of the case as they stand."

[50] The respondent concluded his submission by stating disqualification was a manifestly excessive punishment for the offences committed.

**Decision**

[51] The informant acknowledged that disqualification was the most severe penalty available under r 801(2) and justified its imposition by reference to the cases, both in this jurisdiction and elsewhere.

[52] We have not found *Walker* to be as helpful as the informant's submissions would suggest. This decision requires very careful consideration as to what the Tribunal was referring to as "offending under the Rule of the kind Mr Walker has been found guilty…" (at [5.2]). Mr Walker faced four charges, two of which were laid in the alternative, and was found to be in breach of r 801(1)(m) which provides that a person commits a serious racing offence within the Rules who "commits a dishonest or fraudulent act connected with racing or betting associated with racing" and r 707(1) which restricted the rights of riders in races as to the horses on which they could bet. The maximum penalty for breach of r 801(1)(m) was disqualification for a period up to life and/or suspension for a period not exceeding 12 months and/or a fine not exceeding $50,000. The maximum penalty for a breach of r 707(1) was disqualification for a period not exceeding five years and/or a fine of up to $50,000. The Judicial Committee imposed a period of disqualification of seven years on the charge under r 801(1)(m) and disqualification for a period of one year on the charge brought under r 707(1). The two periods of disqualification were ordered to run concurrently. We note that the Judicial Committee (at [18]) described Mr Walker's actions with respect to the r 707(1) breach (head to head betting) as "thought out and planned with some degree of calculation." On appeal, the 7-year period of disqualification was reduced to five and a half years. The concurrent one-year disqualification was left untouched.

[53] We have difficulty in accepting Mr Symon's submission that were there only to be the betting charge that, say, four and a half years' disqualification would have been the starting point in *Walker* and that this should be the starting point in the case before us. We can see no justification for this conclusion in the reasoning in *Walker*. Mr Walker was guilty of committing a dishonest or fraudulent act; Mr Lawson has admitted two betting charges. These are similar to the second charge in *Walker*, where the maximum period of disqualification available at the time was five years and the penalty imposed was one year's disqualification (concurrent). The extract that the informant cites (see [17]) is directed to the dishonest or fraudulent act breach (r 801(m)). The full passage at [5.2] is as follows:

The Serious Racing Offence encompassed within R. 801(1)(m), committed in the circumstances of the present case however must, in our view, inevitably be regarded as one of the most serious of the offences within R. 801 attracting an appropriately condign penalty within the maximum penalty available. Other than in the most exceptional circumstances we doubt that offending under the Rule of the kind Mr Walker has been found guilty of could properly be met by any penalty other than one of disqualification for a substantial period.

[54] We believe the informant overstates its case for disqualification when it submits the comment applies to the imposition of penalty for the betting breach.

[55] We also have had regard to the NSW decision in *McDonald*. Disqualification was the mandatory penalty under the applicable rule in that case, and this is a significant point of difference. Australian cases, cited in *McDonald,* that were decided prior to the mandatory penalty of two years' disqualification had resulted in disqualifications measured in months and in single digits. Despite the mandatory period being two years, Mr McDonald was ultimately only disqualified for 18 months. He, like the respondent, was a first offender of good character and admitted the breach, but in other respects his personal circumstances would clearly differ markedly from those of the respondent. We are reluctant to read too much into a decision in a different code and jurisdiction, with different maximum penalties, including the prescription, as we note, of a mandatory penalty.

[56] The respondent relied heavily on *Rasmussen*, but again the circumstances in that case are different. There were two betting charges; only the first is similar to the charge the respondent has admitted. Ms Rasmussen placed a futures bet at a time she did not anticipate, due to her being out, injured, that she would be driving in the race in question. When she later took a drive, she overlooked the bet (and failed to notify the Stewards of her drive). The informant in that case only asked for a fine in the range of $1000 to $2000. The Judicial Committee took a more serious view of the breach than had the RIU and imposed a fine of $3,000 on that charge. We note, however, there is a large gulf between the $3000 fine in that case and the three-year disqualification sought by the informant in this case.

[57] Mr Lawson placed two bets in full knowledge he was driving in the two races in question. Mr Dixon placed bets in the presence of Mr Lawson by using a betting voucher he was sharing with Mr Lawson. Again, Mr Lawson was aware that he was driving in the race on which Mr Dixon was placing the bets. Mr Habraken became involved at the request of Mr Lawson. He was persuaded to place the bet on Mr Lawson's behalf because Mr Lawson was well aware that he was not permitted to bet on a race in which he was driving. The compounding factor, of course, is that on each occasion the bet was on a horse other than the one Mr Lawson was driving, although to bet on any horse in the race is in itself a breach.

[58] We have no difficulty in accepting the proposition of the RIU that the penalty we impose must give emphasis to deterrence, both general and specific. The need to uphold the integrity of racing and reinforce public confidence in race betting, we agree, has to be at the forefront of any penalty we impose. However, we do not believe that this needs be to the extent of preventing the respondent from having any connection at all with the industry, as Mr Symon has submitted. We do not believe his presence on a race track will diminish a penalty's deterrent effect. His absence from the driving ranks by way of suspension will have that effect.

[59] Mr R Lawson is correct when he said the emphasis on deterrence must not be at the expense of the other principles of punishment. In that regard, we note the following comment, which although it is made in the context of a criminal sentencing rather than the imposition of a penalty by a sport disciplinary tribunal, is apposite:

The courts must … maintain sentencing standards at levels which will operate as a realistic deterrent. Deterrence, is not, however, the only value involved in the sentencing process. The sentence should not exceed that which is proportionate to the moral turpitude involved in the crime having regard both to the objective character of the wrongdoing and the qualities of the individual offender…. The needs of rehabilitation, must always be considered. The desire to deter must not be given inordinate scope to the exclusion of other values with the result that sentencing becomes an exercise in pointless and even counter-productive severity": *R v Johnston* (1985) 38 SASR 582, at 585-586.

[60] We questioned Mr Symon as to why the informant submitted that only a period of disqualification was appropriate and why of a length of three years. The response was a reference to *Walker* and to the need for deterrence. When we raised the issue of whether a period of suspension from driving and a fine might be appropriate, the response was the RIU believed this would be inadequate, but were that to be the penalty, the period of suspension should be three years and the fine should be the maximum of $30,000. Again, we understood, this was in the interests of deterrence. The need to ensure that the respondent had no involvement in the industry was also emphasised.

[61] If we return to the passage from *Johnston*, we see emphasis on the need for the penalty not only to consider sentencing principles in addition to that of deterrence, but also to have regard to the moral turpitude involved with reference to the objective character of the wrongdoing and the qualities of the individual offender.

[62] The issue, even before the "qualities" of Mr Lawson are considered, is whether these matters cannot be satisfied other than by a penalty short of disqualification.

[63] As Mr R Lawson emphasised repeatedly, the breaches that were admitted were not ones involving a corrupt practice but were breaches of the betting rule. That said, we agree with the RIU, that the issue is not just the integrity of a particular race and whether any identified individuals can be shown to have been harmed, but the integrity of racing more generally and public confidence in race betting. We are clearly of the view that any breach of the betting rule is a challenge to the integrity of racing and is to be taken seriously. For this reason we attach little weight to the respondent's submission that no individual was disadvantaged by his actions.

[64] The informant correctly identified the aggravating features of the respondent's conduct: this was a knowing and deliberate breach — he had already accepted drives in the relevant races by the time of each bet; the number of breaches — there are two charges; the financial motivation; and his involving others in his breaches of the rules.

[65] It must not be overlooked that r 1001(2) provides for a range of penalties for a serious breach of the Rules of Harness Racing. The Appeals Tribunal recognised this in *Walker* stating (at [5.2]): "The fact the maximum penalties are prescribed in the alternative is implicit recognition of the fact that the various Serious Racing Offences identified in r 801 encompass different degrees of culpability which, in the circumstances of particular cases, will attract different penalties or different combinations of penalties depending on their particular facts."

[66] We regard disqualification as the ultimate sanction available for a breach of the Rules. The period may be finite or life. From a starting point of four and a half years, the RIU is asking us to impose a penalty of three years. However, we do not believe that we need to engage the ultimate sanction in this case.

[67] We have already drawn a distinction with the corrupt practice rule in our assessing the seriousness of Mr Lawson's actions. We note also that the two breaches before us are far from sophisticated examples of a breach of r 505. Mr Lawson has not had the guile to completely disassociate himself from the bets that were placed on horses in two races in which he was driving. He has placed some bets himself, he was standing beside Mr Dixon when he placed bets using a voucher the proceeds of which he and Mr Lawson were sharing, and was with Mr Habraken in the TAB when Mr Habraken was placing bets on his behalf. The breaches could be fairly described as stupidity, as Mr R Lawson submitted, rather than a calculated premeditated attempt to obtain financial benefit. We emphasise again there is no suggestion of race fixing. This forms no element of either charge.

[68] We do not place any weight on Mr Symon's "additional layer of deception" (the apparent failure of Mr Lawson to advise Mr Habraken and Mr Dixon that he had a drive in the races on which he had requested them to place a bet for him). It would have been clearly evident to Mr Habraken that the reason Mr Lawson could not place the bet himself was because he was driving in the particular race. Whether or not Mr Lawson told him this, does not add to Mr Lawson's culpability. Mr Dixon and Mr Lawson were sharing a betting voucher and were both placing bets on MR NATURAL. Mr Lawson was with Mr Dixon when these bets were placed.

[69] Nonetheless, we do not overlook the fact that the sole reason for the respondent's actions was to obtain a financial benefit from betting on a horse (MR NATURAL) whose form suggested it was a good thing, a fact which was apparently not evident to other persons who invested on this race. The return to Mr Lawson from that bet was not an insignificant sum. Hence, we have included a fine as part of the penalty we impose. (We note that the second bet (MADAM CONNOISTRE), whilst sizeable, ($100 e/w) returned a lesser sum due to the horse only running second.)

[70] We place little emphasis on the fact that the nature of Mr Lawson's drives in the two races has not been questioned. Obviously, if they had been, further and more serious charges would have been laid. We concern ourselves with the betting breaches.

[71] As we have said, Mr Lawson's actions have challenged the integrity of racing. The breaches arise out of his actions as a driver. We believe a penalty that severely restricts his ability to drive in races in which there is TAB betting, but which allows him to continue to participate in an industry, which is the only career path Mr Lawson has followed, is appropriate. We wish to avoid a penalty, the effect of which is "crushing" for Mr Lawson.

[72] We note the impact disqualification would have upon owners and the partnership arrangement that the respondent has with his father, and on his personal life, which involves regular contact with licence holders in both codes. It is likely disqualification might end the respondent's involvement in an industry, outside of which he has no qualifications. However, we emphasise that these factors would not prevent us from imposing a disqualification if we thought it to be warranted by the nature and gravity of the breaches and the extent of Mr Lawson's culpability.

[73] In determining penalty, we have placed weight on Mr Lawson's good character, which is exemplified in a number of glowing character references that have been placed before us from a number of industry leaders, his hitherto unblemished record with respect to serious breaches of the Rules of Harness Racing, his admission of the breaches, and attendance at gambling counselling with the Salvation Army, which is evidence of his acceptance of the fact that he has an issue and his being proactive in this regard.

[74] We note also that this is a spectacular fall from grace by a former champion junior driver. The publicity that these breaches will inevitably attract will impact upon the respondent and his wider family, which are also heavily involved in the harness racing industry. This of course is a matter that the respondent should have considered before placing the bets, but the fact he will attract the unwanted glare of attention is a consideration, although in the context of the nature of these particular breaches, a minor one.

[75] We are of the view that a lengthy period of suspension from race driving, in combination with a fine, will have sufficient "sting" to have a significant deterrent effect personally for Mr Lawson and will serve as a very evident reminder to any licence holder tempted to repeat the respondent's exploits. The betting breaches go to the very core of the industry, but they relate to Mr Lawson's driving activities and not his position as a licensed trainer.

[76] Giving emphasis to denunciation of the respondent's actions, deterrence and rehabilitation, the seriousness of the breach, the respondent's culpability, and the need to uphold the integrity of harness racing but also having regard to the personal mitigating factors, we impose a penalty of suspension of Mr Lawson's Open Horseman's licence from 15 January 2019 (the date upon which he was stood down by the RIU from race driving pursuant to r 226) up until the end of the 2019/2020 season (ie 31 July 2020) and a fine of $8,000. The penalties are imposed in respect of each information concurrently.

**Costs**

[77] We require the parties to submit written submissions as to costs. The RIU's submissions are to be with the Executive Officer of the JCA by 4 pm Tuesday 12 March and respondent's by 4 pm Tuesday 19 March.

Dated at Christchurch this 5th day of March 2019.

Geoff Hall, Chairman

**Penalty:**