

RACING APPEALS TRIBUNAL

QUEENSLAND

NOTICE OF DECISION

APPEAL NO: RT034-08

DATE: 27 November 2008

APPELLANT: Ms Kelly Jane Gates

RESPONDENT: Queensland Racing Limited

APPEAL FROM: Appeal against the decision of the Stewards to impose a penalty of 3 months disqualification for a breach of Rule AR175(a). Appeal against penalty only.

BREACH OF RULE: Rule AR175(a)

DECISION: Appeal upheld and penalty varied to 3 months suspension from 3 November 2008 with suspension period after one month to be wholly suspended for 12 months pending no further breaches of the Rules relating to misconduct or dishonesty by the Appellant.

APPEARANCES: Ms Gates appeared on her own behalf.

Mr Wade Birch, Senior Steward, appeared on behalf of the Respondent.

REASONS FOR DECISION

Mr Brock Miller - Deputy Chairman

Mr Dennis Standfield - Member

The Appellant is an apprentice jockey whose Master is Trainer Paul Facoor. The Appellant is still under her traineeship for her apprenticeship and it appears that she commenced her apprenticeship at approximately the end of August 2008. As she is under a traineeship, she is required to attend Apprentice School on Mondays of each week. On the Mondays of 20th and 27th October 2008 the Appellant did not attend the Apprentice School stating that she was ill and presented to Queensland Racing two medical certificates stating that she was unable to attend training on those days.

On inspection of the medical certificates the Training Administration Officer of Queensland Racing had reason to believe that they were not genuine and enquired with the medical practice that purported to issue the medical certificate. The medical practice confirmed to Queensland Racing that neither certificate was genuine and the Stewards held an Inquiry into the matter on 3 November 2008.

At the Inquiry the Stewards presented evidence from the medical practice stating that the reports were not genuine and asked the Appellant about the matter. The Appellant when presented with the evidence stated (Stewards Inquiry Transcript ("SIT") page 4 from line 38):

"I just made a mistake. I scanned those certificates onto my computer and changed the dates and sent them in because on those 2 Mondays I was sick and I didn't have a car and I couldn't get to the surgery to get medical certificates and I just sort of panicked. I thought that, you know, it would be legitimate."

The Appellant further went on to say (SIT page 5 from line 3):

"If I had had a car I would have driven to the practice because I live out of town. I live by myself. I would have gone to the doctors and got medical certificates."

Needless to say, the Appellant's Master was not pleased with the whole incident and stated at the Inquiry (SIT page 5 from line 14):

"I just think it is stupidity, irresponsible and just wasting my time and everybody else's. I can't say anything else. I am just so annoyed. She already knows that. I have blasted the hell out of her."

The Appellant went on to explain that she had just sold her car and she was waiting for another car to obtain its roadworthy which was taking longer than expected and this was a basis for not driving to the medical practice to obtain a medical certificate.

The Appellant stated that she was ill on both Mondays and that she had been vomiting and had been sick for the last couple of weeks. The Appellant did attend work on those days and Mr Facoor thought that when she had left work she had gone to the Apprentice School.

The Appellant further went on to say that the only explanation that she can give was that she "panicked" in giving the false medical certificates to Queensland Racing.

As a consequence of the matter the Stewards charged the Appellant with a breach of AR175(a) which reads:-

“AR175(a)

The Committee of any Club or the Stewards may punish:

(a) Any person who, in their opinion, has been guilty of any dishonest, corrupt, fraudulent, improper or dishonourable action or practice in connection with racing.”

The Appellant pleaded guilty to the charge and the Stewards adjourned the Inquiry to consider penalty. When the Inquiry was resumed, the Chairman of the Stewards Panel, Mr J. Dart stated (SIT page 13 from line 31):

“Miss Gates, the matter of penalty is always a difficult one. I will say at the outset the evidence you put forward to this panel doesn’t sit well with us. We have difficulty accepting your evidence in regards to you being sick on two Mondays in a row, and you haven’t notified anyone from Queensland Racing or your boss and then shown up the next day. Your boss thought you were at the training centre and he had no other option but to think that. Nothing was brought up, and the evidence you put forward today doesn’t sit well with us.

We have had to weigh up mitigating circumstances, and that is of course your plea. You pleaded guilty, and that does go to your credit, and you are showing remorse for your actions- being dishonest actions. We have also had to consider how long you have been in the game – that you are an apprentice. You have put forward that you have been in the game for roughly 6 months. We have also had to take into account the seriousness of the breach, that being you did do a dishonest action, and we also feel that the penalty should be one of a general deterrent to yourself.

We feel that an appropriate penalty in the circumstances be a disqualification of your licence, and that be for a period of 3 months, and that it to be effective immediately, and will expire on 2 February 2009.”

The Appellant appeals to the Tribunal on the basis of penalty only, stating as her ground of appeal:

“1. The penalty is excessive because of the hardship it will cause me from a loss of income. My weekly wage of \$425 per week pay’s rent, bills,

transport and living expenses which amount to \$380.00 per week. Without income I would be unable to meet these basic living costs, therefore unable to support myself.

- 2. I have worked in the Industry my whole life, holding a reputation of being reliable and hard working, and have good repores with employers, at 25 years old I have no other qualifications to fall back on.*
- 3. Being unable to work severely punishes my employer Mr Facoor. I am his soul trackwork rider and he trains 12 horses. Exercising his horses will be very difficult, as there is a shortage of riders at Corbould Park.*
- 4. My future career as a jockey will be affected with a disqualification on my record. Recent high profile jockeys facing drug charges and improper riding that misleading to the public have received a lessor punishment than I have as a trainee apprentice that has made a very foolish mistake.*
- 5. On the days I am required to attend Apprentice School I have always made certain the assignment allocated to me are completed promptly and my training requirements are kept up to date. This punishment distracts me from being able to participate in apprentice training decreasing my ability to learn through training tasks and progress in the Industry.”*

There is no doubt that the Appellant's actions showed an element of dishonesty in trying to deceive Queensland Racing by presenting falsified medical certificates. Such behaviour is of concern for a person entering the Industry where the integrity of all participants and in particular future jockeys need to be paramount. The Tribunal is simply at a loss to understand why the Appellant did something so foolish.

There are some matters however which are in the Appellant's favour and that is the evidence from Mr Facoor at the Stewards Inquiry that her work ethic and punctuality is excellent. The Appellant is the sole rider for Mr Facoor and he will be disadvantaged if the Appellant is unable to ride trackwork for him.

There is no doubt that the Appellant is remorseful for her actions and she presented to the Tribunal a number of references as to her character. It appears that the Appellant has been involved with the Industry since she was approximately 15 years

and clearly has a love of horses. It is unfortunate that someone who is a trainee apprentice has breached the rules for dishonesty. While the Stewards imposed a 3 months disqualification stating that such a penalty needs to be for deterrence, the Tribunal is of the opinion that a part suspension of the Appellant's licence, together with a condition that she be of good behaviour would be a more appropriate penalty due to the age and remorse shown by the Appellant.

The Tribunal therefore orders:

1. Appeal upheld.
2. Penalty varied to 3 months suspension from 3 November 2008 with suspension period after 1 month to be wholly suspended for 12 months pending no further breaches of the Rules relating to misconduct or dishonesty by the Appellant.
3. Appeal deposit fee be refunded to the Appellant.

Mr Brock Miller
Deputy Chairman

Mr Dennis Standfield
Member