14 March 2023

**DECISION**

**RACING VICTORIA**

**and**

**JARROD OLSEN**

**Date of hearing:** 6 March 2023

**Panel:** Judge John Bowman (Deputy Chairperson) and Ms Judy Bourke.

**Appearances:** Mr Marwan El-Asmar appeared on behalf of the Stewards.

Mr Jarrod Olsen represented himself.

**Charge:**

AR 233(b) reads as follows:

AR 233 A person must not

(b) engage in workplace harassment or bullying of a person while the person is acting in the course of his or her duties while employed, engaged in, or participating in the racing industry

**Particulars of Charges:**

**CHARGE 1 of 3: AR 233 (b) – Misconduct (workplace harassment)**

**Particulars**

1. You are, and were at all relevant times, a Stable Employee registered with Racing Victoria.
2. Between February 2021 and September 2021, you were an employee of licensed trainer Ray Caldwell, where Ms. Jacqueline Murfett (***Ms. Murfett***) worked for you as a track rider.
3. During that time, you harassed Ms. Murfett, being a person acting in the course of her duties whilst employed in the racing industry, by way of various text messages sent from you to Ms. Murfett, referring to her as “Gorgeous”, “Hun” and inviting her for lunch “*if she was a good girl*”.
4. These messages continued despite Ms. Murfett requesting you to stop and explaining that your messages were making her feel uncomfortable and unsafe at work, resulting in Ms. Murfett’s resignation.
5. Your conduct, as set above, was in contravention of AR 233(b).

**CHARGE 2 of 3: AR 233 (b) – Misconduct (workplace harassment)**

**Particulars**

1. You are, and were at all relevant times, a Stable Employee registered with Racing Victoria.
2. Between November 2021 and April 2022, you were an employee of licensed trainer Ray Caldwell, where Ms. Melinda McDonald (***Ms. McDonald***) worked for you as a track rider and picnic jockey.
3. During that time, you harassed Ms. McDonald, being a person acting in the course of her duties whilst employed in the racing industry, by way of text messages sent from you to Ms. Murfett, referring to her as “Gorgeous” and “Hun”.
4. These messages continued despite Ms. McDonald requesting you to stop and explaining that your messages were making her feel uncomfortable and unsafe at work.
5. Your conduct, as set above, was in contravention of AR 233(b).

**CHARGE 3 of 3: AR 233 (b) – Misconduct (workplace harassment)**

**Particulars**

1. You are, and were at all relevant times, a Stable Employee registered with Racing Victoria.
2. During 2021 you were an employee of licensed trainer Ray Caldwell, where Ms. Peta-Jean Stewart (***Ms. Stewart***) worked for you as a track rider.
3. During that time, you harassed Ms. Stewart, being a person acting in the course of her duties whilst employed in the racing industry, by way of messages sent from you to Ms. Stewart, referring to her as “Gorgeous” and “Hun”.
4. These messages continued despite Ms. Stewart requesting you to stop and explaining that your messages were making her feel uncomfortable and unsafe at work.
5. Your conduct, as set above, was in contravention of AR 233(b).

**Plea:** Guilty to all charges.

**DECISION**

Mr Jarrod Olsen, you have pleaded guilty to three breaches of AR 233(b).

Each Charge arises out of your behaviour when you were employed as a stable hand and, in essence, foreman by trainer Mr Ray Caldwell. That behaviour essentially relates to text messages sent and words spoken to three female employees of Mr Caldwell. These messages and calls were numerous, persistent and continued despite requests from the women concerned that they cease. Some were more blatant than others. Many were requests to “take out” the women involved and your behaviour in each instance was in the nature of harassment. Each of the women concerned seems to have been years younger than you, you being in your late 30’s at the time. In each instance you persisted with your messaging and phone calling despite requests to stop and expressions of disinterest. The messages and calls were numerous. In this case of one track rider, Ms Jacqueline Murfett, you sent something in the order of 165 inappropriate or unwelcome messages or make calls.

In relation to the periods over which these unwanted or inappropriate calls and messages were sent, those to Ms Murphett were between February 2021 and September 2021. Ultimately, she resigned from her employment with Mr Caldwell because she could take them no longer. No expression of disinterest on her part caused you to cease messaging or calling. A Victim Impact Statement of Ms Murphett was read to us. We certainly take that into account.

Messages or calls to Ms Melissa McDonald occurred between November 2021 and April 2022. They were of much the same nature as those to Ms Murfett and continued despite the requests.

During 2021, messages and calls to Ms Peta-Jean Stewart were also made persistently, and despite objection. Again, these were of much the same nature.

Your situation is that you are now 40 years of age. You have worked as a horse breaker in the thoroughbred racing and harness racing industries since your early teens. You no longer work for Mr Caldwell, who has ceased training for reasons of health. You have recently had a hernia operation, which has caused some interruption to your work. You have been engaging in essentially weekend work as a “bouncer”. You have an ex-partner and a 10 year old child and you pay some maintenance in that regard.

Whilst you have pleaded guilty, during the hearing you did not sound particularly remorseful in relation to what you have done. However, you will get the benefit of your guilty pleas in relation to the penalties which we impose.

We also take into account that the vast majority of your calls and messages dealt with your persistently asking to see the recipients, taken them out, your admiration of their appearance and the like. Many of these were repeated contacts that could be described as “nuisance calls”, rather than being wilfully or graphically obscene. That does not excuse them, but is a relevant factor.

As stated, there are three Charges to which you are pleading guilty. In each instance, the Stewards are seeking that you be suspended for a period of two months, with a one month suspension of that being in turn suspended for a period of 24 months. Thus, there would be a total suspension of six months, with three months of that in turn suspended for 24 months.

Essentially, we agree with the submissions of Mr El-Asmar on behalf of the Stewards, but with one exception. We believe that the suspended period of suspension should be one of 36 months. In other words, should you offend again in the next three years, the suspended suspension of three months will be activated. Your attitude expressed during the hearing as to what occurred is one factor that has led us to the view that the adjourned three months suspension should be hanging over your head for three years. Hopefully you will not offend again, but we are of the view that the penalty should you do so should remain hanging over you for another three years.

In case it is confusing, we repeat that the effect of our decision is that you are suspended for a period of three months. Should you offend again in the next three years, the further period of three months suspension will be activated.

Further, we would add that an application for the suppression of the names of those involved was not granted.

Mark Howard

Registrar, Victorian Racing Tribunal