30 March 2023

**DECISION**

**RACING VICTORIA**

**and**

**SAMUEL McLEOD**

**Date of hearing:** 20 February 2023

**Panel:** Judge John Bowman (Chairperson) and Dr June Smith.

**Appearances:** Mr Marwan El-Asmar, instructed by Mr Scott Hunter, appeared on behalf of the Stewards.

Mr Paul Horvath, instructed by Mr Jackie Chan, appeared on behalf Mr Samuel McLeod.

**Charges and particulars:**

**Charge 1 of 8: AR 228(b) – Conduct detrimental to the interests of racing (misconduct, improper conduct or unseemly behaviour)**

AR 228(b) reads as follows:

AR 228 A person must not engage in:

…

(b) misconduct, improper conduct or unseemly behaviour

…

**Particulars**

1. You are, and were at all relevant times, a stable employee registered with Racing Victoria.
2. Between 31 July 2019 and 15 October 2021, you were employed as a stable employee at the licensed premises of trainer, Matthew Laurie, located at 120 Graydens Road, Moorooduc.
3. Between October 2019 and October 2020, you engaged in misconduct, improper conduct or unseemly behaviour in that:
4. you used social media platforms to send inappropriate and improper messages to AB, an apprentice jockey, which were predominantly sent via Snapchat;

(ii) You sent aggressive and abusive text messages to AB;

(iii) You would not stop text messaging AB until AB would respond to your messages; and

(iv) On one occasion you messaged AB requesting photographs of AB’s body.

 4. Your conduct, as set out above, was in contravention of AR 228(b).

**Charge 2 of 8: AR 233(b) – Misconduct (workplace harassment)**

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**

1. You are, and were at all relevant times, a stable employee registered with Racing Victoria.
2. Between 31 July 2019 and 15 October 2021, you were employed as a stable employee at the licensed premises of trainer, Matthew Laurie, located at 120 Graydens Road, Moorooduc.
3. Between October 2019 and October 2019, you engaged in workplace harassment or bullying of AB, an apprentice jockey, whilst AB was participating in the racing industry, in that:

(i) you used social media platforms to send inappropriate and improper messages to AB, which were predominantly sent via Snapchat;

(ii) You sent aggressive and abusive text messages to AB when AB was with other stable employees;

(iii) You would not stop text messaging AB until AB would respond to your messages; and

(iv) On one occasion you messaged AB requesting photographs of AB’s body.

1. Your conduct, as set out above, was in contravention of AR 233(b).

**Charge 3 of 8: AR 228(d) – Conduct detrimental to the interests of racing (publishing or posting on any social media platform or channel)**

AR 228(d) reads as follows:

AR 228 A person must not engage in:

…

(d) publishing or posting on any social media platform or channel any material, content or comment that is obscene, offensive, defamatory, racist, threatening, harassing, discriminatory or abusive to or about any other person involved in the racing industry

…

**Particulars**

1. You are, and were at all relevant times, a stable employee registered with Racing Victoria.
2. Between 31 July 2019 and 28 April 2022, you were employed as a stable employee at the licensed premises of trainer, Matthew Laurie, located at 120 Graydens Road, Moorooduc and trainer, Trent Busuttin, located at 5/1155 Ballarto Road, Cranbourne.
3. Between October 2019 and April 2022, you engaged in publishing or posting on a social media platform material, content or comment, which was offensive, harassing or abusive to AB, CD and EF, apprentice jockeys, in that:

(i) between October 2019 and October 2020, you used the social media platform, SnapChat, to send offensive, harassing or abusive messages to AB;

(ii) such messages included, and not limited to:

* *“It’s going to ruin your career if you hang out with people like that…”*
* *“I take you to the races. Why can’t you answer me? I do all this stuff for you and you can’t even respond to me.”*
* *“You look like your weight’s going really well. You should take a photo of your abs to show me how ripped they are…”*

(iii) between 18 June 2021 and 28 June 2021, you used the social media platform, iMessage, to send 445 messages to CD;

(iv) such messages included, but not limited to:

* “*Well you need to think of those things before saying them because you know I can make a massive difference to you moving forward and your close to losing it*.”
* “*I’m happy to giv you another chance but we still need to catch up during the weekend. And I want ya to add me back on snap as well I rather message on there*. *You said U wana go back to normal so do it. Nope I want you to add me back. Very simple.”*
* “*I know you are I’m not silly. and I’m not going anywhere so get use to it. I’m not changing, you have had multiple chances to come up to me in person and apologise propley and u don’t. If you want things to work at work u need me on your side not against me*.”

(v) between 12 March 2022 and 27 March 2022, you used the social media platform WhatsApp to send 420 messages to EF;

(ii) such messages included, but not limited to:

* “*If you do what I say should be able to sort something out*. *Remember to add me back on snap before you sleep I just added u. Il reward you if you do*. *Well you better get snap sorted.”*
* “*The question was you need me? Need to try a little bit better OK*. *I wana help u heaps but u gota communicate when you can*. *Yes-and you will get looked after very very very good.*”
* “*Tell me heaps of personal shit about u then*. *I will put some more money in lata in week.* *What are you guna do for me when I Giv u heaps of money*? *U will haft to think*. *Because I have heaps of money*. *And you know I send now*. *And I want all this to stay between me and u ok no I else to know*. *If it does I will look after* *you a lot*.”
1. Your conduct, as set out above, was in contravention of AR 228(d).

**Charge 4 of 8: AR 228(b) – Conduct detrimental to the interests of racing (misconduct, improper conduct or unseemly behaviour)**

AR 228(b) reads as follows:

AR 228 A person must not engage in:

…

(b) misconduct, improper conduct or unseemly behaviour

…

**Particulars**

1. You are, and were at all relevant times, a stable employee registered with Racing Victoria.
2. Between 31 July 2019 and 15 October 2021, you were employed as a stable employee at the licensed premises of trainer, Matthew Laurie, located at 120 Graydens Road, Moorooduc.
3. Between June 2021 and October 2021, you engaged in misconduct, improper conduct or unseemly behaviour in that:

(i) You used social media platforms to send inappropriate and improper messages to CD, a stable employee / track rider, which were predominantly sent via Snapchat and iMessage;

(ii) You sent a message to Y stating: *“I’m going to help you improve your riding. I just need to see your muscle physique, see what you need to work on in the gym”; and*

(iii) Following a discussion between CD and XX, a stable employee, you confronted CD when he was on his own and threatened him that by talking to XX it was “…*going to come back and bite you in the arse and I’ll make sure of that…”.*

1. Your conduct, as set out above, was in contravention of AR 228(b).

**Charge 5 of 8: AR 233(b) – Misconduct (workplace harassment)**

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**

1. You are, and were at all relevant times, a stable employee registered with Racing Victoria.
2. Between 31 July 2019 and 15 October 2021, you were employed as a stable employee at the licensed premises of trainer, Matthew Laurie, located at 120 Graydens Road, Moorooduc.
3. Between June 2021 and October 2021, you engaged in workplace harassment or bullying of CD, a stable employee / track rider, whilst he was participating in the racing industry, in that:

(i) You persistently sent messages to CD wanting to know what CD was doing;

(ii) When CD did not respond to your messages, you would message CD and tell CD he would not get any rides;

(iii) When CD was strapping a horse for Matthew Laurie, you would ensure you were driving the float and make him feel uncomfortable as if you wanted something in return from him;

(iv) You sent CD the following message: *“I’m going to help you improve your riding. I just need to see your muscle physique, see what you need to work on in the gym”.*

(v) Following a discussion between CD and XX, a stable employee, you confronted CD when he was on his own and threatened him that by talking to XX it was “…*going to come back and bite you in the arse and I’ll make sure of that…”.*

1. Your conduct, as set out above, was in contravention of AR 233(b).

**Charge 6 of 8: AR 228(d) – Conduct detrimental to the interests of racing (publishing or posting on any social media platform or channel)**

AR 228(d) reads as follows:

AR 228 A person must not engage in:

…

(d) publishing or posting on any social media platform or channel any material, content or comment that is obscene, offensive, defamatory, racist, threatening, harassing, discriminatory or abusive to or about any other person involved in the racing industry

…

**Particulars**

1. You are, and were at all relevant times, a stable employee registered with Racing Victoria.
2. Between 31 July 2019 and 15 October 2021, you were employed as a stable employee at the licensed premises of trainer, Matthew Laurie, located at 120 Graydens Road, Moorooduc.
3. Between June 2021 and October 2021, you engaged in publishing or posting on a social media platform material, content or comments, which was offensive, harassing or abusive to CD, a stable employee / track rider, in that:

(i) between 18 June 2021 and 28 June 2021, you used the social media platform, iMessage, to send 445 messages to CD;

(ii) such messages included, but not limited to:

* “*Well you need to think of those things before saying them because you know I can make a massive difference to you moving forward and your close to losing it*.”
* “*I’m happy to giv you another chance but we still need to catch up during the weekend. And I want ya to add me back on snap as well I rather message on there*. *You said U wana go back to normal so do it. Nope I want you to add me back. Very simple.”*
* “*I know you are I’m not silly. and I’m not going anywhere so get use to it. I’m not changing, you have had multiple chances to come up to me in person and apologise propley and u don’t. If you want things to work at work u need me on your side not against me*.”
1. Your conduct, as set out above, was in contravention of AR 228(d).

**Charge 7 of 8: AR 228(b) – Conduct detrimental to the interests of racing (misconduct, improper conduct or unseemly behaviour)**

AR 228(b) reads as follows:

AR 228 A person must not engage in:

…

(b) misconduct, improper conduct or unseemly behaviour

…

**Particulars**

1. You are, and were at all relevant times, a stable employee registered with Racing Victoria.
2. Between 18 October 2021 and 28 April 2022, you were employed as a stable employee at the licensed premises of trainer, Trent Busuttin, located at 5/1155 Ballarto Road, Cranbourne.
3. Between 12 March 2022 and 27 March 2022, you engaged in misconduct, improper conduct or unseemly behaviour in that:

(i) You persistently used social media platforms to send messages to EF, an apprentice jockey, which were predominantly sent via WhatsApp in circumstances where EF refused to converse with you over Snapchat;

(ii) When EF did not respond to your messages, you continued to message him but in a more demanding tone and you did not stop messaging until he responded;

(iii) You requested that EF send pictures of himself to you. When EF asked you what sort of photos, you sent him a screenshot of a photo of EF when he was 16, at the pool with his friends, and with his top off.

1. Your conduct, as set out above, was in contravention of AR 228(b).

**Charge 8 of 8: AR 228(d) – Conduct detrimental to the interests of racing (publishing or posting on any social media platform or channel)**

AR 228 (d) reads as follows:

AR 228 A person must not engage in:

…

(d) publishing or posting on any social media platform or channel any material, content or comment that is obscene, offensive, defamatory, racist, threatening, harassing, discriminatory or abusive to or about any other person involved in the racing industry

…

**Particulars**

1. You are, and were at all relevant times, a stable employee registered with Racing Victoria.
2. Between 18 October 2021 and 28 April 2022, you were employed as a stable employee at the licensed premises of trainer, Trent Busuttin, located at 5/1155 Ballarto Road, Cranbourne.
3. Between 12 March 2022 and 27 March 2022, you engaged in publishing or posting on a social media platform material, content or comment, which was offensive, harassing or abusive to Z, an apprentice jockey, in that:

(i) between 12 March 2022 and 27 March 2022, you used the social media platform WhatsApp to send 420 messages to EF;

(ii) such messages included, but not limited to:

* “*If you do what I say should be able to sort something out*. *Remember to add me back on snap before you sleep I just added u. Il reward you if you do*. *Well you better get snap sorted.”*
* “*The question was you need me? Need to try a little bit better OK*. *I wana help u heaps but u gota communicate when you can*. *Yes-and you will get looked after very very very good.*”
* “*Tell me heaps of personal shit about u then*. *I will put some more money in lata in week.* *What are you guna do for me when I Giv u heaps of money*? *U will haft to think*. *Because I have heaps of money*. *And you know I send now*. *And I want all this to stay between me and u ok no I else to know*. *If it does I will look after* *you a lot*.”
1. Your conduct, as set out above, was in contravention of AR 228(d).

**Pleas:** Charges 2 and 5 were withdrawn.

Charges 3, 6 and 8 were also withdrawn on basis that a new charge 3 was filed and served.

Guilty to Charges 1, 3, 4 and 7.

**DECISION**

Mr Samuel McLeod is pleading guilty to four Charges.

We say at the outset that the application by the Stewards that the names of the three witnesses be redacted is successful. This application was not opposed by Mr Horvath, who appeared on behalf of Mr McLeod. We would refer to the recent Ruling of this Tribunal in GRV Stewards v Webb (29 March 2023) as to whether such a power exists. It was determined that the Tribunal did possess such a power. The handing down of the decision in this case was delayed pending that Ruling.

In any event, given the circumstances and the ages of the three young persons involved, it is our opinion that the names should be redacted. The application of the Stewards in this regard is successful. Effectively, as stated, there was no opposition to it by Mr Horvath.

Henceforth, the three persons the subject of Mr McLeod’s attention shall be referred to as follows:

The stable employee referred to in Charges 1 and 3 – Mr AB.

The stable employee referred to in Charge 4 – Mr CD.

The stable employee referred to in Charge 7 – Mr EF.

We turn now to the circumstances of the offending in the present case. Originally there were 8 Charges, but Charges 2, 5, 6 and 8 were withdrawn. Mr McLeod is pleading guilty to all remaining Charges.

Mr McLeod’s occupation was that of a stable employee, and one of some experience and seniority. He is 36 years of age. At the time of this offending, he had been employed as a stable hand either here or in New Zealand for many years.

Charges 1 and 3 relate to Mr McLeod’s behaviour towards Mr AB, who was a young apprentice jockey at the time. Charge 1 involves the sending of numerous inappropriate, improper, aggressive and abusive text messages to Mr AB. This is a breach of AR 228(b), which prohibits misconduct, improper conduct or unseemly behaviour.

Charge 3 concerns a breach of AR 228(d). It also involves Mr AB. Mr McLeod is pleading guilty to publishing on social media material that was obscene, offensive, abusive and the like. The conduct involved in this Charge, and Charge 1, took place over approximately a year.

Charge 4 involves a breach of AR 228 (b). The person who was the subject of the misconduct, improper conduct or unseemly behaviour was Mr CD. The victim of this behaviour was a young stable hand. The conduct involved was again the sending of numerous text messages, along with an “in person” conversation. The behaviour occurred over a period of approximately three months.

Charge 7 arose out of Mr McLeod’s employment with a different trainer from that in Charges 1, 3 and 4. The Charge is also pursuant to AR 228 (b). Mr McLeod is pleading guilty to sending many unwanted messages to Mr EF. Although this occurred over a relatively short period of a couple of weeks, the messages, predominately sent via WhatsApp, were numerous. At the time Mr EF was also an apprentice jockey.

To state the obvious, behaviour of this type by a person considerably older than the young victims and in a position of some perceived authority over them cannot be tolerated and must be punished appropriately.

At this stage we will set out the penalties sought by Mr El-Asmar on behalf of the Stewards. These are as follows:

Charge 1 – 2 years disqualification

Charge 3 – 12 month disqualification, concurrent with the penalty for Charge 1

Charge 4 – 2 years disqualification, of which something in the order of 6 to 12 months disqualification should be cumulative upon the penalty in Charge 1.

Charge 7 – the same penalty as for Charge 4.

The end result is that the Stewards sought a penalty of something in the order of two to four years disqualification. Mr El-Asmar stated that not a great deal of assistance can be obtained from previous decisions. He did refer to a penalty imposed by the Stewards of 2 years disqualification in the matter of Walker in 2019, in which photographs had been taken by that person of female jockeys. Apparently his appeal was dismissed by reason of his absence and his failure to pursue that appeal.

We turn now to some of the matters raised by Mr Horvath on behalf of Mr McLeod. These include the following.

Mr McLeod made a statement of apology to Messrs AB, CD and EF. When interviewed by the Stewards, he answered all questions and effectively implicated himself. He entered early pleas of guilty at a Directions Hearing. Mr McLeod has a long and clean disciplinary record. Character references were placed before us.

Further, it is submitted that Mr McLeod has been diagnosed as suffering from anxiety and depression. This goes back a couple of years and coincided with the onset of the Covid epidemic. This precipitated the incidents. He was forced to live in circumstances of isolation and was not permitted to return to New Zealand. He has since returned to New Zealand, where he has been in receipt of medical treatment.

Mr McLeod has been completely out of the racing industry since April 2022. He has been residing in New Zealand. His absence from the industry has been self-imposed. For the last couple of months, he has been employed in the milk industry. However, at some stage he wishes to return to Victoria and to the racing industry.

At the time of these offences, Mr McLeod did not appreciate the gravity of his behaviour. He was working between 55 and 70 hours per week. He was physically exhausted. He had no friends or family here and, as stated, the Covid restrictions were in place.

The impact of his behaviour upon the three individuals concerned seems to have been limited. That is not to excuse it.

Mr Horvath further submitted that the offending was not at the serious end of the scale. The primary charges are pursuant to AR 228, and such charges have since been removed from the list of serious offences. Mr McLeod wishes to return to racing in Australia in the future. He has taken all the appropriate steps, such as letters of remorse and early pleas of guilty. He is now living at home in New Zealand with his mother. He voluntarily surrendered his racing licence in April 2022 and would have to apply to Racing Victoria for its renewal.

In supporting his submission on penalty, Mr El-Asmar argued that disqualification, rather than suspension, was appropriate. Suspension would effectively have no impact upon a non-registered participant. Disqualification is the appropriate form of penalty, so that Mr McLeod would have to establish, as part of the re-registration process, that he was a fit and proper person to be involved in the industry. Mr El-Asmar emphasised that specific and general deterrence were both relevant. Mr McLeod had been in a type of position of trust, which he had abused. He took advantage of that position of trust and power. Disqualification, as sought, is appropriate.

Having summarised aspects of the very detailed and helpful submissions, we have come to the following conclusions.

A period of disqualification is warranted. It is the appropriate form of penalty. Mr McLeod abused his position of considerable power in the stables. He was many years older and more experienced than the young people involved. We take into account the matters advanced by Mr Horvath, but disqualification seems to us to be the proper and appropriate form of penalty.

We also take into account the many matters, including psychiatric or psychological factors, submitted to us. However, we agree with Mr El-Asmar that the occurrence of Mr McLeod’s leaving the industry in April 2022 should not effect either the form of the penalty or the commencement date of it. To leave the industry is a decision which Mr McLeod took and we are not minded to back-date in some way the penalty imposed.

Bearing all of the above in mind, and acknowledging matters such as Mr McLeod’s previously very good record, his early plea of guilty, his remorse, the circumstances of his offending and the impact of this case upon him, we have arrived at the following conclusions:

On Charge 1, he is disqualified from the date of this decision for a period of two years.

On Charge 3, he is disqualified for a period of 12 months to be concurrent with the penalty on Charge 1.

On Charge 4, he is disqualified for a period of two years wholly concurrent with the penalty on Charge 1.

On Charge 7, he is disqualified for a period of two years wholly concurrent with the penalty on Charge 1.

The bottom line is that the penalty is disqualification for two years, such penalty to commence from the date of these orders.

Mark Howard
Registrar, Victorian Racing Tribunal