24 December 2020

**DECISION**

**RACING VICTORIA**

**and**

**BEN MELHAM**

**and**

**KARLIE DALES**

**Dates of hearings:** 21 December 2020, 22 December 2020 and 23 December 2020

**Panel:** Judge John Bowman (Chairperson), Judge Graeme Hicks (Deputy Chairperson) and Justice Shane Marshall (Deputy Chairperson.

**Appearances:** Mr Albert Dinelli instructed by Mr Daniel Bolkunowicz appeared on behalf of the Stewards.

Mr Dermot Dann instructed by Mr Jim Cosgriff appeared on behalf of Mr Melham.

**Charges & Particulars:**

**BEN MELHAM** **CHARGE ONE: AR 115(1)(c)**

The Stewards charge you with breaching AR 115(1)(c) which reads as follows:

*AR115 (1) A jockey or apprentice jockey must not:*

*(c) bet, or have any interest in a bet, or facilitate a bet, on any race;*

Particulars of charge:

1. You are, and were at all relevant times, a Jockey licensed by Racing Victoria.
2. In contravention of AR 115(1)(c), on 27 March 2019, through Karlie Dales’ TAB Account, you placed a $500 win bet on the thoroughbred horse *Venezuela* racing in race 7 at Sandown that day.

**CHARGE TWO: AR 115(1)(c)**

The Stewards charge you with breaching AR 115(1)(c) which reads as follows:

*AR115 (1) A jockey or apprentice jockey must not:*

*(c) bet, or have any interest in a bet, or facilitate a bet, on any race;*

Particulars of charge:

1. You are, and were at all relevant times, a Jockey licensed by Racing Victoria.
2. In contravention of AR 115(1)(c), on 30 March 2019, you facilitated and/or had an interest in the making of, 20 bets on thoroughbred horse races between approximately 1:18pm and 5.36pm on 30 March 2019, as a result of you initially placing $3000 cash into the TAB account of Karlie Dales at the Dava Hotel TAB at approximately 11:42am that day.

**CHARGE THREE: AR 115(1)(c)**

The Stewards charge you with breaching AR 115(1)(c) which reads as follows:

*AR115 (1) A jockey or apprentice jockey must not:*

*(c) bet, or have any interest in a bet, or facilitate a bet, on any race;*

Particulars of charge:

1. You are, and were at all relevant times, a Jockey licensed by Racing Victoria.
2. In contravention of AR 115(1)(c), on 19 May 2019, through Karlie Dales’ TAB account, you placed a two-legged multi bet, one leg of which included the thoroughbred horse *Amazingly,* which ran in Race 8 at the Sunshine Coast that day, the other leg being on boxer Deontay Wilder

**CHARGE FOUR: AR 115(1)(e)**

The Stewards charge you with breaching AR 115(1)(e) which reads as follows:

*AR115 (1) A jockey or apprentice jockey must not:*

* + 1. *bet, or have any interest in a bet, on any race or contingency relating to thoroughbred racing involving a race in which he or she is riding.*

Particulars of charge:

1. You are, and were at all relevant times, a Jockey licensed by Racing Victoria.
2. In contravention of AR 115(1)(e), on 23 July 2019, through Karlie Dales’ TAB account, you placed bets on thoroughbred horses *Heirborn, Al Dorama* and/or *Shot of Irish,* all of which were running the next day at Sandown in races 2, 6 and 8 respectively, and to be ridden by you.
3. On 24 July 2019, you rode *Al Dorama* and *Shot of Irish* at Sandown in races 6 and 8 respectively.
4. On 24 July 2019 at approximately 7.22am, *Heirborn* was scratched from race 2.

**CHARGE FIVE: AR 115(1)(c)**

The Stewards charge you with breaching AR 115(1)(c) which reads as follows:

*AR115 (1) A jockey or apprentice jockey must not:*

*(c) bet, or have any interest in a bet, or facilitate a bet, on any race;*

Particulars of charge:

1. You are, and were at all relevant times, a Jockey licensed by Racing Victoria.
2. In contravention of AR 115(1)(c), on 18 August 2019, you made, facilitated and/or had an interest in the making of, 5 bets on thoroughbred horse racing in Singapore, when you attended the Grand Hotel in Mornington and supplied cash to a man who placed those bets.

**CHARGE SIX: AR 115(1) (c)**

The Stewards charge you with breaching AR 115(1)(c) which reads as follows:

*AR115 (1) A jockey or apprentice jockey must not:*

*(c) bet, or have any interest in a bet, or facilitate a bet, on any race;*

Particulars of charge:

1. You are, and were at all relevant times, a Jockey licensed by Racing Victoria.
2. In contravention of AR 115(1)(c), on or prior to 1 September 2019, through an associate, you facilitated bets for Karlie Dales on *Orleans Rock* which ran in Race 9 at Geelong on 1 September 2019*.*

**CHARGE SEVEN: AR 232(i)**

The Stewards charge you with breaching AR 232 (i) which reads as follows:

AR 232 *A person must not:*

*(i) give any evidence at an interview, investigation, inquiry, hearing and/or appeal which is false or misleading.*

 Particulars of charge:

1. You are, and were at all relevant times, a Jockey licensed by Racing Victoria.
2. On 3 September 2019, you were interviewed by Racing Victoria Stewards in relation to thoroughbred bets placed through your partner Karlie Dales’ TAB account. Throughout the course of that interview, you gave evidence that you had never placed cash into Karlie Dales’ TAB account.
3. CCTV footage and/or images from the Dava Hotel in Mornington on 30 March 2019 show that you did place cash into Ms Dales’ TAB Account.
4. The evidence given by you at the 3 September 2019 interview was therefore false and/or misleading.

**KARLIE DALES**

**CHARGE ONE: AR 232(i)**

The Stewards charge you with breaching AR 232(i) which reads as follows:

AR 232*A person must not:*

*(i) give any evidence at an interview, investigation, inquiry, hearing and/or appeal which is false or misleading.*

Particulars of charge:

1. You are, and were at all relevant times, a registered owner bound by the Rules of Racing.

2. On 3 September 2019, you were interviewed by Racing Victoria Stewards in relation to thoroughbred bets placed through your TAB account. Throughout the course of that Interview, you gave evidence that only you deposited money into your TAB account.

3. CCTV footage and/or images from the Dava Hotel in Mornington on 30 March 2019 show that your partner, Ben Melham, deposited cash into your TAB account.

4. Evidence given by you during the interview on 3 September 2019 was therefore false and/or misleading.

**Pleas:** Guilty to charges 1, 2, 3 and 7

Charges 4 and 6 were withdrawn

Charge 5 was dismissed by the VRT on 10 September 2020

 Charge 1 for Ms Karlie Dales was withdrawn

**DECISION**

We shall now recommence our decision, commencing with the following additional matters.

Courts and Tribunals frequently rely heavily upon agreed sets of facts in determining penalty and only in exceptional circumstances can they departure from them.

In the present case, a document headed “Statement of Agreed Facts – was placed before us at the outset. Unfortunately, that document, upon which we have relied, contains an ambiguity which was not corrected or mentioned until after the Chairman had commenced to read our decision.

The ambiguity is in Paragraph 9 of the Statement of Agreed Facts and relates to charge 2. It refers to Mr Melham’s activities on 30 March 2019. That paragraph reads as follows:

“As to the second charge (Charge 2), at approximately 11.42am on 30 March 2019, Mr Melham placed $3,000 cash into Ms Dales’ TAB account at the Dava Hotel TAB. Between 1.18pm and 5.36pm on that day, Mr Melham facilitated and had an interest in the making of 20 bets on thoroughbred horse races. Those 20 bets totalled $14,600, with a return of $21,536.11”

It is also to be remembered that, when interviewed on 3 September 2019, Mr Melham asserted that he had never deposited money into his partner’s account anywhere and did not even know the passwords, see page 15 of the transcript of the interview.

We have proceeded on the understanding that the Statement of Agreed Facts meant that Mr Melham had visited the Dava Hotel on 30 March 2019, placed a substantial deposit in his partners’ account, and remained at the Hotel for in excess of four hours, placing some 20 bets. Indeed, Deputy Chairman Hicks on several occasions referred to Mr Melham’s brazen behaviour.

The handing down of our decision was interrupted so as to inform us that the Statement of Agreed Facts does not extend to Mr Melham’s remaining at the Hotel and placing the bets there. It is silent on the issue of what occurred after the placing of the $3,000 cash deposit at the Hotel, but the clear inference is that he remained there.

In any event, that clear impression was gained. However, it is not an agreed fact that Mr Melham remained at the Hotel and placed his bets there.

Accordingly, and bearing this in mind, and with the consent of the parties, we have revised our decision and shall recommence the reading of it.

Mr Ben Melham, you have pleaded guilty to three breaches of AR 115(1)(c) and one breach of AR 232(i). The breaches of AR 115(1)(c) concern your betting on racehorses. The breach of AR 232(i) is in relation to your giving false and/or misleading evidence to Stewards when interviewed.

We turn now to the individual charges, dealing firstly with the breaches of AR 115(1)(c). Whilst all three involve serious offences, in our opinion the charge which is of greatest concern is Charge 2. This relates to your activities on 30 March 2019 at the Dava Hotel in Mornington and subsequently. We might add that not only are you a very prominent, successful and well know jockey, but you reside in Mount Martha, no great distance from Mornington.

On 30 March 2019 at the Dava Hotel you made a deposit in your partner’s TAB account. That deposit was $3,000 cash. Subsequently on 30 March 2019 you had or facilitated no fewer than 20 bets on thoroughbred racehorses. Your turnover was in excess of $36,000. Your outlay was $14,600, your collects exceeded $21,500. All such bets are forbidden, but these were bets averaging over $800 each, the activity taking place over four and a quarter hours at a location concerning which there is no agreed evidence.

In our view, this was blatant repeated breaching of the Rule. We shall turn to the issue of penalty shortly.

Charge 1 relates to one bet of $500 on 27 March 2019. The circumstances were not as culpable as your activity on 30 March 2019, but it was nevertheless a substantial bet and a substantial breach of the Rule. We shall return to it.

Charge 3 concerns a more unusual bet. It involves a multi bet on an interstate race and a boxing contest. This occurred on 19 May 2019. It is also a serious matter, the amount of the bet being substantial. The Rule prohibits a jockey from betting on, having an interest in a bet on, or facilitating a bet on any thoroughbred race.

The remaining charge, the breach of AR 232(i), concerns your giving false and misleading evidence to Stewards concerning your activity at the Dava Hotel on 30 March 2019. We shall return to it shortly.

We turn now to your background and the particular circumstances of the offending. You are 32 years of age. You have a partner and three young children. You are a prominent and highly successful jockey. We take into account that, at the time of your offending in March 2019, you were recovering from a wrist injury sustained in a nasty fall and were not riding. Time may have been hanging heavy on your hands. That may be a part explanation for what occurred, although not excusing it.

We also bear in mind that this case took a lengthy time to get on. That was, to no small extent, due to COVID-19, the closing of this Tribunal’s premises and your preference to have a hearing in person rather than an electronic hearing. That was an option that was offered, and you were fully within your rights to take it up. As soon as accommodation could be found – in this instance, at the County Court – steps were taken to fix the matter for hearing. However, it does mean that it was hanging over your head for longer than would have been the norm.

Next, we take into account your pleas of guilty. Those pleas indicate some remorse. You are entitled to some reduction in penalty on account of this. In that regard, we also bear in mind your record. You have no prior convictions for offences of this nature, betting or misleading Stewards. Further, we bear in mind the character references that have been put before us. We also take into account your financial and family circumstances. Interference with your licence will doubtless lead to hardship and financial stress.

Of course, we also have to take into consideration the gravity of the offences themselves. Turning firstly to the betting offences, these give a very bad impression indeed of the racing industry, and that is particularly so in relation to your offences on 30 March 2019 – Charge 2. For a prominent jockey to attend at a hotel, place a substantial deposit in cash in an account, and then place substantial bets, irrespective of the location of the betting, is particularly reprehensible. The general public needs considerable and continued reassurance that racing is honest – the often referred to phrase of a level playing field. Your activity does great damage to that concept. It is a stain on the whole industry. General deterrence has a significant role to play, as does specific deterrence. These charges extend over approximately 2 months and cover a substantial number of bets. We have also borne in mind the principles of totality in arriving at an appropriate penalty.

In relation to the breach of AR 232(i) – the giving of false information to the Stewards – this is also a serious offence. The work of the Stewards is difficult enough as it is without having to grapple with false and misleading evidence. It consumes time and energy to deal with it and to endeavour to separate truth from fiction. We take the view that this is a serious offence indeed and those in the industry must appreciate that it will not be tolerated.

Bearing all of the above in mind, we have arrived at the following penalties. We shall deal firstly with Charge 2.

We are of the view that a period of disqualification is required. We have already expressed our opinion as to your conduct on 30 March 2019. It clearly warrants disqualification, and we have fixed upon a period of three months.

The breaches involved in Charges 1 and 3 also warrant disqualification. Each involves a very substantial bet. In each instance you are disqualified for a period of one month. Each such period of disqualification is to be concurrent with the 3 months disqualification imposed for Charge 2.

The other charge – the giving of the false information – is a separate and distinct charge. We have already stressed its gravity. The penalty in relation to it is disqualification for two months. This is cumulative and not concurrent.

The end result is that you are disqualified for a period of five months. Unless there is good reason why it should not, that period of disqualification shall commence immediately.

Mark Howard
Registrar, Victorian Racing Tribunal