7 October 2020

**RULING – CHARGE 5**

**RACING VICTORIA**

**and**

**MR BEN MELHAM**

**Date of hearing:** 10 September 2020

**Panel:** Judge John Bowman (Chairperson).

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

Mr John Kelly instructed by Mr Jim Cosgriff appeared on behalf of Mr Melham.

**Charges & Particulars:**  **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.

**Pleas:** Reserved

**RULING – CHARGE 5**

Pursuant to Section 50X of the Racing Act 1958, this matter requires a Ruling by me on a question of law or mixed fact and law. It relates to the operation and scope of AR 115 (1) (c), although other parts of AR 115 (1) also require consideration. Accordingly, at the outset I shall set out those relevant provisions:

“A jockey or apprentice jockey must not:

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

(d) be present in the betting ring during a race meeting;

(e) 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.”

Mr Ben Melham is a licensed jockey who has been charged with a number of offences relating to betting. The Particulars of the charge which is relevant to the present Ruling, being Charge 5, reads as follows:-

“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”.

 It is a charge to which Mr Melham is pleading “Not Guilty”. The argument before me centres on whether the placing of such bets (assuming that this happened as described above) is conduct prohibited by the Rule.

Mr Melham had been riding in Singapore very recently before the alleged placing of the bets.

I shall not set out the very detailed and helpful written submissions provided by counsel, but shall turn immediately to the reasons for my ultimate conclusion. They are not set out in order of importance or significance.

Firstly, if the intention of paragraph 1 (c) of the Rule was to make illegal any bet by a jockey on a race anywhere, whether here or overseas, I would have expected the Rule to say so. It does not. That is not conclusive, but is an indication that such an operation of the Rule may not have been contemplated. The Stewards’ Supplementary Submissions contain a reference to the definition of “Bet” to be found in the British Rules of Racing. Apparently, the application of the definition prohibits a jockey from “placing, taking or having an interest in a bet connected to horseracing in any jurisdiction” (my underlining). If AR 115 (1) (c) was intended to have the effect for which the Stewards argue, why does it not say so in similar terms? Wording of that kind or to that effect is simply not used.

Secondly, absent such wording as “in any jurisdiction” or the like, why should AR115 (1) (c) be interpreted differently from other provisions in the Rules? The Australian Rules of Racing are just that. They are primarily directed to the conduct of racing in Australia and the behaviour of participants licensed in this country in relation to such racing. Surely to go one step further and, in one particular Australian Rule, regulate behaviour taking place here, not in relation to Australian racing but to overseas racing, is something one would expect to be spelt out with clarity.

Thirdly, where in the Rules it apparently has been deemed necessary to refer to races run outside Australia or prize money so earned, this has been clearly stated. LR 68, dealing with allocated weights, contains a specific reference to Group and Listed Races “run outside Australia”. AR 179 contains reference to calculation of prize money earned “in other countries”. To state the obvious, there are no such references in the relevant parts of AR 115. This provides further support for the proposition that AR 115 was not intended to operate in relation to races conducted outside Australia.

Fourthly, a breach of the Rule can have a significant effect upon livelihood and reputation. It is a punitive provision of some consequence. That is all the more reason for making quite clear the breadth of its operation. Absent such a clear exposition, it is understandable that anyone reading it would assume that, like the other Rules, it applies to bets on Australian races – races conducted in accordance with the Australian Rules of Racing. What is under consideration is one part of one Rule which, it is argued, should not just be applied in relation to events outside Australia (despite the fact that basically the overwhelming majority of the balance of the Rules do not do so), but which is punitive in nature, and which can be so applied without any warning or specific prohibition contained in it.

Fifthly, it is of assistance if the operation of AR 115 (1) (c) is viewed in context, and particularly when AR 115 (1) (d) is borne in mind. Obviously, it is part of the same Rule and follows (c) immediately. It prohibits jockeys from being present in a betting ring during a race meeting.

“Betting ring” is a familiar term and one that has existed in Australian racing for generations. It has also been used in Britain and Ireland for decades, if not centuries. It is not a term defined in the Rules, but is clearly understood to be that part of the course where the bookmakers are located. For example, I would refer to the Wikipedia definition of “betting ring” as being the area on a racecourse where the bookmakers operate. Other definitions are similar. Thus, at courses where there are no bookmakers, there is no betting ring.

Could (d), the part of the Rule immediately adjacent to (c), apply to a jockey licensed in Australia, but holidaying in Europe and going to the races there? Must such jockey avoid the betting ring? And what if there are no bookmakers and thus no betting ring? Presumably such jockey could go wherever he or she liked. Surely (d) could not apply internationally. If it did, this could then result in a situation where our holidaying jockey can visit the Totalisator Hall at Longchamps, but must avoid going through the betting ring at Royal Ascot. I could draw many more examples. In my view, the only sensible interpretation of AR 115 (1) (d) is that its operation is confined to behaviour related to Australian racing.

What, then, is the effect of this? AR 115 (1) (c) and (d) are clearly adjacent and related sub-rules directed towards the one activity and the perception of it. Jockeys should not be permitted to bet on races and should not be in the betting ring, where the public might gain the impression that they are so betting or passing on information relating to betting. It seems to me that AR 115 (1) (d) is clearly directed to racing in Australia and, absent any wording to the contrary, its companion Rule, AR 115 (1) (c) is similarly directed.

My opinion in relation to this fifth point is reinforced by looking at this Rule as it read prior to the restructuring of the Rules. Previously the provisions under discussion were not just adjacent sub-rules, but were part of the one undivided Rule. What was AR 83 read as follows:-

“Every jockey or apprentice may be penalised:

…(c) if he bet, or facilitates the making of it, or has any interest in a bet on any race or contingency relating to thoroughbred racing, or if he be present in the betting ring during any race meeting;”

When the Rules were revised, what was a somewhat unwieldy provision was broken down into two sub-rules and simplified, but those carrying out the revision did not see fit to insert any words such as “in any jurisdiction”, “in other countries” or the like. AR 115 (1) (c) and (d) are now consecutive subdivisions of the one Rule and it seems to me to be highly unlikely that one was intended to cover all international racing and the other apparently was not. In any event, even if that was the intention, there is no wording to that effect.

Sixthly, there seems to me to be merit in the argument advanced on behalf of Mr Melham to the effect that there is nothing in Rules AR 3 and 4 which supports the proposition that the Australian Rules apply to international races. AR 4 (1) (a) states as follows:

“These Australian Rules…apply to all races held under the management or control of a PRA…”.

A “PRA” is a Principal Racing Authority, which is essentially defined as a body which has the control and general supervision of racing within an Australian State or Territory. It is to those races so conducted that the Rules apply.

Finally, Mr Melham’s behaviour in placing the bets occurred in Australia, but the races involved did not. He is a person licensed in this country and thus subject to these Rules, as discussed above. If, whilst he was in Singapore but still licensed here, he placed bets on Australian races (assuming that such can be done), that would seem to me, *prima facie*, to be a breach of the Rule. However, to state the obvious, that is the opposite of what occurred. The Rule under consideration, like many other Rules, is designed to protect the integrity of Australian racing, not Singaporean racing. It does so by prohibiting jockeys from betting on Australian racing or being seen in Australian betting rings. Absent clear wording to the contrary, that seems to me to be the way in which the Rule is intended to operate and does in fact operate.

Thus, I am of the opinion that Charge 5 is not a valid charge within the meaning of AR 115 (1) (c). The alleged offence is a serious one as listed in Rule 2. Accordingly, whilst I can determine questions of law and have done so in this case, pursuant to Section 50 P (a) of the Racing Act the actual determination in respect of a serious offence can only be done by the Chairperson and at least one other Member. That can be attended to when the other charges come on for hearing. The above is my Ruling pursuant to Section 50X.

Finally, I would raise a matter of some embarrassment to me. Amongst many others, a decision to which I was referred in the comprehensive submissions on behalf of the Stewards was one of my own – the decision of the Racing Appeals and Disciplinary Board in *RVL Stewards v Liam Riordan* (4 August 2016). The Board found Mr Riordan, then a comparatively new apprentice jockey, guilty of breaching the predecessor of AR 115 (1) (c), namely AR 83. He had placed a $20 bet on a race at Deauville in France. Obviously, I am now of the view that such a decision was incorrect. All I can say in my own and the Board’s defence is that it was a plea of “guilty” and no jurisdictional issues or other technical arguments were advanced. In any event, l apologise to Mr Riordan.

Mark Howard
Registrar, Victorian Racing Tribunal