17 September 2021

**DECISION**

**RACING VICTORIA**

**and**

**JAMIE KAH**

**Date of hearing:** 17 September 2021

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

**Appearances:** Ms Raelene Sharp instructed by Mr Patrick Considine appeared on behalf of the Stewards.

Mr Damien Sheales represented Ms Jamie Kah.

**Charge:** Australian Rule of Racing (“AR”) 232(i) states:

A person must not:

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

(“AR”) 228(b) states:

A person must not engage in:

1. (b) misconduct, improper conduct or unseemly behaviour;

**Particulars of charge:** 1. You are, and were at all relevant times, a jockey licensed by Racing Victoria.

2. On Wednesday, 25 August 2021, you were at a gathering at an “Airbnb” in Mornington (the Gathering).

 3. On Thursday, 26 August 2021, you were interviewed by Racing Victoria Stewards with the respect to your attendance of others at the Gathering (the interview).

 4. During the interview, you gave evidence along the lines:

* That you, Celine Gaudray, Ben Melham, Ethan Brown and two other licensed persons were present at the Gathering.

5. The evidence you provided (as noted in particular 4) was false and/or misleading, given you failed to state that licensed jockey Mark Zahra also attended the Gathering, and was accordingly in breach of AR232(i).

**Plea:** Not Guilty

**DECISION**

Ms Jamie Kah, we have found you guilty of a breach of AR 232(i). We have found that you gave evidence at an interview or inquiry that was false or misleading. We would refer to our decision of 15 September 2021. We shall not set out the background facts, which are contained in that decision. Suffice to say that they concern a get together on the night of 25 August 2021 at an Airbnb rented by you at Mornington.

The breach of the Rule with which you have been charged took place on 26 August 2021. When telling Stewards who had been present, you wilfully omitted the name of Mr Mark Zahra. You did not give his name until directly confronted by the Stewards on 30 August 2021. Your evidence was that, whilst you knew that he had been at the house earlier, you thought that the Stewards were enquiring about who had been present at a later time when the police arrived. We have made it clear that this was an excuse which we simply do not accept.

As we said in the cases of Ms Gaudray and Mr Zahra, the giving of false or misleading evidence to the Stewards is understandably a serious offence, even at the best of times. The work of the Stewards is demanding. The arrival of the COVID-19 epidemic and the Protocols increased those demands. Having to endure false or misleading evidence, and the resulting wastage of time, is something that they can ill afford. General deterrence is an important consideration.

Further, given that this offence occurred in the context of COVID-19, this giving of false or misleading evidence could have had disastrous consequences, both for those participating, other members of the industry with whom they came into contact and the general public. Many hours passed between your false or misleading evidence to the Stewards on 26 August 2021 and your ultimate admission on 30 August 2021 that Mr Zahra had been present at the party. Indeed, the greater part of a day (and his riding at jump-outs on 27 August 2021) had passed between Mr Zahra leaving the party and his admission to the Stewards. In short, there could have a calamity.

However, this charge concerns not your breaching AR 232(b), for which you have already been punished, but for giving false or misleading evidence. The relevance of the COVID-19 virus is that it is the context in which this charge arose and the fact that your false evidence delayed the Stewards awareness of Mr Zahra’s attendance at your premises.

We also take into account the matters put forward by Mr Sheales on your behalf. You have an unblemished record in respect of this or any other serious offence. You are highly successful and have just won the award for riding the most metropolitan winners in the 2020-21 season. As submitted by Mr Sheales, you have created a large amount of positive and widespread interest in racing. Apart from your obviously outstanding ability, the manner in which you have presented yourself has brought a lot of favourable attention to the sport and the industry associated with it.

Mr Sheales also addressed us in relation to the financial impact of your suspension – for example, the missing out on leading rides in the Cox Plate, the Caulfield and Melbourne Cups and the like. Of course, missing those top Spring Carnival rides is the consequence of the penalty imposed by the Stewards for your breach of AR 232 (b) – what could be described as the COVID-19 offence – and is a penalty which you have not challenged.

We appreciate that Mr Sheales was making that submission concerning massive potential losses in the context of the background to this offence. We also appreciate that there is some factual overlapping between the two charges. However, they remain two distinct and separate charges, attracting separate penalties. Similarly, some aspects of what has been submitted by Ms Sharp on behalf of the Stewards might be seen as being more directed towards the charge for which you have already been punished.

The events at the Airbnb provide the setting or context in which this charge arose. The penalty which we impose will not be in respect of that background and the breach of AR 232(b). It will be for the breach of AR 232(i), a separate and serious offence.

Ms Sharp submitted that the penalty should be one of two months suspension, with no part of that period in turn suspended. She has drawn our attention to the penalties imposed in some previous cases involving jockeys and a breach of this Rule.

Mr Ben Melham was disqualified for a period of two months in December 2020. His case did not involve COVID-19. He had pleaded guilty.

Mr Ben Thompson pleaded guilty to a breach of this Rule on 14 July 2021. His case did not involve COVID-19. He was suspended for two months.

In each of those cases, the penalty for the breach of AR 232(i) was not concurrent with the other charge or charges involved. It was cumulative.

The case of Mr Mitch Aitken (4 November 2020) was against a background of the COVID-19 Protocols. He pleaded guilty to a breach of AR 232(i). He was suspended for eight weeks. That was cumulative upon other penalties involved. However, the total period of suspension for all three charges to which he pleaded was in turn partially suspended. There were particular circumstances and problems in his background for which he was receiving professional assistance. None such has been put before us in your case and we repeat that Mr. Aitken, like Mr Melham and Mr Thompson, was pleading guilty.

Of course, you are fully entitled to plead not guilty, and it would be wrong to increase a penalty for your so doing. However, no discounting factor of the type related to a plea of guilty shall be applied. In arriving at an appropriate penalty, we have taken into account the principle of totality, and that, due to the factual circumstances, there is some overlay.

The bottom line is that we are of the opinion that a period of two months suspension should be imposed for this charge pursuant to AR 232(i). It is cumulative in its entirety upon the period of three months suspension imposed by the Stewards in relation to the breach of AR 232 (b). Thus, the total period of suspension is five months.

Mark Howard
Registrar, Victorian Racing Tribunal