25 November 2020

**DECISION**

**RACING VICTORIA**

**and**

**MR MITCHELL AITKEN**

**Date of hearing:** 4 November 2020

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

**Appearances:** Mr Daniel Bolkunowicz and Mr Michael Williams appeared on behalf of the Stewards.

Mr Matthew Hyland appeared on behalf of Mr Mitchell Aitken.

Mr Mitchell Aitken appeared.

**Charge:** Australian Rules of Racing (AR) 232(b) states a person must not fail or refuse to comply with an order, direction or requirement of the Stewards or official.

 AR 232(i) states a person must not give any evidence at an interview, investigation, inquiry, hearing and/or appeal which is false or misleading.

**Particulars of charge: Charge 1**

1. You are, and were at all relevant times, a jockey licensed by Racing Victoria.
2. On or around 20 March 2020, Racing Victoria published COVID-19 Jockey Protocols (the **Jockey Protocols**), that stated that from 21 March 2020, jockeys in the Green Team were required to separate themselves from jockeys not in the Green Team at race meetings as much as possible.
3. You are, and were at all relevant times, a member of the Green Team.
4. On 29 August 2020, you were engaged to ride ZIPPY in race three, the Emmett’s Warracknabeal Branch Maiden Plate at Warracknabeal.
5. Prior to weighing out for race three, you approached apprentice Lachlan Neindorf and took possession of his saddle. Mr Neindorf is not and has never been, a member of the Green Team.
6. Your conduct noted above in particular 5 constituted a failure to comply with Racing Victoria’s COVID-19 Protocols, and therefore a failure or refusal to comply with an order, direction or requirement of the Stewards or official, thereby being in breach of AR 232(b).

**Charge 2**

1. You are, and were at all relevant times, a jockey licensed by Racing Victoria.
2. Since 1 April 2020, and last revised on 11 September 2020, Racing Victoria has published COVID-19 Protocols for industry Participants and Service Providers (the **Industry Protocols**). The Industry Protocols state that you must comply with any local, state or federal government law, requirement, order or direction (where it relates to the COVID-19 Pandemic) (**Government COVID Law**).
3. On 28 August 2020, subject to some exceptions, Government COVID Law prevented persons from entering a premises at which they did not ordinarily reside in Metropolitan Melbourne. On that day, you breached Government Law by staying overnight at a friend’s house in Gladstone Park (Kevin Mullen), whereby you entered a premises that you do not ordinarily reside in, and the purpose of your stay did not fall within one of the exceptions.
4. Your conduct as set out in particular 3 constituted a breach of Racing Victoria’s Industry Protocols, and therefore a failure or refusal to comply with an order, direction or requirement of the Stewards or an official, thereby being in breach of AR 232(b).

**Charge 3**

1. You are, and were at all relevant times, a jockey licensed by Racing Victoria.
2. On 29 August 2020, you weighed out to ride ZIPPY in race three, the Emmett’s Warracknabeal Branch Maiden Plate at Warracknabeal.
3. On 29 August 2020, you were interviewed by the Stewards with regards to weighing out for race three, during which you gave evidence along the following lines:
4. you did not bring your own saddles;
5. you weighed out for race three using a saddle borrowed from Dean Holland;
6. the saddle from Dean Holland could have come from Lachlan Neindorf; and/or
7. that Dean Holland did source the saddle from Lachlan Neindorf.
8. In a subsequent interview conducted by the Stewards with you on 29 August 2020, you gave evidence along the following lines:
9. the saddle for race three was Lachlan Neindorf’s, who had given it to Dean Holland who gave it to you;
10. that you asked Lachlan Neindorf if you could borrow a lighter saddle when he was walking past the Green Jockeys room; and/or.
11. Lachlan Neindorf came over to the Green jockey’s room and handed a saddle to Dean Holland as you were busy getting ready and Dean Holland gave it to you straight away.
12. In a subsequent interview conducted by the Stewards with you on 29 August 2020, you acknowledged that you took the saddle from Lachlan Neindorf himself outside the front of the Green Jockey’s room.
13. Your evidence as noted in particular three and four was false and/or misleading, and accordingly in breach of AR 232(i).

**Plea:** Guilty

**DECISION**

Mr Mitch Aitken, you have pleaded “guilty” to three charges. These charges related to two breaches of Australian Rules of Racing (“AR”) 232(b) and one breach of AR 232(i). Essentially, they concern events surrounding the running of Race 3 at Warracknabeal on 29 August 2020. You were riding “Zippy” in that race.

The breaches of AR 232(b) are offences relating to the COVID-19 jockey protocols and the state COVID-19 regulations. At Warracknabeal, you were a member of the green team of jockeys, meaning that you had to avoid contact with members of the gold team. You had accidentally forgotten to bring your saddles. You had been given a lift from Rockbank to Warracknabeal in the car of another jockey. You realised that you had forgotten to bring your saddles after arrival at Warracknabeal. Without going through all the details, you accepted saddles from another jockey, and they were handed directly to you by a fellow rider, not a member of the green team. This clearly breached the jockey protocols.

You had spent the previous night at the house of a friend in Gladstone Park. This also clearly breached the state COVID-19 regulations and the jockey protocols.

Further, you gave a false account of what had occurred to Stewards. Effectively, it was not until the third interview that you told the truth and admitted what had actually taken place. This was inexcusable, as serious health problems and transmission of the virus could have occurred in the meantime.

Mr Hyland has told us quite a lot about your background and some of the problems that have arisen in your life. You have also told us directly of your extreme remorse and some of the problems that you have been facing. Hopefully these are behind you and you are receiving professional assistance in this regard, as well as help from friends. You are moving to Adelaide in the new year in order to further your career and hopefully improve your financial position.

In recent times you have been largely dependent upon trackwork for income. You have also been helping a close family member who has been residing with you. We will not go into the details of some of your problems.

In all the circumstances, we feel that the following penalties are appropriate.

On each of charges 1 and 2 – the COVID-19 offences – you are suspended for 2 weeks.

On charge 3 – false and misleading evidence – we agree with the Stewards that this is the most serious offence and could have had disastrous consequences. We agree that 8 weeks suspension cumulatively upon the other penalties is appropriate.

That makes a total suspension period of 12 weeks. Because of your particular circumstances, including your financial situation, we are of the view that 5 weeks immediate suspension is warranted, with the balance of 7 weeks to be in turn suspended for a period of 12 months.

We understand how important trackwork is to you, particularly in your present situation. You may resume riding trackwork after a period of suspension of 2 weeks.

The result is that you are suspended for 12 weeks, but 7 of those weeks are in turn suspended for 12 months. You are suspended from riding trackwork for 2 weeks and can then resume.

Mark Howard
Registrar, Victorian Racing Tribunal