1 December 2022

**RULING**

**HARNESS RACING VICTORIA**

**and**

**TONY ASTBURY**

**Date of hearing:** 23 November 2022

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

**Appearances:** Mr Brad Powell appeared on behalf of the Stewards.

 Mr Lance Justice represented Mr Tony Astbury.

**RULING**

A preliminary point has arisen in this somewhat unusual matter. It involves a question of jurisdiction, and hence of law. That being so, in accordance with S. 50X of the *Racing Act 1958* (“the Act”), it is to be determined by me as Chairperson.

This matter came on at very short notice. Mr Brad Powell, Senior Investigations Steward of Harness Racing Victoria (“HRV”) appeared on behalf of HRV. Mr Lance Justice appeared on behalf of Mr Astbury. I thank each for their assistance. As shall be discussed the originating document issued out of the Tribunal has the heading “SECTION 50K APPEAL”.

In effect, Mr Powell and Mr Justice agreed that this Tribunal has jurisdiction to deal with the matter. Of course, jurisdiction cannot be conferred by consent. The decision in relation to whether jurisdiction exists is one for me.

Some factual background is necessary in order to comprehend the decision. This is a matter in which criminal charges have been laid and indeed there is a preliminary hearing listed in the Hamilton Magistrates Court early in 2023. The background which I am about to set out in no way represents findings of fact or an agreement as to the facts. Some of the matters are not contentious, but the facts generally are assumed solely for the purpose of this jurisdictional argument and in the context of the operation of the Act. No evidence was taken.

Mr Astbury has been charged by the Police with illegal possession of a firearm. It was a sawn-off shotgun. It was found in a drawer in a rural house which he had sold and vacated. According to Mr Astbury, the gun belonged to a neighbour, and Mr Astbury had completely forgotten that it was in a drawer in his house. Accordingly, it remained there after he had moved out.

Mr Astbury is engaged by HRV as a Clerk of the Course and attends harness racing meetings in that capacity in many places throughout the state. It is his only occupation.

On Friday, 18 November 2022, HRV invoked AHRR 15(1)(e) and suspended Mr Astbury from official duties within the harness racing industry pending the outcome of the criminal court matter. Apparently this suspension is in approximately that wording and was conveyed orally and not in written form. Mr Astbury was so suspended pending the outcome of the criminal proceeding and accordingly not until a date certain. In his email of 21 November 2022 Mr Powell, on behalf of the Stewards, has stated that “Mr Astbury was suspended by Stewards under AHRR 15(1)(e)…(my underlining)

In relation to that suspension for an indefinite period, Mr Astbury lodged a Notice of Appeal on Monday, 21 November 2022 to this Tribunal. It is a pro forma document headed “FORM 1 SECTION 50K APPEAL TO THE VICTORIAN RACING TRIBUNAL”. Apart from contact details and the like, there is handwriting stating “APPEALING FOR A STAY OF PROCEEDINGS”. Apart from some personal details, there is also some further handwriting in relation to the grounds of appeal as follows:

“Appealing being stood down and the severity of the charge based on the likelihood of a fine issued only”.

The above is identified as the ground upon which the application for a Stay is based and the document has been signed by Mr Astbury.

It is against this background that the issue of the jurisdiction of this Tribunal arises. As is obvious, the unusual nature of the appeal is that the alleged offence upon which the suspension is based is not one which is in any way related to Mr Astbury’s work as a Clerk of the Course or in any position with HRV.

I turn now to my determination of the jurisdiction question. As stated, the proposed suspension is pursuant to AHRR 15(1)(e). It reads as follows:

“(1) Stewards are empowered – ….

(e) to suspend or disqualify any person from participating in or being employed or engaged in or about the harness racing industry;”.

That sub-rule should be seen in context. Rule 15(1)(a) refers to empowerment “to direct and control at any time the activities of persons licensed under these rules and anyone else appointed, employed or engaged in any aspect of the harness racing industry, concerning the application of these rules”.

Rule 15(1)(b) empowers the Stewards to “entertain and determine all matters under question or in dispute … or concerning any impact of the harness racing industry”.

If a person is not licensed, it seems to me arguable, at least in some situations, that the Stewards have no power to impose penalties upon them in relation to activities regulated by the Rules. I leave to one side matters such as bad behaviour by on-course patrons. I would refer to my decision in the matter of HRV v Trickey (25 February 2021).

In the present case, it has not been suggested that Mr Astbury is not, and has not been at all relevant times, a licensed person. The question then becomes one as to whether the Rules apply to him when the alleged offending has no connection with, or does not occur in premises occupied or utilised by, HRV. More particularly, it then becomes whether jurisdiction exists for the Tribunal to deal with the matter.

After some initial doubts, I have come to the conclusion that jurisdiction does exist. Section 50C of the Racing Act 1958 sets out the functions of this Tribunal. One function is to hear and determine an appeal made under S. 50K in relation to a decision made imposing a penalty.

That takes us to S. 50K, and in particular to S. 50K(1). A person may appeal to the Tribunal against a decision made under the Rules to impose a penalty if the penalty is a suspension, disqualification, warning off, or a fine in excess of $250.

The definition of “penalty” contained in S. 50A does not take matters any further. “Person” is not defined. Similarly, it is not defined in S. 3. In S. 3 “relevant person” is defined. It is a sweeping definition, including attendees at race meetings and persons participating in an activity connected with or involving horse racing. However, as stated, this definition is not in Part IIA, which deals with the Tribunal and its operation.

In the present case, two ingredients required for the application of S. 50K(1) appear to be present. I am assuming that Mr Astbury is a person within the meaning of S. 50A and that a penalty by way of a suspension has been imposed upon him as set out in the letter of Mr Powell. That only leaves the prerequisite of there having been “a decision made under the Rules”.

There is a definition of “Rules” in S. 50A as follows:

“In this part … Rules has the same meaning as it has in sections 38 and 51 and includes the Rules of Racing Victoria”. Section 38 is Part II of the Act headed “Harness Racing Victoria”. The definition of “Rules” contained therein is that the word means “Rules made by the Board pursuant to this part”. Section 51 concerns greyhound racing. Thus, it seems to me that, partly on the basis of some assumptions concerning the status of Mr Astbury, a decision has been made under the relevant Rules. If that be so, it seems to me that this Tribunal does have jurisdiction to deal with the matter and I accept the submissions of the parties in this regard.

The preliminary issue of jurisdiction having been dealt with, we can move on to the issue of the suspension and whether a stay in relation to that suspension should be granted.

Mark Howard
Registrar, Victorian Racing Tribunal