13 December 2022

**RULING No. 2**

**HARNESS RACING VICTORIA**

**and**

**TONY ASTBURY**

**Date of hearing:** 6 December 2022

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

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

 Mr Lance Justice represented Mr Tony Astbury.

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On 1 December 2022 I handed down my Ruling in relation to the Tribunal’s jurisdiction in this dispute, a dispute which came on at very short notice and with little documentation. I would refer to the factual background set out in that Ruling. I would also point out that only a limited number of facts was available and that my provisional finding that the Tribunal had jurisdiction was based upon the presumption that, at the relevant time, Mr Astbury was a licensed person.

I have now been advised that Mr Astbury was not at the relevant time and is not a licensed person. Whether he was a direct employee of Harness Racing Victoria (“HRV”) or was a contractor is not clear. What remains clear is that the duties which he performed were those of a Clerk of the Course at various harness racing venues and that he was not a licensed person.

In light of this further information, my Ruling has, of necessity, been revised.

I would refer again to AHRR 15(1)(e) and 15(1)(a). Prima facie, it seems to me that Rule 15(1)(a) still has clear relevance. Mr Astbury is appointed, employed or engaged in an aspect of the harness racing industry, that aspect being a Clerk of the Course at certain HRV meetings. Rule 15(1)(b) empowers the Stewards to entertain and determine all matters concerning any impact on the harness racing industry.

I would also refer to the discussion in my earlier Ruling of aspects of the *Racing Act 1958* (“the Act”).

In *Harness Racing Victoria v Trickey* (25 February 2021) I noted that this Tribunal had no jurisdiction to impose a penalty on a person who was not licensed, but in *Trickey* the person was neither licensed nor on the premises owned and operated by HRV. The latter fact was an important distinction. Mr Trickey was neither a licensed person nor on a licensed premises.

I would also refer to the Tribunal decision of *Harness Racing Victoria v Daryl Douglas* (8 October 2020). That concerned the conduct of a licensed person at an intersection outside the Echuca Raceway, but not within its boundaries. However, that involved AHRR 231(2).

Perhaps of greater assistance is the decision in *Racing Victoria v McDonald* (14 September 2020). That involved an unlicensed person on licensed premises. Whilst it involved horse racing and its Rules, it has some parallels to the present situation. Mr Astbury is not a licensed person, as was the situation with Mr McDonald. Mr Astbury’s behaviour (the presence of the firearm at his former residence) was not associated with harness racing, just as Mr McDonald’s offence was associated with the live baiting of greyhounds, an activity not associated with horse racing. In each instance, the action of the Stewards is and was based upon the mere presence of the person at the venue. In the case of Mr Astbury, the situation extends beyond mere presence to taking an active role in the presentation of meetings as a Clerk of the Course. Mr McDonald, who was in ill health, was brought to racecourses by friends and was no more than a spectator.

In *McDonald*, the Tribunal concluded that individuals who attend race meetings fell within the operation of the Rules. Reference was made to Section 5F of the Act. Whilst my decision in Mr McDonalds case was in the context of a horse racing meeting, it seems to me to be a useful parallel. Mr Astbury attends at harness racing meetings and, indeed, so attends not just as a spectator, but in what many would consider to be a quite high-profile position of some authority. I appreciate that Mr McDonald was subject to Section 5F of the Act, but the similarities between the cases are of some use. Further, reference is made to the wide powers possessed by HRV Stewards pursuant to Rule 15(1)(e).

Weighing up all the above, it seems to me that the Tribunal does have jurisdiction to deal with this matter. Mr Astbury attends at harness racing venues in what would seem to many to be a position of considerable visibility and some authority. I am of the view that, on the basis of the information now available, he is subject to the operation of the Relevant Rules.

Mark Howard
Registrar, Victorian Racing Tribunal