10 August 2021

**RACING VICTORIA**

**and**

**RICHARD LAMING**

**and**

**MARNU POTGEITER**

**and**

**ZEYAUR RAHMAN**

**Date of directions hearing:** 5 August 2021

**Panel:** Judge John Bowman (Chairperson) and Judge Graeme Hicks (Deputy Chairperson).

Magistrate John Doherty, who was the third member of the Tribunal which heard the case, was absent due to illness, but participated in discussions and agrees fully with the following Statement.

**Appearances:** Mr Sandip Mukerjea appeared on behalf of Mr Dion Villella.

**STATEMENT – VICTORIAN RACING TRIBUNAL**

These cases were heard by the Victorian Racing Tribunal as constituted today from Monday 22 February 2021 until Thursday 25 February 2021. All charges were then dismissed by consent on the application of the Stewards. No explanation was given to the Tribunal.

Subsequently, an inquiry pursuant to section 37b (1)(g) of the *Racing Act 1958* was conducted by the Racing Integrity Commissioner, Mr Sean Carroll. A thorough and detailed report was released by Mr Carroll on 10 June 2021.

Recommendation 1 of the report states as follows:-

“RVto immediately (no later than seven days) inform the VRTand *the participants’* barrister of Steward Villella’s conduct in contacting a witness during the course of the VRT hearing”.

In accordance with that recommendation, by letter dated 16 June 2021 Mr Jamie Stier, executive general manager integrity services department, wrote to Mr Mark Howard, the Registrar of this Tribunal. The letter was immediately forwarded, as requested, by the Registrar to myself and to my colleagues, His Honour Graeme Hicks and His Honour John Doherty. The letter had attached the relevant part of the report outlining Mr Carroll’s findings with respect to Mr Villella’s conduct.

The letter contained no request for or suggestion that any action be taken by us. We regarded the letter as being purely informative and having been sent as a matter of courtesy. As far as we were concerned, we were *functus officio* – that is, our hearing of the cases had been fully completed. *Functus officio* is a legal latin term defined in Butterworth’s Legal Dictionary as meaning “precluded from again considering the matter even if new arguments or evidence are presented”. The cases against Mr Laming and his employees had been dismissed by consent, without explanation.

It was only in a more recent telephone conversation between the Chair and Mr Carroll that it was said that it had been envisaged that we might have some further involvement or some public comment to make. Accordingly, the matters have been listed today, after an earlier contemplated date was derailed by COVID-19.

We now turn to a summary of what occurred during the hearing and some comments in that regard.

Mr Laming and two of his employees pleaded ‘not guilty’ to charges involving alleged race day stomach tubing of *Jamaican Rain* on 5 November 2019 – a breach of AR255 (1) and a serious offence under the rules. There were also lesser charges arising from the same unannounced stable inspection on that day.

As stated, the cases commenced before us on Monday 22 February 2021. Mr Brendan Murphy QC with Ms Amy Wood of Counsel appeared on behalf of the Stewards. Mr Damian Sheales of Counsel appeared on behalf of Mr Laming and his employees.

On Monday 22 February 2021, many of those involved went on a view at Mr Laming’s stables at Cranbourne. Various matters were pointed out and demonstrations conducted. No oral evidence was taken.

The oral evidence commenced on the following morning at the County Court building. The first witness was Mr Villella. At an early stage, an Order was made that all witnesses leave the Tribunal and the hearing of the Tribunal until called upon to give their evidence. That Order was made at the request of Mr Sheales. There appeared to be compliance with it. Mr Villella remained in the hearing room because he was the first witness.

Mr Villella gave evidence, including by way of cross-examination, throughout the balance of Tuesday 23 February and on the morning of Wednesday 24 February. In the early afternoon of that day, senior counsel for the Stewards applied for an adjournment to the following day. As noted by Mr Carroll in his report, Mr Murphy stated as follows:

“It would be very dangerous to ignore the circumstances and it would put the tribunal ultimately in a difficult position”.

Frankly, we had no idea as to what Counsel meant or as to what he was referring. Mr Sheales seemed equally bemused, but said that he did not oppose the application. In those circumstances, we granted the application and the case was adjourned to the following morning.

On 25 February 2021, almost immediately after the cases were called on, Counsel for the Stewards stated that his instructions were to withdraw all charges. No explanation was offered. Immediately, and before we could even consider the situation, Mr Sheales said words to the effect that he had just been told about this and enquired as to whether there was “a capacity to ask for them to be marked as dismissed”.

The Chair asked whether that was what had been agreed. Mr Sheales replied that there had been no discussions and there was no agreement, adding “I just got told two minutes ago”. Senior Counsel for the Stewards added at almost the same time “We’ve got no trouble with that, your honour”. The following exchange then took place, as recorded on the transcript:

“Chairman: charges dismissed. That applies to the three people who have been charged?

Mr Murphy: Yes, your honour.

Chairman: Yes, very well. All right. The charges are dismissed.”

All of the above would have taken two minutes or less.

The difference between withdrawal and dismissal of charges is far from academic. A withdrawn charge can be brought again. A dismissed charge cannot. A dismissal is the complete end of a charge.

Thus, our role in the case was over. There were consent orders dismissing the charges. We were *functus officio* (precluded from again considering the matter) – and none the wiser as to what had brought about the consent dismissal of all charges.

This remained the situation, until there was a media release by Racing Victoria on 23 March 2021. Along with others, we were given some information as to what had occurred.

In our opinion, the situation was poorly handled by the Stewards. The preferable way of dealing with the situation of Mr Villella’s apparent breaching of the order of the Tribunal was as follows.

The order for witnesses out of court was the Tribunal’s order. When it appeared to the Stewards that it had been breached, the Tribunal should have been informed – in open hearing.

Doubtless the Tribunal would have sought details, so as to get an impression of the extent and gravity of the breach of its order. Submissions from Mr Sheales would have been invited. Who knows? He may well have opted to proceed with the hearing. Certainly, a potentially fertile field of cross-examination had opened up. Alternatively, he might have applied for a re-hearing, perhaps before a tribunal differently constituted. The ultimate decision would have been ours – a Tribunal decision.

To state the obvious, none of this occurred. The cases were simply dismissed by consent. Understandably, Mr Sheales, having had his probably optimistic request for a dismissal accepted by the Stewards, had nothing further to add. We were simply left with consent orders to make, which we did. That was the end of the cases.

Having explained the background at some length, we turn now to the issue of the Commissioner’s report and any further involvement of this Tribunal.

Paragraph 30 of the Commissioner’s comprehensive report reads as follows:-

“Steward Villella’s conduct also fell well short of the high standards expected of racing Stewards in discharging their professional duties to enforce *the rules*. This conduct may be considered a breach of *the rules* in that it was detrimental to the interests of racing”.

The wording of the second sentence of that paragraph is almost identical to the wording of AR 228 and the heading above it.

That wording is as follows:-

“AR 228. conduct detrimental to the interests of racing.

A person must not engage in:

1. conduct prejudicial to the image, interests, integrity, or welfare of racing, whether that conduct takes place within a racecourse or elsewhere;…”

Whether such a charge, or any other charge, is to be brought against Mr Villella is entirely a matter for Racing Victoria and its Stewards. It is not the role of this Tribunal, as an independent and neutral umpire, to advise as to the bringing of charges. If and when a charge is laid, this Tribunal will deal with it in the usual way. We repeat and emphasise that the bringing of any such charge, as opposed to the hearing of it, is something concerning which we shall not advise.

We also repeat that, as far as the cases in question against Mr Laming, Mr Potgeiter and Mr Rahman are concerned, we are *functus officio.* The charges against them have been dismissed by consent. Our involvement in the hearing of the charges against them ended on 25 February 2021.

Mark Howard
Registrar, Victorian Racing Tribunal