14 October 2024

**DECISION**

**RACING VICTORIA**

**and**

**KATE GOODRICH**

**Date of hearing:** 23 September 2024

**Date of decision:** 10 October 2024

**Panel:** Judge Marilyn Harbison (Deputy Chairperson).

**Appearances:** Mr Marwan El-Asmar appeared on behalf of the Stewards.

Ms Kate Goodrich represented herself.

**Rule:** Australian Rule of Racing (“AR”) 20(e) states:

The Stewards have the following powers:

(e) to refuse or reject the nomination of any horse at any time for any period and/or until that horse has satisfactorily participated in an official trial or a jump-out, or passed any required veterinary examination.

**Particulars:** In accordance with AR 20(e), Racing Victoria (“RV”) refuse to accept nominations of 5-year-old horses that have not had a race start due to the increased risk of catastrophic limb injury until:

 1. Any information, including veterinary incidents (including but not limited to respiratory surgery, tendon or ligament injury, stress fractures, arthroscopy, etc) has been provided as to why the horse has not started in a race.

 2. Provide a satisfactory veterinary clearance.

 3. Trial satisfactorily over the flat.

 4. Provide a satisfactory veterinary clearance post-trial.

 5. Satisfactory report on a full body scintigraphy prior to racing.

 6. Pre-race veterinary inspection oncourse at first start.

Further diagnostic tests may be required depending on the results of the scintigraphy.

 On 19 August 2024, the trainer of “She’s First Lady” (the Horse), Ms Kate Goodrich, applied to the Stewards for an exemption from these requirements.

On 4 September 2024, RV Stewards refused to grant an exemption from RV’s requirements regarding unraced 5-year-old horses (the Requirements) in regard to the Horse for the following reasons:

* The Horse is not approved to race until such time as she has completed all steps outlined in the Requirements, including scintigraphy. This is considered appropriate in the following circumstances:
* Whilst it is acknowledged that the Horse has suffered no injuries to date, the Horse’s history indicates that, despite some periods of being in training, she has not yet taken part in any official jump outs, trials or races; and
* The Requirements have been developed on the basis of statistical evidence that this particular group of horses are at a higher risk of suffering a catastrophic injury (approximately 4.4 times) when compared with horses that raced prior to turning five years of age.

**DECISION**

1. Ms Kate Goodrich is the trainer of “She’s First Lady”. She has appealed to this Tribunal against a decision of the Stewards in relation to that horse. The decision was made in accordance with Racing Victoria’s (“RV”) requirements regarding unraced 5-year-old horses (the Requirements). Australian Rule of Racing (“AR”) 20(e) provides that the Stewards have the power to refuse or reject the nomination of any horse at any time for any period and/or until that horse has satisfactorily participated in an official trial or a jump-out or passed any required veterinary examination.
2. The Stewards made a decision to refuse to accept the nomination of She’s First Lady until the horse has completed all steps outlined in the Requirements, including a veterinary procedure known as scintigraphy, which is a bone scan used to detect lameness in horses. The Stewards require this procedure to be undergone by all 5-year-old horses which have not previously raced. The Stewards justify this on the basis of statistical evidence which indicates that unraced 5-year-old horses are at a far higher risk of suffering catastrophic injury when compared with horses that have raced prior to turning five years of age.
3. Ms Goodrich requested an exemption for her horse from the Requirements and that request for exemption was refused.
4. Ms Goodrich has outlined several grounds of appeal. I will summarise them in brief. She alleges that this decision to refuse to grant an exemption was made because the Steward who made it is biased against her, given previous dealings between herself and this Steward. She further alleges that this Requirement is unnecessary in the particular case of her horse, which does not attract the risk of catastrophic injury. Ms Goodrich alleges that the Requirements are not within the power of the Stewards. She has submitted that the Rule is an unreasonable penalty on a subgroup of the racing industry who race unraced 5-year-old horses. She submits that the Rule is unfair and discriminatory.
5. Before hearing the substantive merits of the case, the Stewards have raised a jurisdictional issue. The Stewards argue that the Tribunal has no jurisdiction to hear this appeal.
6. The argument is as follows. This Tribunal is established under the *Racing Act 1958* (“the Act”). It has no jurisdiction to hear appeals except with jurisdiction specifically conferred by the Act.
7. Section 50K of the Act provides that a person may appeal against a decision made under the Rules to impose a penalty if that penalty is a suspension, disqualification or a warning off. In addition, the section provides that a person may appeal against a decision made under the Rules if that decision involves a fine of more than $250.
8. This section is the only foundation for the jurisdiction of the Tribunal, apart from those matters set out in Section 50M and subsections (b) to (f) of Section 50C. None of those other sections bear any relevance to the appeal brought by Ms Goodrich.
9. In this case, the decision of the Stewards is in two parts. Firstly, the refusal to accept the nomination of She’s First Lady until the horse has completed all steps outlined in the Requirements, including undergoing scintigraphy, and secondly, the refusal to grant an exemption from the Requirements.
10. Thus, the decision which she seeks to appeal clearly does not fit within Section 50K of the Act.
11. In addition to the above legislation, AR 280(2)(b) provides that there is no right of appeal under the Rules against a “restriction imposed on a horse requiring that the horse pass a test or examination”. The decision made by the Stewards fits squarely into this category.
12. In response, Ms Goodrich relies on several arguments. Firstly, she says that the present AR 20 mirrors the previous AR 50. She says that she has previously, and successfully, appealed to the Racing Appeals and Disciplinary Board (“RADB”) in relation to the then AR 50. Ms Goodrich submits that this Tribunal was set up to replace the RADB, and with the aim of strengthening, not reducing, the powers of the RADB, and thus this Tribunal should be endowed with the same jurisdiction as was exercised by the RADB. If the Stewards argument is correct, this would leave her without any avenue of appeal at all.
13. Secondly, Ms Goodrich says, that in effect, the decision of the Stewards has suspended her horse from participating in the industry or suspended her from participating in the industry. It should thus be treated as imposing a suspension upon her.
14. Thirdly, Ms Goodrich points to AR 280(1). This provides that a person to whom a decision relates may appeal to a Principal Racing Authority (“PRA”) in respect of a penalty imposed by a PRA or the Stewards, or a restriction imposed by a PRA or the Stewards in relation to a horse in which the person has an interest. Ms Goodrich says that the refusal of the exemption is a restriction imposed by the Stewards which fits within this Rule.
15. I do not accept the arguments advanced by Ms Goodrich.
16. Ms Goodrich has presented a lot of material in support of her arguments which relate to the functions of the now defunct RADB. In doing so, she has misunderstood the fundamental differences between the RADB, which was a creature of the Rules under which it was set up, and this Tribunal, which is an entity deriving all of its powers from very specific legislation. This Tribunal has no power other than that conferred on it by legislation. There is no legislation conferring on it the jurisdiction previously exercised by the RADB or expanding the powers of the RADB. The structure of the enabling legislation is clear that some of the appeal functions have been allocated to this Tribunal, while others have not. It does not have a general power to supervise all functions of the Stewards, or all the procedures set out in the Rules.
17. Further, I do not accept that the decision which Ms Goodrich asks us to consider can be described as a suspension as that term is used in the Act. Such a conclusion would artificially strain the meaning of the word “suspension” as it is used in the Act and the Rules.
18. I have considered the argument of the Stewards that a decision which relates to the suspension of a horse, rather than a human being, does not fit within the ambit of the legislation. There are certainly some contexts in which the Tribunal commonly makes orders in relation to a horse – for instance, the disqualification of a horse from a race. I do not express a view on this argument, given that I have decided that the decision appealed has not resulted in a suspension, disqualification, warning off or a fine of more than $250.
19. The content of AR 280(1) is not relevant, as it deals with appeals to a PRA. It does not relate to appeals to this Tribunal.
20. I fully accept Ms Goodrich’s argument that my rejection of her arguments leaves her unable to access the pathway set out in the Act as allowing for a speedy and accessible appeal mechanism. It may be that she has other administrative law remedies in other jurisdictions, although I acknowledge that the cost and delay inherent in pursuing them may make them unviable.
21. Even so, this Tribunal has no overall power to deal with issues which arise in the racing industry absent a specific legislative power. It has no broad ranging supervisory function over the racing industry.
22. Accordingly, this appeal is dismissed. It is beyond the jurisdiction of the Tribunal. The Tribunal makes no findings on the merits of the appeal otherwise.

Kathleen Scully

Assistant Registrar, Victorian Racing Tribunal