6 November 2024

**RACING VICTORIA**

**and**

**JARROD McLEAN**

**and**

**TYSON KERMOND**

**Date of hearings:** 3 September 2024 and 24 October 2024

**Date of decision:** 31 October 2024

**Panel:** His Honour John Bowman (Chairperson), Her Honour Kathryn Kings (Deputy Chairperson) and Mr Des Gleeson.

**Appearances:** Mr Angus Willoughby of Counsel appeared on behalf of the Stewards.

Mr Damian Sheales of Counsel appeared on behalf of Mr McLean and Mr Kermond.

**Charges and particulars:** Reference is made to the list of charges set out in the Tribunal decisions of 24 April 2024 and 5 July 2024.

**Pleas:** Mr Jarrod McLean and Mr Tyson Kermond – Not Guilty to Charges 1, 2, 3 and 10

Guilty to all other Charges

**DECISION – CLARIFICATION OF PENALTY STARTING DATES**

Hopefully this will be the final Ruling in relation to the matters of Mr Jarrod McLean and Mr Tyson Kermond. It relates to the commencement date of penalties imposed by us in our decision of 2 September 2024. Those penalties were disqualification for 9 months in the case of Mr McLean and disqualification for 3 months in the case of Mr Kermond.

What remains to be determined is the starting dates of the periods of disqualification. These were specifically left to one side in the decision of 2 September 2024.

Let us say at the outset that it is our firm opinion that offences of this nature warrant the penalty of disqualification. That is so whether the persons involved were what could be described as principal participants or played a less active role in what occurred. The use or possession of electric shock devices are serious offences which virtually inevitably attract a penalty of disqualification.

We would also point to the damage done to the image of racing, particularly at a time when the welfare of the horses involved receives considerable attention. Disqualification was considered by us to be the appropriate penalty in these cases. We did not consider that the lesser penalty of suspension was appropriate.

We emphasise the distinction between the two. Disqualification is a more severe penalty and one which has been seen to be appropriate in cases involving devices such as “jiggers”.

The bottom line is that we found that the type of penalty appropriate for Messrs. McLean and Kermond was disqualification. That remains our opinion.

Ultimately, we were also of the view that some allowance should be made for the period of suspension imposed by the Stewards which Messrs. McLean and Kermond suffered between 10 October 2019 and the conclusion of the Magistrates’ Court proceedings on 14 December 2022. We would refer again to our decision of 2 September 2024. That period is the “taken into consideration” factor referred to in the letter of Racing Victoria Limited of 11 October 2019. In each instance, the relevant facts were “taken into consideration” and the allowance for that period of suspension was determined. Reduction in the period of disqualification imposed resulted.

However, we emphasise again the distinction between suspension and disqualification and the more severe nature of the latter, which we considered to be appropriate for the penalties.

In short, we reject the argument on behalf of Messrs. McLean and Kermond, which is effectively that the allowance or offset which should be “taken into consideration” is that for the full period of suspension ending 14 December 2022. We are not of the view that the commencing date for the penalty of disqualification imposed by the Tribunal should effectively be backdated in the manner argued for by Mr Sheales or that the earlier period of suspension should be completely offset against the penalty now imposed. We do not agree that the starting date of disqualification should be adjusted accordingly.

We appreciate what was stated in the case of Bennet v HRNSW, this being drawn to our attention by Mr Sheales. In that decision, emphasis was placed upon the fact that suspension, like disqualification, involves loss of the principal source of income. However, we do not propose to follow that course. We have determined that disqualification is appropriate, it being effectively the most serious form of disciplinary penalty available for an offence of this nature.

We have “taken into consideration” the period of suspension served by each. The penalty imposed by us reflects that and was intended to be an additional, and more severe, form of penalty.

Further, we do not agree with the submission on behalf of the Stewards that each period of disqualification should commence from the handing down of this decision.

In each instance, we fixed the term and nature of the penalty on 2 September 2024. We Ruled upon the duration or quantum of an allowance for time already served.

We see no reason why 2 September 2024 should not be the starting date of each revised penalty. It is the date upon which penalties were handed down and it seems to us to be fair and reasonable that this should be their starting date.

Accordingly, in the case of Mr McLean the penalty of 9 months disqualification commenced on 2 September 2024. Mr Kermond’s penalty of 3 months disqualification commenced on that same date.

Mark Howard

Registrar, Victorian Racing Tribunal