29 November 2024

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**PETER O’BRIEN**

**Date of hearing:** 13 November 2024

**Date of decision:** 13 November 2024

**Panel:** Judge Marilyn Harbison (Deputy Chairperson) and Ms Amanda Dickens.

**Appearances:** Mr Andrew Cusumano appeared on behalf of the Stewards.

Mr David Briggs represented Ms Peter O’Brien.

**Charges and particulars:**

**Charge No. 1**

Rule 231(1)(d) reads as follows:

*A person shall not: -*

*…*

*(d) abuse*

*anyone employed, engaged or participating in the harness racing industry or otherwise having a connection with it.*

**The particulars of the charge being:**

1. You were, at all relevant times, a licensed trainer and driver with Harness Racing Victoria and a person bound by the Australian Harness Racing Rules.
2. On 28 May 2021, you were the licensed trainer of ‘*Harry McKinnis*’ and ‘*Wroxtons Farewell*’, who were engaged to race in Race 12 at the Mildura harness racing meeting.
3. Prior to the conduct of Race 10, you directed the following comments (or comments to the following effect) to HRV Steward Mr Wayne Smith in the stabling area:
	1. “*fucking dickhead*”
	2. “*you can’t do your fucking job properly”*
4. By directing the comments outlined in particular 3 (or comments to that effect) to Mr Smith, you did abuse a person employed in the harness racing industry.

**Charge No. 2**

Rule 247 reads as follows:

*A person attending before the Controlling Body its members or employees, the Stewards, officials, or at any proceeding under these Rules, shall not speak or behave in a malicious, intimidatory or otherwise improper manner*

**The particulars of the charge being:**

1. You were, at all relevant times, a licensed trainer and driver with Harness Racing Victoria and a person bound by the Australian Harness Racing Rules;
2. On 28 May 2021, you were the licensed trainer of ‘*Harry McKinnis*’ and ‘*Wroxtons Farewell*’, who were engaged to race in Race 12 at the Mildura harness racing meeting.
3. Whilst attending before the Stewards at a Stewards’ inquiry on that date, you struck the table that the Stewards were sitting at before remarking “*I couldn’t give a fuck about racing*” and exiting the Stewards’ room prior to the conclusion of the inquiry.
4. By engaging in the conduct outlined in particular 3, you behaved in an intimidatory and / or improper manner and spoke in an improper manner.

**Charge No. 3**

Rule 231(1)(d) which reads as follows:

*A person shall not: -*

*…*

*(d) abuse*

*anyone employed, engaged or participating in the harness racing industry or otherwise having a connection with it.*

**The particulars of the charge being:**

1. You were, at all relevant times, a licensed trainer and driver with Harness Racing Victoria and a person bound by the Australian Harness Racing Rules.
2. On 28 May 2021, you were the licensed trainer of ‘*Harry McKinnis*’ and ‘*Wroxtons Farewell*’, who were engaged to race in Race 12 at the Mildura harness racing meeting.
3. After the conduct of Race 12, and after exiting the Stewards’ room during their inquiry, you directed the following comments (or comments to the following effect) to HRV Steward Mr Michael Ross:
	1. *“you can just get fucked”*
	2. “*I couldn’t give a fuck what you do”*
4. By directing the comments outlined in particular 3 (or comments to that effect) to Mr Ross, you did abuse a person employed in the harness racing industry.

**Charge No. 4**

Rule 187(3) which reads as follows:

*A person shall comply with an order or direction given by the Stewards*

**The particulars of the charge being:**

1. You were, at all relevant times, a licensed trainer and driver with Harness Racing Victoria and a person bound by the Australian Harness Racing Rules;
2. On 28 May 2021, you were the licensed trainer of ‘*Harry McKinnis*’ and ‘*Wroxtons Farewell*’, who were engaged to race in Race 12 at the Mildura harness racing meeting.
3. After the conduct of Race 12, and after exiting the Stewards’ room during their inquiry, HRV Steward Mr Michael Ross issued a direction for you to attend the Stewards’ room prior to leaving the course.
4. You failed to comply with the direction issued by Mr Ross.

**Charge No. 5**

Rule 187(1) reads as follows:

*A person who is directed to do so by the Stewards shall attend an inquiry or investigation convened or conducted by them.*

**The particulars of the charge being:**

1. You were, at all relevant times, a licensed trainer and driver with Harness Racing Victoria and a person bound by the Australian Harness Racing Rules.
2. On 1 July 2021, HRV Chairman of Stewards Brett Day issued you with a written direction to attend an in-person interview before the HRV Stewards at 12:00pm on 21 July 2021 at the Stewards Room at the Mildura harness racing club regarding your conduct at the Mildura harness racing meeting on 28 May 2021.
3. You failed to attend the interview and, by failing to do so, you failed to attend an inquiry convened or conducted by the Stewards.

**Charge No. 6**

Rule 187(1) which reads as follows:

*A person who is directed to do so by the Stewards shall attend an inquiry or investigation convened or conducted by them*.

**The particulars of the charge being:**

1. You were, at all relevant times, a licensed trainer and driver with Harness Racing Victoria and a person bound by the Australian Harness Racing Rules;
2. On 3 August 2021, HRV Chairman of Stewards Brett Day issued you with a written direction to attend an in-person interview before the HRV Stewards at 12:00pm on 25 August 2021 at the Stewards Room at the Mildura harness racing club regarding your conduct at the Mildura harness racing meeting on 28 May 2021.
3. You failed to attend the interview and, by failing to do so, you failed to attend an inquiry convened or conducted by the Stewards.

**Charge No. 7**

The Stewards charge you with a breach of Rule 187(1) which reads as follows:

*A person who is directed to do so by the Stewards shall attend an inquiry or investigation convened or conducted by them*

**The particulars of the charge being:**

1. You were, at all relevant times, a person bound by the Australian Harness Racing Rules.
2. On 14 October 2021, HRV Chairman of Stewards Brett Day issued you with a written direction to be available via your mobile phone number to participate in a telephone interview before the HRV Stewards at 2:00pm on 22 October 2021 regarding your conduct at the Mildura harness racing meeting on 28 May 2021.
3. You failed to answer your mobile phone at the scheduled time and, accordingly, you failed to attend the interview and, by failing to do so, you failed to attend an inquiry convened or conducted by the Stewards.

**Pleas:** Guilty to Charges 1, 2, 3, 4, 7.

 On application to the Tribunal, Charges 5 and 6 were withdrawn by the Stewards.

**DECISION**

1. Mr Peter O'Brien is charged with seven offences arising out of his verbal interactions with stewards in the year 2021. The first four offences occurred on the same day – 28 May 2021 at a harness racing meeting at Mildura.
2. He had become upset because he had noticed that a Steward was escorting his niece from the track. She had been banned from attending, but he had believed that the Stewards’ action in removing her from the track was not warranted.
3. The first charge is that he abused a Steward, Mr Wayne Smith on that day. The circumstances were that he approached Mr. Smith in the stabling area before the running of a race in which two of his horses were engaged and addressed him as a “fucking dickhead”. He also said to Mr. Smith “you can’t do your fucking job properly”.
4. The Stewards allege that these comments amount to abuse of Mr Smith.
5. The second charge relates to Mr O’Brien’s alleged behaviour later that day when he was brought before an inquiry of Stewards at the racetrack. It is alleged that, whilst he was attending that inquiry, he struck the table that the Stewards were sitting at and then said, “I couldn’t give a fuck about racing”.
6. The Stewards say that this conduct is properly to be described as behaving in an intimidatory or improper manner towards the Stewards and is therefore in breach of the rules.
7. The third charge is another charge that he abused Steward. It is alleged that on the same day, 28 May 2021, after the Stewards’ inquiry, he spoke to another Steward, Mr Wayne Ross. Mr Ross attempted to engage him in conversation to ensure that he understood his obligations following the inquiry. During the course of a short conversation with him, Mr O’Brien said to the Steward “you can just get fucked”. In response to Mr Ross outlining what procedure the Stewards would take in respect of the matters we have previously outlined, Mr O’Brien said “I couldn’t give a fuck what you do”.
8. The fourth charge is a charge that Mr O'Brien failed to comply with a direction given by the Stewards. Again, on 28 May 2021, after the events described in the above three charges, he was told to attend the Stewards’ room before leaving the course. He failed to do so.
9. Thus, these four charges all relate to Mr O’Brien’s behaviour towards the Stewards on the same day.
10. The balance of the charges relate to his nonattendance on three later occasions when the Stewards attempted to arrange an inquiry into Mr O’Brien’s conduct.
11. At the hearing, the Stewards withdrew charges 5 and 6. Although the hearings they relate to were scheduled, they did not ultimately proceed. This leaves charge 7, which relates to the inquiry convened on 22 October 2021.
12. Mr O’Brien was notified in writing on 14 October 2021 to attend on 22 October 2021. The attendance was to be via mobile phone. Mr O'Brien failed to answer his mobile phone at the scheduled time and accordingly the Stewards have charged him with having failed to attend an inquiry when directed to do so. This is the subject matter of charge 7.
13. Given that Mr O’Brien did not attend the hearing on 22 October 2021, he was suspended under the rules from that time, and his registration later lapsed. Mr O'Brien appears to have ceased being involved in the harness racing industry and to have had no contact with the Stewards from that time until January 2024, when he applied to be licensed as a stable hand. He was advised by the Deputy Chief Steward, Mr Nicholas Murray on 22 February 2024 that the matters which have been identified in the charges brought today needed to be further investigated before that application was dealt with. Mr O'Brien told Mr Murray that he did not wish to provide any submissions or evidence in relation to these charges.
14. Mr O'Brien did not attend this hearing. He did however ask a friend and fellow industry participant, Mr David Briggs to attend this inquiry and speak on his behalf. Mr Briggs told us that Mr O’Brien wished to enter a plea of guilty to each charge, and he gave us some information as to Mr O’Brien’s past and present circumstances.
15. We regard Mr O'Brien's behaviour in charge two as being the most serious. We have listened to an audio of the inquiry. Mr O'Brien became very loud and intimidating at that inquiry and struck the table forcefully, as well as swearing at the Stewards. We regard his behaviour towards the two Stewards, as set out in charges one and three, as also being intimidatory and well out of line.
16. Although he did not display any violent behaviour in relation to charges four and seven, his action in refusing to participate in the inquiry on each occasion described is also serious, because that disobedience goes to the heart of the Stewards’ function. The Stewards cannot perform their investigatory or regulatory functions properly or at all if industry participants simply ignore directions.
17. It was submitted on behalf of the Stewards that the behaviour in charge two was so serious as to require a significant period of disqualification and that our sentences on each of the charges before us should contain significant cumulation. We were asked to consider our overall sentence in the light of Mr O’Brien’s previous history, and in particular it was pointed out that he was fined for inappropriate comments to the Stewards in June of 2020. It is noted that $500 of this fine was suspended and it is open to us to order that this penalty be reactivated following his conviction today.
18. We agree with the submissions of the Stewards that charges one and three require both general and specific deterrence to be taken into account. Such behaviour towards the Stewards must not be tolerated and in this case Mr O'Brien has a history of committing similar offences. We agree that his behaviour in charge two was intimidatory. We agree that his failure to attend the Stewards’ inquiry, charges four and seven, frustrated the Stewards from completing their task
19. There is a further significant factor to consider. Mr Briggs outlined to us on Mr O’Brien’s behalf that he suffers from a significant medical condition following a stroke in October 2019. He was hospitalised for some time and has been left with significant personality changes as a result of the stroke. We received medical evidence which indicated that the stroke has caused change in his mental state, leading to him having trouble handing handling stress, becoming very irritable, lacking in self-control, being easily confused and having difficulties in communication. He is also physically impaired on the left side of his body as a result of the stroke.
20. It appears that, arising directly out of this medical condition, he has developed a phobia that the Stewards “were out to get him”. We accept Mr Briggs submissions to us that this medical condition played a significant part in the behaviour for which we are to sentence Mr O'Brien today.
21. In addition to this medical trauma, he suffered the death of his brother in January 2019 and the death of both his parents the next year. He has, over a short period of time, gone from being a person who was heavily involved in the industry and has had racing as part of his life for a long time, to someone in the state that we find him in at the time that these offences were committed.
22. He is 60 years of age and now lives on a disability pension. He is single and lives with his brother, who supports him, together with his sister and his niece. He does not have any realistic chance of fully participating in the industry in the way that he did in the past. However, he does wish now to be licenced as a stable hand so that he can have some involvement in the industry and assist his niece, who is a registered trainer driver.
23. Mr Briggs also outlined two character references submitted on behalf of Mr O’Brien. The first is from Mr Nick Alvino, who describes him as honest, trustworthy and loyal. The second is from Ms Karen Leary, who describes him as a personal friend for 35 years who has been there for her during that time and who is treated as part of her family.
24. We regard the previous medical condition of Mr O'Brien as taking this case out of the harsher approach which would otherwise be appropriate for offending of this nature.
25. In addition, we propose to take into account that Mr O'Brien has effectively by his own actions been out of the industry for three and a half years already. We accept that, if he had had the appropriate assistance and guidance at the time that these offences were committed, the matter would have been dealt with sooner. He has opted to cut himself adrift, and we see his action in doing so as being a reflection of his medical state.
26. We also note that each of the first four charges relate to the same day, at a time when Mr O'Brien was clearly agitated and upset.
27. Taking all of the above into account, the penalties which we impose are as follows.
28. On charge one, which is a charge of abusing Mr Wayne Smith on 28 May 2021, the penalty which we impose is a fine of $500 with $250 of that fine suspended for 18 months.
29. On charge 3, which is a charge that he abused Mr Wayne Ross on 28 May 2021, the penalty which we impose is a fine of $500 with $250 of that fine suspended for 18 months.
30. Given that charges one and three relate to separate incidents involving separate Stewards, we order that the sentence on charge three be served cumulatively with the sentence on charge one, resulting in an immediate fine of $500, together with a further $500 suspended for 18 months.
31. On charge 2, which is a charge of behaving in an intimidatory or improper manner towards the Stewards on 28 May 2021: charge 4 which is a charge that he failed to comply with the direction given to attend the Stewards’ room before leaving the course on 28 May 2021: and charge 7 which is a charge of failing to participate in the inquiry listed for the 22 October 2021, the penalty which we impose for each offence is disqualification for 12 months, with six months of that disqualification suspended for 18 months.
32. We order that the sentences imposed on charges two, four and seven be served concurrently, as we characterise them as arising out of the same overall fact situation -that is, Mr O’Brien’s unreasonable and intimidatory behaviour arising out of a misguided sense that his niece had been victimised, and fuelled by his medical condition.
33. Given the circumstances of this case, and in particular Mr O'Brien's parlous financial situation, we do not propose to make any order in relation to the sum of $500 which remains suspended following the 2020 fine.
34. We order that each period of disqualification commence on the 17 January 2024. We have chosen this date as this is the date on which Mr O'Brien applied to be registered as a stable hand.

Mark Howard

Registrar, Victorian Racing Tribunal