Appeal decision

Date: 17 July 2014

Code of racing: Thoroughbred

Appeal panel: Judge W Carter (chair), Mr B Miller and Mr G Casey.

Appearances: Mr J Murdoch, QC, appeared on behalf of licence applicant Ronald Jackson.

Mr W Birch, general manager, Stewards and Integrity Operations, Racing Queensland, appeared on behalf of the stewards.

Decision being appealed: Refusal by Racing Queensland to grant an open trainer's licence.

Appeal result: Appeal upheld.

Extract of proceedings – in the matter of the refusal by Racing Queensland to grant an open trainer's licence. Licence applicant: Ronald Jackson

THE CHAIRMAN: This appeal to the Racing Disciplinary Board is brought pursuant to section 149S of the *Racing Act 2002*, which includes within the definition of "appellable decision", the refusal by the control body to grant a licence to a person. In this case the appellant's application for an open trainers licence was refused by the control body and he now appeals to this board against that refusal.

We incorporate in full in this decision the control body's Statement of Reasons for refusing the application and attach that document hereto as *Annexure A*.

However, a brief summary of some of the relevant matters may assist a more ready understanding of the issues involved in this appeal.

- The appellant was born on 24 August 1938. He will be aged 76 years in a few weeks.

- On 3 February 2005 in the District Court at Lismore he was convicted of the offence of having sexual intercourse with a person aged between 10 and 16 years. He had pleaded guilty. The offence was committed in 1994.

- The District Court sentenced him to eight months' imprisonment, which was immediately suspended upon his entering into a good behaviour bond for the period of eight months during which period he was supervised by the New South Wales Probation Service.

- In August 2005 he made application to the racing control body in Queensland for a stablehand's licence, which was granted.

- In August 2006 he made further application to the racing control body in Queensland for a trainer's licence and this also was granted.

- In respect of each of these two applications granted in August 2005 and 2006 the appellant failed to disclose to the control body in Queensland the fact of his conviction in the Lismore District Court on 3 February 2005. In respect of each application he answered "No" or "Nil" on the relevant form which required disclosure of any criminal history.

- On 21 October 2010, control body steward Fletcher met with one Wayne King, the control body's manager of Investigations and Operations, and the appellant. By that time the control body had become aware of the fact of the appellant's prior conviction and on 3 November 2010 gave to the appellant a notice to show cause as to why the trainer's licence then held by him should not be cancelled. The grounds for the show cause were (1) the fact of the conviction; (2) his failure to advise stewards of his conviction; and (3) falsely stating in his prior applications (August 2005 and August 2006) that he had no prior convictions.

- After due process the control body advised the appellant on 17 November 2010 that his trainer's licence was cancelled on and from 24 November 2010.

- On 5 September 2013 the appellant applied to the control body and was granted a stablehand's licence in Queensland and he continues to work as a licensed stablehand.

- On 31 March 2014 the appellant made application for a trainer's licence, the subject of this appeal, by which time the control body well knew of his earlier conviction. He was advised by letter dated 10 June 2014 that this application was refused. Hence this appeal.

In addition to the above facts one only needs to add that other legislation required that because of the nature of the relevant offence, the appellant was required to report monthly to police. On one occasion (between 29 June 2012 and 29 July 2012) he failed to report. Senior Counsel Mr Murdoch QC informed the board that this occurred because of his then recent change of address. On 20 August 2012 in the Magistrates Court at Sandgate he was convicted and fined $400 for this default.

The board does not consider for present purposes that this default is of significant relevance and accepts that his failure to report on this one occasion was explicable on the basis of changed personal circumstances. In any event, he has been punished by a fine for this default.

We refer to the comprehensive Statement of Reasons of the control body for its rejection of the appellant's latest application for a trainer's licence. That document refers to the provisions of the Racing Act and to the Licensing Scheme Policy of the control body made pursuant to sections 81(c) and 86 of the Racing Act.

By section 33(1) of the Racing Act the function of the control body is "to manage its code of racing" and by sections 78(2)(a)(b) and (c) it does that by making policies, rules of racing and giving directions. Other statutory provisions deal with the process for the making of policies (see section 81(a)) including the obligation to consult with racing stakeholders so that once made, it can be assumed that racing participants have had the opportunity for input into any policy.

Sections 86-89 emphasise that the purpose of a control body's licensing scheme is, *inter alia*, "to ensure the integrity of racing activities conducted as part of the code" and by section 87(2)(c) that the licensing scheme must provide, *inter alia*, "the criteria for each type of licence including appropriate qualifications for and disqualifications from obtaining a licence." It is beyond question that the licensing committee, as outlined in *Annexure A*, was particularly conscious of and sought to apply the Racing Act and the control body policy relating to the licensing of participants when deciding that this applicant should be refused a licence.

In general the licensing committee, having regard to the nature of the main offence and his failure to advise, as required, the details of this at the time of his August 2005 and August 2006 applications held that the applicant "did not fulfil the criteria of" propriety and therefore did not meet suitability requirements outlined in the Licensing Scheme Policy" (see *Annexure A*, pages 4-5).

By section 149ZE(3) of the Racing Act, an appeal to this board "…is by way of rehearing, unaffected by the appellable decision being appealed against, on the material before the relevant control body … and any further evidence allowed by the constituted board."

In addition to the body of material with which the licensing committee had to deal, this board accepted from counsel the following additional material:

- character references from Ms Glenis Burnett and Mr and Mrs Eric Singh, all three of whom are aware of the appellant's criminal history

- that Ms Burnett, now aged 60 years, has worked for the appellant as a strapper in 2007 and, if the appellant is again licensed, will again assist him as a stablehand assuming she is appropriately licensed

- that the appellant's current application for a trainer's licence was prompted by the request of a friend "to train a horse for him"

- that if the board were to allow the appeal it would do so on the basis that appropriate conditions were attached to the licence relevant to the appellant's criminal conviction.

The need for integrity in racing and racing participants cannot be overstated. Both the Racing Act and the control body's Licensing Scheme Policy requirements are emphasised in *Annexure A* as being of fundamental importance and so they are. The Licensing Committee was of the view that the "propriety" provisions of the Licensing Scheme Policy and related provisions were of fundamental relevance in its refusal to grant the appellant the licence.

Although the board has no details of the facts and circumstances relating to the sexual offence in question, its definition and the consequential penalty – a wholly suspended sentence of eight months – may suggest that it was not regarded as the most serious of sexual offences. On the other hand the Licensing Scheme Policy expressly requires that "all

offences will be considered, particularly those considered to have a direct impact on an applicant's suitability" and it then includes "dishonesty" and "sexual assault" as relevant offences. The appellant was patently dishonest in failing to honestly reveal – or in fact denying – his prior criminal offence in the August 2005 and 2006 applications. However, the term "sexual assault" in this context should not be narrowly construed nor applied subject to the legal niceties which often accompany the definition of certain criminal offences. In the context of this policy it is well known that many stables employ young women, including those under the age of consent and who work as subordinates. The idea that an adult male may seek a sexual advantage in respect of such a person, even if the act was consensual, is repugnant. Not only are young women employed in stables, they are often engaged also on race days or as trackwork riders and in like areas. The industry is therefore entitled to question the suitability of a proposed licensee who has committed a sexual offence upon an underage young woman.

The fact also that an applicant for a licence provides a racing control body with false information relevant to the application may likewise support a finding of unsuitability against an applicant.

At the same time it has to be understood that such a policy needs to be applied justly and equitably. A policy such as this is a necessary and valuable working document which advises prospective licensees of control body expectations. It should not, however, be construed with the same strictness as one would if dealing with a will or a deed or similar document. It has to be used and applied in a way which upholds the general principle that licensed participants in racing be persons of integrity who are acceptable within racing as such and that the quality of racing participants will not be disadvantaged or compromised by a particular decision in respect of a particular person's application for a licence.

The mere fact of a person's conviction for a particular offence does not automatically require the control body to refuse an application. That, however, is not to understate its relevance. The policy has to be applied within an acceptable level of flexibility which, almost invariably, will require that the facts of the offence conviction and penalty must be considered not only with reference to its own facts and circumstances but in the wider context which invariably will require an assessment of its impact or otherwise on the good nature of the racing industry. The decision of a control body in this context is a discretionary one and accordingly that discretion must be exercised validly. That means that irrelevant circumstances must be excluded from consideration but that all relevant circumstances must be properly taken into account. In some cases the facts and circumstances of a criminal conviction may be decisive. In others it may not.

It is necessary for us then to turn to the facts of the case and to the material before us.

In respect of the offence to which the appellant pleaded guilty and was sentenced to a non-custodial penalty, we incline to the view that it was considered to be less serious than many of the sexual offences with which the court has to deal. Again that is not to say that it is not a relevant matter of concern. At the same time the mere fact that an applicant for a licence has committed a sexual related offence does not expressly or definitively require that such applicant must, *ipso facto*, be refused. Again the whole of the relevant facts and circumstances have to be considered. The Licensing Scheme Policy recites that "In general, crimes committed in the last 10 years will be considered relevant." The material before us asserts that this offence was committed in 1994 – some 20 years ago. Such an offence might still, in a different context, remain relevant if, for instance, it was part of a more

complex criminal history. On the other hand, such an old conviction might be considered of lesser gravity in view of the lapse of time and the other matters relevant thereto.

The other major concern for the control body was the fact that the appellant falsely denied in his applications in August 2005 and 2006 the fact of his conviction. It appears that the control body only became aware of it in or about October 2010. The more recent National Police Certificate dated 26 September 2013 confirms the earlier conviction and includes the more recent one in the Sandgate Magistrates Court for one count of failure to report. This more recent certificate was relevant to the appellant's application for a stablehand's licence, which was made on or about 9 September 2013 and which the control body granted. It was also properly used in respect of this application dated 31 March 2014 for the trainer's licence which the control body refused.

In determining this appeal, we take into account, firstly, the relevant statutory provisions and the Licensing Scheme Policy made on 1 May 2013 which became effective on that date.

Secondly, we take into account the conviction and penalty imposed in respect of the Licensing Scheme Policy.

Thirdly, we take into account the appellant's failure to advise the control body of his conviction for a sexual offence. We regard this as a significant issue and in a different case or in different circumstances might prove to be decisive. We note also that with knowledge of that significant default the control body did grant the appellant a stablehand's licence in November 2013 after having cancelled his then trainer’s licence on 17 November 2010.

Fourthly, we acknowledge that a major concern for the Licensing Committee was the "significant risk" posed by the applicant's conviction because of his ability to either employ or otherwise engage with young women as a licensed trainer. Given that the offence was committed 20 years ago we have taken into account the submission that in all of the circumstances of the case, the "risk" issue could be dealt with by attaching to the licence an appropriate condition.

Fifthly, there are other facts and circumstances before us which are relevant and personal to the applicant. He is supported by apparently reputable citizens. One of the referees, Ms Burnett, was present at the appeal. She has known the applicant since 2006 and is aware of his background. She has worked for him in the past and will accept employment with him again if he is licensed. She is aged 60 years. The age of the appellant is likewise relevant. He is almost 76 years of age, which will necessarily limit any proposed training career. His present intention is to train only one horse.

Having regard to all of these matters, we propose to order that the appeal be allowed and that the appellant be granted a trainer’s licence but subject only to the following condition and the appellant's acceptance of such condition:

- That Ronald Joseph Jackson shall not employ any person under the age of 18 years nor engage or associate with any person under the age of 18 years who is involved in any way in the racing industry in Queensland.

The order of the board is that the appeal be allowed subject to the above condition and, subject to this board, any other condition reasonably required by the control body and consistent with the terms of this judgement.

Liberty to apply.

Further right of appeal information: The appellant and the stewards may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **14 days of the date of this decision**. Information in relation to appeals to QCAT may be obtained by telephone on (07) 3247 3302 or via the Internet at www.qcat.qld.gov.au