



## INTERNAL REVIEW DECISION

(Internal Review Decision Notice in response to an Application for Internal Review)

PART 1: Details of Internal Review	
Internal Review Number:	Internal Review 0055-17
Applicant's Name:	A Jenkins
Original Decision:	Breach of 213(a) of the Australian Harness Racing Rules Breach of 231(1)(e) of the Australian Harness Racing Rules
Original Decision Makers:	L Wilson, R McRae, N Finnigan, M Ross
Date of Original Decision:	6 July 2017
Internal Review Decision:	Original decision in relation to rule 213(a) confirmed. Original decision in relation to 231(1)(e) on charge confirmed. Original decision on penalty amended.
Internal Review Decision-Maker:	Mr Kane Ashby, Internal Adjudicator, Queensland Racing Integrity Commission
Date of Internal Review Decision:	2 August 2017
PART 3: Summary of Internal Review Application	
<p>The Applicant, Mr Anthony Jenkins, is a licensed trainer and driver with the Queensland Racing Integrity Commission. On 6 July 2017, a stewards' inquiry was conducted in relation to the Applicants' conduct at the Redcliffe race meeting.</p> <p>This resulted in the Applicant being charged with a breach of Australian Harness Racing Rule 231(a) and 231(1)(e).</p> <p>Australian Harness Racing Rule 213(a) states: "A person shall not by use of harness, gear, equipment, device, substance or any other thing inflict suffering on a horse."</p> <p>Australian Harness Racing Rule 231(1)(e) states: "A person shall not assault anyone employed, engaged or participating in the harness racing industry or otherwise having a connection with it."</p> <p>The stewards report states: "Stewards opened an inquiry following a report prior to the running of race 8 from assistant starter Mr. J Petersen regarding trainer Mr. A Jenkins actions in the birdcage area towards his horse EULO FLYER where Mr. Petersen was of the opinion that Mr. Jenkins had struck his horse. Further Mr. Petersen reported to stewards after Mr. Jenkins was advised to attend a steward's inquiry regarding the matter Mr. Jenkins approached him from behind and placed his hand on his shoulder and cocked his arm with a closed fist in the direction of his face. It was established after taking evidence from trainer Mr. A Jenkins, official assistant starter Mr. J Petersen and Mr. Les Farnell that Mr. Jenkins had reacted to being headbutted by his horse and responded by throwing punches and striking the horse in the leg when unbalanced. Subsequently Mr. Jenkins was charged and found guilty pursuant to Rule 213 (a) for inflicting undue suffering on a horse and was fined \$1000 with \$500 suspended for a period of twelve months. Further evidence was taken regarding the second incident in particular from independent witness Mr. S Sutherland that supported Mr. Petersen evidence. Mr. Jenkins was subsequently charged and found guilty pursuant to Rule 231 (1) (e) A person shall not assault anyone employed, engaged or participating in harness racing or otherwise having a connection with it. After hearing submissions on penalty Mr. Jenkins was disqualified for a period of twelve months. Mr. Jenkins was advised of his internal review rights and the restrictions and conditions of a disqualified person."</p> <p>The Applicant sought a review of charge and penalty.</p>	



#### PART 4: Reasons for Internal Review Decision

The stewards' conducted an inquiry into the Applicants alleged conduct at the Redcliffe race meeting on 6 July 2017. The alleged conduct involved inflicting suffering on a horse and assaulting the assistant starter prior to and subsequent to the running of race eight on the program.

During the inquiry, Mr John Petersen (Assistant Starter) in summary stated *"As I was going around checking the gear for the race in which Mr Jenkins' horse Eulo Flyer was engaged, he had turned the horse around and the horse was in the process of either being put in the gig or in the sulky – in the gig. At that point the horse has proceeded to step forward and step on Mr Jenkins' foot."* *"As a result of that, there were expletives used, which was to an extent irrelevant. As soon as he had finished swearing at the horse, he proceeded to raise his leg. Now, as I initially reported to you, I didn't know to what extent what contact was made, but certainly contact was made to the horse around the chest area. I additionally came up and reported that to yourself, to which you said that you required to see Mr Jenkins. I waited for his horse to go onto the track."*<sup>1</sup>

Mr Petersen added *"I then, as he started to walk back from the entrance to the track there, I said, "Mr Jenkins, the stewards require you in the stewards' room." His response straight away without any prompting was, "Is this in relation to kicking my horse?" I said, "They will require to see you if you could come up now." He said, "I'm not coming up now, I haven't finished with the horse." With that he said, "I didn't make contact with the horse." I proceeded to come back up to let you know that he wouldn't be coming in until after the following race." With that, he placed his hand on my shoulder and with a clenched fist in my face said, "If the horse is going to knock me and knock my effing glasses off, then I will do whatever I want to the horse."*<sup>2</sup>

When questioned how did you interpret the hand on your shoulder and cocked fist, Mr Petersen stated *"I must say in the first instance I wasn't what you'd say was immediately threatened by it, but I suppose in those circumstances you don't know if it's going to escalate, de-escalate or whatever."* *"I suppose it's one of those situations you don't necessarily want to be put in that situation either way, but I suppose it wasn't until Mr Jenkins had finished saying what he had to say that you knew what the extent of the conversation was."*<sup>3</sup> *"So even though there was physical contact, there was no threatening nature in that sense, but in saying that, the fist was cocked in the face."*<sup>4</sup>

Mr Steve Sutherland (Track Attendant) was a witness to the alleged assault and in summary stated *"I saw Mr Petersen walking towards the drivers' room. I was sitting down there with Dennis Whitaker, who I work with, and John McMullen, and I turned around to speak to John (Mr Petersen) and Mr Jenkins came up behind him, grabbed John by the left shoulder, I didn't know whether he was mucking around to start with, but John went from looking rather bemused to, like – and then he basically put his right fist in his face. I didn't hear what was said."*<sup>5</sup> Mr Sutherland added *"I did not hear what was said. I didn't know what it was about."* *"I just saw a left hand go on John's left shoulder and the right hand was cocked, and I think Mr Petersen first thought, "Is he joking?" But it didn't appear to be to me ----- that he was joking."*<sup>6</sup>

When questioned how did you interpret the incident and what was your reaction/feel Mr Sutherland replied *"I thought he was going to approach him about something, I didn't know what intent there was. But when I noticed he basically grabbed Mr Petersen by the left shoulder and cocked his right fist in his face."* *"Well, like I said, Mr Petersen had a*

<sup>1</sup> Transcript of stewards' inquiry, 6 July 2017, page 3

<sup>2</sup> Transcript of stewards' inquiry, 6 July 2017, page 3

<sup>3</sup> Transcript of stewards' inquiry, 6 July 2017, page 10

<sup>4</sup> Transcript of stewards' inquiry, 6 July 2017, page 11

<sup>5</sup> Transcript of stewards' inquiry, 6 July 2017, page 8

<sup>6</sup> Transcript of stewards' inquiry, 6 July 2017, page 9



sort of bemused look “does this gentleman want to talk to me”, and the next thing – if it had’ve been me, I would have thought, “well, is he going to snot me”, to be honest.” “Well, it did not look friendly to me, put it that way.”<sup>7</sup>

Mr Les Farnell was a witness to the alleged inflicting suffering on a horse and in summary stated “... Tony (Mr Jenkins) was just turning the horse around and he was putting the number on – on the horse. And we didn’t know the horse – don’t know it’s stable name, but his real name is Eulo Flyer – head-butted Tony and hit him just here.” “And knocked his glasses off, his hat off, and nearly put him on the ground.” “And Tony got up, had a swing at the horse, but I thought he missed, because it was so comical. And he lashed out with his hand, and that was it. Because I was – I had a perfect position because I was in stall 17, Tony was in stall 16, I was leaning on the rail watching Tony put the number on.” When questioned you said Mr Jenkins initially had a swing at him, could you just elaborate on that, the Applicant indicated once again that he used a left and a right stating “A left and a right, but he missed the horse.” “You know, as far as I know, he missed the horse.” When further questioned, you are indicating that he swung at the horse on this occasion, Mr Farnell stated “Yeah, he swung at the horse.” When further questioned, and after that did he hit the horse in the leg as he suggested or not? Mr Farnell stated “Well, I thought he missed, honest. I thought he missed.”<sup>8</sup>

The Applicant in summary stated “Well, my horse there trod on my bloody foot, he head-butted me, knocked my hat and my glasses off. I picked them up and I went, “Get out, you bastard.” And then I slapped him.” When questioned did you lift your leg and make contact with the horse the Applicant replied “Of course I lifted my leg.” “Very, very slightly. Wouldn’t have killed a fly.”<sup>9</sup> When further questioned did you hit the horse with your leg the Applicant stated “Just a tap---wouldn’t kill a fly.”<sup>10</sup> The Applicant denied throwing a few punches at the horse stating “No. No, I never bloody threw punches at him.” When questioned that’s the evidence of Mr Farnell the Applicant stated “I never hit the horse. We were playing around.”<sup>11</sup> The Applicant later in evidence denied the horse stood on his foot stating “No, he never even tread on my foot. I’ve been around horses too long for them to tread on my foot.”<sup>12</sup>

The Applicant blatantly denied the alleged assault stating “No, that is lies--- Not true.” When questioned did you touch Mr Petersen, raised your hand or cock your fist, the Applicant replied “No. No. Mate, I wouldn’t be so ----- I would not be so stupid, mate---No. No. No.” When further questioned so there was no altercation or conversation with Mr Petersen after he spoke to you about going to the stewards the Applicant replied “No. No. No.”<sup>13</sup> The Applicant later in the inquiry conceded he put his hand on Mr Petersen stating “I think I did just put my hand on him, but as for cocking my fist, no.”<sup>14</sup>

The reviewer notes the two penalty notices issued to the Applicant dated 7 July 2017, both record rule 213(a) was breached. The reviewer accepts an inadvertent discrepancy appeared on one of the penalty notices, however is satisfied that the Applicant also breached rule 231(1)(e) which is consistent with the particulars of the penalty notice and charge as particularised during the stewards’ inquiry.

The Applicant submitted the outcome he was seeking is “dismissal or severe reduction in suspension.” The Applicant in summary added the tap is a “behavioral tap” the horse is given when “not behaving.” This tap is “used for some time now” and because of this it gets his “attention quickly to remind him of what’s required.” The Applicant confirmed

<sup>7</sup> Transcript of stewards’ inquiry, 6 July 2017, page 14

<sup>8</sup> Transcript of stewards’ inquiry, 6 July 2017, page 6, 7 and 8

<sup>9</sup> Transcript of stewards’ inquiry, 6 July 2017, page 4

<sup>10</sup> Transcript of stewards’ inquiry, 6 July 2017, page 11

<sup>11</sup> Transcript of stewards’ inquiry, 6 July 2017, page 12

<sup>12</sup> Transcript of stewards’ inquiry, 6 July 2017, page 15

<sup>13</sup> Transcript of stewards’ inquiry, 6 July 2017, page 5 and 6

<sup>14</sup> Transcript of stewards’ inquiry, 6 July 2017, page 11



he put his hand on Mr Petersen's shoulder but denied making a fist stating *"I did not make a fist but had my hand in a natural position which is fingers curled towards palm but not fully enclosed."*<sup>15</sup>

The Applicant further submitted *"the assault charge was not properly conducted as all issues need to be delivered to stewards through the front door – not up the back stairs in private."* *"The natural curve within my hand has been made out to be a fist and the hand on the shoulder to attract attention has been done by me before and has been done to me on numerous occasions."* *"I believe that a 12-month suspension for a common attention gesture and natural curving of the hand is unjustly harsh but I fully support that a truthful assault is a very serious issue and needs to be dealt with not only by the racing board but also needs to be reported to and dealt with by the police."*<sup>16</sup>

The definition of assault, states in amongst others *"An act that threatens physical harm to a person, whether or not actual harm is done."*<sup>17</sup> The reviewer finds there was no evidence provided to support the assault charge was not properly conducted as alleged by the Applicant.

The reviewer acknowledges each case is treated on its merits.

The reviewer accepts horses at times require behavioral discipline, however swinging fists at a horse as evidenced by the Applicants witness, Mr Farnell and kicking a horse as conceded by the Applicant and witnessed by Mr Petersen is not the appropriate form of discipline. The reviewer is satisfied on the evidence the charge under rule 213(a) is proven. The reviewer accepts the evidence of Mr Petersen and Mr Sutherland that the Applicant placed one hand on Mr Petersen's shoulder and had a clenched fist with the other hand towards his face in an offensive physical manner. The reviewer does not accept the Applicants evidence and finds his initial evidence in denying all parts of Mr Petersen's evidence related to the assault, is telling, before accepting he put his hand on Mr Petersens shoulder. The Applicant further denied throwing punches at the horse which was contrary to Mr Farnell's evidence and was further contradictory with his evidence related to the horse standing on his foot. The reviewer finds the Applicants evidence lacks credibility and therefore is satisfied on the evidence the charge under rule 231(1)(e) is proven.

The Applicants disciplinary history notes no prior offence under the charges subject of this review. Precedents for similar related incidents under rule 213(a) have incurred penalties up to \$1000. There were no precedents under rule 231(1)(e). The reviewer finds the penalty under 213(a) is consistent with similar related matters and therefore confirms the original decision of penalty.

The reviewer acknowledges the importance of ensuring officials within any code of racing can carry out their duties in a safe environment without fear of intimidation or physical harm. The Internal Review decision of *R Lock v QRIC*<sup>18</sup> confirmed a 6 month disqualification in a case that involved a strike/punch to the head of another licensed person. This matter is the subject of further appeal. In a recent Victorian Racing Appeals and Disciplinary Board decision of *Racing Victoria v Cox* dated 29 November 2016, the trainer, in amongst other charges was issued with a 6 month disqualification for physical contact towards an official in the course of their duty.

The reviewer finds licensed participants are bound by the Rules of Racing, to ensure, in part, any conduct does not adversely impact the reputation of the industry. The reviewer finds conduct of this nature is a serious offence and is prejudicial to the image of the industry. In consideration of the evidence, including the Applicants submissions and aforementioned related decisions on penalty, finds the original decision on penalty under rule 231(1)(e) be amended to 6 months disqualification.

<sup>15</sup> Internal Review application dated 11 July 2017

<sup>16</sup> Internal Review application dated 11 July 2017

<sup>17</sup> Oxford Dictionary

<sup>18</sup> Internal Review decision 0008-16



## PART 5: Review Rights following Internal Review Decision

In accordance with section 246 of the *Racing Integrity Act 2016*, as the applicant for an internal review of the original decision, you are able to apply to the Queensland Civil and Administrative Tribunal (QCAT) for an external review of the internal review decision.

An external review is commenced by lodging the appropriate forms with QCAT. In accordance with section 33 of the *Queensland Civil and Administrative Tribunal Act 2009*, an application for an external review of an internal review decision is to be made within 28 days from the day this internal review decision notice is provided to the applicant.

For further information regarding the processes for an external review of the decision, please contact QCAT:

### Queensland Civil and Administrative Tribunal

Registry Location: Level 9, 259 Queen Street, BRISBANE QLD 4001  
Postal Address: GPO Box 1639, BRISBANE QLD 4001  
Phone: 1300 753 228  
Email: [enquiries@qcat.qld.gov.au](mailto:enquiries@qcat.qld.gov.au)