

**NEW SOUTH WALES
HARNESS RACING
APPEAL PANEL**

APPEAL PANEL MEMBERS

Hon. W Haylen KC

P Kite SC

B Judd

RESERVED DECISION

31 OCTOBER 2023

APPELLANT DARRELL STANDEN

RESPONDENT HRNSW

SEVERITY APPEAL

**AUSTRALIAN HARNESS RACING RULES
273(6)(A)**

DECISION

The severity appeal is upheld, the penalty of \$750 is set aside and replaced by a penalty of \$375. The Appellant is to be refunded 50% of the appeal fee.

1. Stable representative Mr Darryl Standen has appealed against the severity of the fine imposed by Stewards at Newcastle on 29th September 2023. Mr Standen was the stable representative for trainer Mr Goadsby for race 10 at Newcastle held on 21 July 2023. Mr Goadsby had three starters in this race but was not in attendance, having racing responsibilities elsewhere. Two of the horses racing that night in race 10 were Artistic Scott and Kozacznski. Artistic Scott finished first in the race at odds of \$6 while Kozacznski finished out of a place as the \$1.70 favourite.
2. Artistic Scott was to carry saddle cloth number 5 and start from barrier 5, but ran in saddle cloth number 7 and started from barrier 7. Kozacznski was to carry saddle cloth number 7 and start from barrier 7 but ran in saddle cloth number 5 and started from barrier 5. The Stewards immediately opened an inquiry as to how the horses came to be wearing the wrong saddle cloths and started from the wrong barriers. After taking evidence from participants, including Mr Standen and the race starter, Mr Parkes, and acting under the provisions of AHRR 64, these two horses were disqualified from the event and removed from the finishing order of the race. Mr Goadsby appealed that decision however the Appeal Panel found that the Stewards were entitled to take disqualification action under AHRR64. The details of that decision by the Appeal Panel can be found in the Appeal by Trainer Mr Aaron Goadsby published on 22 September 2023.
3. In the September hearing Mr Standen told Stewards that he had been employed by Mr Goadsby for two years. At the time he held a C Grade drivers license but previously had held B Grade and A Grade Licenses. He had also previously held A and B Grade trainer's licences. The Stewards did not inquire into the duties usually undertaken by Mr Standen in the Goadsby yard however he had acted as the Stable representative only on two occasions. He had been the Stable representative at Tamworth on the day before the Newcastle meeting where he again acted as the Stable representative.
4. In evidence before the Stewards Mr Standen said that his instructions from Mr Goadsby were to make sure that the horses had all the right gear. Mr Goadsby had all the gear for the runners packed but gave Mr Standen no instructions about ensuring that the correct cloth numbers were placed on the horses. In the period leading up to the presentation of the horses for race 10, Mr Standen asked a Mr Yallop to collect "the numbers" for him. Mr Standen could not recall the interaction between him and Mr Yallop when the latter returned with the numbers but Mr Yallop placed the saddlecloths on the horses. Mr Yallop was not a stable employee but was connected to another business operated by Mr Goadsby and had attended the meeting as an observer. It was in this capacity that Mr Yallop placed the numbers on Artistic Scott and Kozaczynski.
5. It was also established that the Starter, Mr Parkes, had not checked the cloth numbers on these horses because a group of runners presented at the same time. It is unclear why this obstruction prevented Mr Parkes from checking the horses after they left in a cluster. During the hearing it was accepted that Mr Parkes duties commenced some 7 minutes prior to the race and involved checking the horses and their gear. Checking that the cloth numbers were being worn by the correct horses was part of the duties of the Starter. At the hearing of this appeal the Panel was informed that Mr Parkes had been stood down and had not performed the duties of Starter since this late July race. It has not been disclosed to the Panel whether he has been charged with some offence under the rules or of his contract or when the investigation into his role will be concluded.

6. The drivers of these two horses did not check the cloth numbers, assuming that they were accurate and so completed the race unaware of the problem. They were interviewed by the Stewards who apparently were satisfied that charges against them were unnecessary.
7. Mr Standen was charged separately for each horse, alleging a breach of AHRR 273 part (6), part (a): A person shall not present to start or start in a race a horse that is: (a) not wearing the correct number.” Mr Standen immediately pleaded guilty to each charge.
8. In reaching their decision on penalty the Stewards stated that these were serious offences and that the circumstances of the breaches were “more serious”. The Stewards had earlier disqualified the two horses but there was no elaboration of the matters that made these offences “more serious”. The Stewards continued by stating that they felt the appropriate penalty for presenting with the wrong numbers was a fine of \$500 “for each runner”. The Stewards continued:” From that we do work our way backwards in terms of your guilty plea. With the principles of totality we would take 25 percent from that and announce a penalty of \$750 to be payable.”
9. At the Appeal HRNSW drew attention to the seriousness of these offences and their wider effect. The owners had lost their winning prizemoney and the punters had lost their winning bets. In fact punters lost all bets placed on both horses as both were disqualified. The Stewards did not appear to make any direction regarding wagering on the event. The involvement of an unlicensed person added to the embarrassment associated with this race.
10. Under HRNSW Penalty Guidelines a breach of AHRR 273(6)(a) carries a penalty of \$100. A survey of nearly 600 cases dealing with this rule showed the predominant fines were in the \$100-\$200 range. There were 5 cases where the fines were \$300 and 3 of those cases dealt with two horse offences. There were no cases where \$500 fines were imposed. During the hearing HRNSW identified an inter-State case where a \$1000 fine had been imposed but no details were provided to the Panel.
11. The Panel accepts that the Guidelines can be increased or decreased in light of the particular facts of a case. The Panel also accepts that Mr Standen was involved in a serious offence in a role that he had just accepted and that there were others who played a part in this unfortunate breach. Pleading guilty at the earliest time warranted a deduction in the fines of 25%. However, the Stewards commenced their calculations with two separate fines of \$500 which taken together amounted to a fine of \$1000. They then reduced that amount by 25% in recognition of Mr Standen’s early pleas, reducing the final penalty for both offences to \$750. The Panel is of the view that the Stewards failed to give consideration to the principle of totality although they mentioned it. The 25% deduction was clearly related only to the early pleas made by Mr Standen.
12. The totality principle applies where an offender is sentenced for more than one offence. In criminal law, the principle applies to ensure that the sentence reflects the overall criminality of the offending behaviour, rather than adopting a mathematical cumulation of the penalty for each offence. In proceedings of this nature the same principle applies. The two cases are inescapably tied to each other- there is one switch of cloth numbers. This was recognised in the \$300 penalty cases provided to the Panel where two horses were identified thus suggesting that the fine was \$150 in each case.

13. In this case the Panel is satisfied that a total fine of \$500 is the appropriate starting point. That figure should be reduced by 25% in acknowledgement of the early plea. The result is a final penalty of \$375.
14. For the abovementioned reasons, the appeal is upheld, the penalty of \$750 is set aside and replaced by a penalty of \$375. The Appellant is to be refunded 50% of the Appeal fee.

Hon Wayne Haylen KC – Principal Member
Mr P Kite SC – Panel member
Mr B Judd – Panel Member

31 October 2023