

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Mr D
Licensee:	TopBetta
Proceedings:	Pursuant to section 85(2) of the <i>Racing and Betting Act</i> – Referral of dispute to Racing Commission for determination
Heard Before: (on papers)	Ms Cindy Bravos (Presiding Member) Ms Amy Corcoran Mr Allan McGill
Date of Decision:	14 June 2019

Background

1. On 22 April 2018, pursuant to section 85(2) of the *Racing and Betting Act* (the Act), the complainant lodged a gambling dispute with the Northern Territory Racing Commission (the Commission) against the licensed sports bookmaker, TopBetta.
2. The complainant placed a 'First4' exotic bet for a stake of \$40 on the outcome of Race 10 of the Canberra Greyhound Races held on 8 April 2018. The bet resulted as a winning bet for which the complainant expected to receive \$9,166 in winnings.
3. TopBetta initially settled the bet by crediting the complainant's account in the amount of \$9,166 however, subsequently capped the bet payout to the amount of the Victorian tote pool size, being \$1,724.74. TopBetta then resettled the bet by negatively adjusting the complainant's betting account balance by \$7441.26.
4. The complainant disputes the capping of the payout for his winning bet and states that he had an agreement in place with TopBetta where no pool capping was applicable to his betting account. The complainant stated that when placing an exotic bet with TopBetta, he is notified of his exotic bet being referred to a TopBetta trader after which TopBetta confirm whether the bet has been accepted or rejected via the TopBetta website.
5. The complainant has also advised the Commission that on two previous occasions, TopBetta has paid in excess of the relevant pool cap for successful exotic bets.
6. TopBetta advised the Commission that in accordance with its terms and conditions, the winning payout on bets will not exceed the pool amount for that type of bet at the nominated tote or where no tote is nominated, the Victorian tote declared pool subject to TopBetta maximum payouts.
7. TopBetta dispute that there was an agreement, express or implied, in place with the complainant whereby TopBetta would not apply the bet cap rule to the complainant's betting account. TopBetta advised the Commission that as there was no agreement in place, there were no reasonable grounds for the complainant to assume that the bet cap rule would not apply to any bet he placed regardless of whether the bet was accepted or not by a TopBetta trader.

8. TopBetta also advised the Commission that on the two previous occasions where the complainant had been paid in excess of the relevant pool cap for successful exotic bets, the payouts were in amounts of a few hundred dollars and as such they were not identified at the time and processed in error.
9. Information relevant to this dispute was gathered from both parties by Licensing NT betting inspectors appointed by the Commission, with that information provided to the Commission to consider the dispute on the papers.

Consideration of the Issues

10. Both the complainant and TopBetta are in agreement that the complainant placed a winning 'First4' exotic bet with a stake of \$40 on the outcome of Race 10 of the Canberra greyhound races held on 8 April 2018. A 'First4' bet is a bet where it is necessary to select the 1st, 2nd, 3rd and 4th place-getters in correct order to result as a winning bet. Had TopBetta not applied a pool cap on the winnings of the complainant's bet, the bet would have resulted in a payout to the complainant of \$9,166.
11. The issue for consideration by the Commission is whether in the circumstances, TopBetta is entitled to apply the pool cap contained within its terms and conditions to the complainant's winning bet and as a result of that application, limit the payout to the complainant to that of the tote pool size applicable to the greyhound race, in this case being \$1,724.74.

Terms and Conditions

12. Each sports bookmaker licensed in the Northern Territory promulgates a comprehensive set of terms and conditions for wagering that both parties are bound by when a betting account is opened and each time a bet is struck. These terms and conditions operate to ensure legislative compliance and the commercial efficacy of the business model of a sports bookmaker.
13. The relevant TopBetta terms and conditions in respect of 'maximum bet wins' is TopBetta's Betting Rules Terms and Conditions, General Betting Rule 2.5(f) as detailed below:

On any bet type in any location, the payout will not exceed the pool amount for that bet type at the nominated tote. If the nominated tote doesn't offer the selected bet type or there is no nominated tote, the Victorian tote declared pool and dividend will apply, subject to our maximum betting payouts. If there is no Victorian pool then the Queensland tote declared pool and dividend will apply, subject to our maximum betting payouts. Where the player's stake is larger than the pool size, the player will receive their stake back rather than the pool.
14. The Commission notes that the complainant appears to it, to be an experienced gambler given his advice to the Commission that he has had several betting accounts with sports bookmakers, most of which have either had limits set on the value of the exotic bets that he can place or the betting account has been closed due to, in the complainant's words, the betting accounts being "*not economically viable.*"

15. It is also apparent to the Commission that the complainant is clearly aware of the terms and conditions that apply to betting accounts as he has advised the Commission that when he opened the betting account with TopBetta in early 2017, he spoke with an account manager by phone, “...*as to the Terms and Conditions and any limitations on the account.*” Further, the complainant states that in order to understand sports bookmakers terms and conditions and how they apply or do not apply to his betting activity he “...*talk[s] with an Account Manager after reading the respective Terms and Conditions.*”
16. The complainant has advised the Commission that he was advised by a TopBetta account manager that his betting activity would be via the Internet only; that TopBetta only applied a pool size ceiling on exotics bets if there has been tote manipulation and that his bets may be referred to a trader for approval.
17. Conversely, TopBetta has advised the Commission that “...*it never advised [the complainant] by telephone or otherwise that it would ever waive a cap on payouts based on pool size.*”
18. As with all sports bookmakers licensed in the Northern Territory, TopBetta’s licence includes a condition that they must ensure that all conversations with their customers involving discussions relating to bets, complaints or disputes, regardless of medium, are recorded on approved recording equipment.
19. The Commission has listened to a telephone conversation between a TopBetta client acquisition and retention officer and the complainant that occurred on 3 February 2017, shortly after the complainant opened his TopBetta betting account. During that conversation, a discussion occurred relating to deposit matching and fixed odd win limits, however there was no discussion in relation to exotic bets nor pool capping.
20. The telephone conversation was followed up by an email from TopBetta to the complainant in which TopBetta advises the complainant that the fixed odd limit at that time was set to \$2,000. There is no reference to exotic bets or pool capping.
21. The complainant has also provided the Commission with an earlier email to him from the same TopBetta client acquisition and retention officer which the complainant states was sent on 28 June 2016 following a ‘cold call’ telephone call to the complainant to open a betting account with TopBetta. In that email, reference is made to deposit matching and free tickets into tournaments but again, there is no reference to exotic bets or pool capping.
22. The complainant advised the Commission that he recollects that the discussion regarding there being no cap on the pool size for exotic bets occurred in a separate telephone call with the same TopBetta client acquisition and retention officer. The complainant advised that the TopBetta representative “...*used words to the effect that no pool cap is put on the exotic bets unless there is a tote manipulation (colloquially termed a rort).*”
23. TopBetta has advised the Commission that it cannot locate a recording of any telephone conversation between TopBetta and the complainant during which exotic bets or pool capping was discussed.
24. The Commission notes that following the two telephone conversations between the TopBetta client acquisition and retention officer and the complainant mentioned in

paragraph 19 and paragraph 21 above, the TopBetta representative sent an email to the complainant detailing their discussion. With this in mind, the Commission notes that it has not been provided with any email evidence from either the complainant or TopBetta in which exotic bets or pool capping was discussed.

Referral of Bets to a Trader

25. As mentioned at paragraph 16 above, the complainant has advised the Commission that he was advised by TopBetta that his bets may be referred to a trader for approval. The complainant states that *"[m]y account with Topbetta is agreed and operated with referral of all Exotic bets to the Topbetta Trader for either approval, rejection or variation of the stake, based on their assessment of the liability to them ..."*
26. The complainant has provided the Commission with a number of screenshots that show that when placing several exotic bets with TopBetta, his bet has been referred to a trader for review. Once reviewed by the trader, the complainant is informed that the bet has been accepted or that the bet has been rejected with the stated reason being 'liability exceeded'. In the examples provided where the bet was rejected, the complainant has then submitted a bet for a lesser amount with these bets then being accepted.
27. The complainant submits that this process supports his understanding that there was an agreement in place between TopBetta and the complainant that any exotic bets that he placed would not be subject to pool capping, as why would TopBetta accept a bet when the amount of the bet, if resulted as a winning bet would result in a payout that exceeded the capped amount. The complainant is further of the view that once the TopBetta trader has accepted the bet, then TopBetta accepts the full bet payout liability.
28. With respect to this aspect of the dispute, TopBetta have submitted that:

[w]e note that on occasion some experienced traders may decide to reject a bet if they believe it may result in a payout going over the pool size but that would be the exception rather than the norm. In any event, it does not alter the effect of conditions in clause 2.5(f).
29. TopBetta has further submitted to the Commission that:

[t]here is no way to tell how much a pari-mutuel bet will pay so whilst the most experienced traders will sometimes restrict the stake size out of goodwill to the customer as they believe it would pay over the limits, it is certainly not the expectations of traders to do this.
30. The Commission notes in this regard that it would not be possible for the trader to predict the final tote pool on an exotic bet and therefore it would be unlikely for a trader to reject a bet on this basis unless the likely outcome of the bet if successful would result in a significant payout. TopBetta does however, have other maximum bet win amounts detailed within its terms and conditions such as a maximum of \$10,000 per race for a quinella or exacta, \$20,000 for a quaddie and a maximum daily win of \$50,00 for an individual during any given 24 hour period, that the Commission notes that a trader may take into account when accepting or rejecting a bet.

Reasonable Expectation

31. Prior to lodging the dispute with the Commission and in an attempt to resolve the dispute directly with TopBetta, the complainant wrote to the then Chief Executive Officer of TopBetta Mr Todd Buckingham detailing his dispute with TopBetta and attaching supporting information. In that correspondence the complainant drew Mr Buckingham's attention to a winning exotic bet that he had placed and that TopBetta had settled in an amount exceeding the size of the tote pool.
32. This bet was a quinella bet placed on the outcome of Race 8 at Bulli on 13 January 2018. The complainant's bet was successful and he received a payout from TopBetta in the amount of \$1,026. This is despite the fact that the tote pool for the Quinella was \$539.27, some \$486.73 less than the payout made to the complainant by TopBetta.
33. During the course of the investigation undertaken by a Licensing NT betting inspector into this dispute and in relation to previous winning exotic bets placed with TopBetta, the complainant advised the betting inspector that he had "*...now found two (2) such cases on my TopBetta Account additional to the bet in dispute.*" The complainant advised that there may be other examples but as he had placed several thousand bets with TopBetta, the two examples were "*...the ones I was able to find.*"
34. The second bet the complainant has drawn to the Commission's attention was a quinella bet placed on the outcome of Race 9 at Bulli on 31 March 2018 some eight days before the bet subject of this dispute. The complainant's bet was a winning bet and he received a payout from TopBetta of \$1,165. The quinella tote pool for that race was \$776.10 and as such, the complainant received a payout from TopBetta of \$388.90 in excess of the tote pool.
35. In relation to the above two bets where the complainant received payouts in excess of the tote pools, TopBetta has advised the Commission that:

It is noted that those payouts were in excess of the pool by \$388.90 and \$486.76. Being in amounts of a few hundreds of dollars, they were not identified at the time and allowed to be processed in error. This sort of error has been brought to the attention of the relevant persons responsible in TopBetta to reduce the risk of it reoccurring.

It is also noted that given Mr D's comment "*I have now found...*", at the time of placing the bet on Race 10, there could be no expectation that the terms of clause 2.5(f) would not be applied.
36. TopBetta has submitted to the Commission that as at the date on which the complainant placed the bet in dispute, the complainant "*...was not aware that there were 2 prior instances...where the cap had not been applied to his winnings...*" As a result, TopBetta has submitted that there were no reasonable grounds for the complainant to assume that the pool cap would not apply to his bets.
37. It must be noted that in relation to the two bets referred to above, they were drawn to the Commission's attention following a request from the Licensing NT betting inspector to the complainant to provide the Commission with evidence of previous bets paid above the pool. It is the understanding of the Commission that TopBetta were not aware that the complainant provided information regarding these two bets at the request of the Licensing NT betting inspector.

38. In order to make a determination on this dispute, the Commission must turn its mind to whether TopBetta's actions in not capping the winning payout amounts on the two bets placed by the complainant on 13 January 2018 and 31 March 2018, enlivened a reasonable expectation on the part of the complainant that the cap would not be applied to the complainant's winning 'First4' exotic bet on Race 10 of the Canberra greyhound races held on 8 April 2018.
39. The complainant has submitted that the circumstances of his dispute are similar to a previous Commission decision, that being the matter of Mr L v IASbet.com (IASbet) dated 13 February 2013. In that matter, the Commission determined that Mr L had reasonable grounds on which to assume that a waiver of the cap contained within IASbet's terms and conditions on harness racing quadrella bets would be waived again as it had in the past. The Commission stated in its decision that Mr L was aware of seven instances over a number of months, where IASbet did not apply the cap and the winning bets had been paid out in full. Mr L also advised the Commission that he had been advised by an IASbet staff member that caps did not apply to his account and as this was not able to be confirmed or denied by IASbet, the Commission made no determination as to whether an agreement was in existence or not.
40. TopBetta submits that the facts in Mr L v IASbet can be distinguished from the facts in the complainant's dispute as:
 1. TopBetta never advised Mr D by telephone or otherwise that it would ever waive a cap on payouts based on pool size.
 2. As at 8 April 2018 when Mr D placed his bet on Race 10 at the Canberra greyhounds, he was not aware that there were 2 prior instances (on 13 January 2018 and 31 March 2018) where the cap had not been applied to his winnings (as evidenced by his statement: *"I have now found..."*).
 3. Given that Mr D was not aware of any waiver by TopBetta of the cap rule, and as there was no agreement otherwise, express or implied, there were no reasonable grounds for Mr D to assume as at 8 April 2018 that Rule 2.5(f) would not apply and be put into effect with any bet he placed regardless of whether the bet was accepted or not by TopBetta's trader.
41. As determined by the Commission in the matter of Mr L v IASbet, the striking of a bet between a sports bookmaker and the sports bookmaker's customer is an agreement founded in contract law. In that decision, the Commission stated that:

A waiver is essentially a unilateral act by one party to the contract that results in the surrender of a legal right they would otherwise have under the terms of the contract. In this case IASbet has, on several occasions prior to 7 July 2012, unilaterally waived its legal right to cap Mr L's quadrella payments as it was entitled to do in accordance with the IASbet's Rules and Conditions. In this case the waivers prior to 7 July 2012 were granted unilaterally and voluntarily by IASbet. The fact that IASbet, by consistently waiving the cap prior to 7 July 2012 without reference or notification to Mr L that it intended to do so, clearly raises issues in respect of Mr L's expectation that either the cap did not apply

to his account or, in the alternative, that the cap would be waived on future quadrella bets as it had been in the past when winnings had exceeded the cap and had been paid in full.

42. The complainant has also submitted that the circumstances of his dispute are also similar to another previous Commission decision, that being the matter of Mr S v Sportingbet dated 16 February 2015. In that decision, the Commission referenced the previous Commission decision of Mr L v IASbet and determined that whilst there was no evidence of an agreement being in place between Mr S and Sportingbet that caps would not apply to Mr S's winning bets, a reasonable expectation had been created by Sportingbet paying out winning bets in excess of the caps on seven occasions, including on one occasion after the lodgement of the gambling dispute by Mr S.
43. The Commission notes that the value of the excess amounts paid to Mr S by Sportingbet referred to in the 2015 Commission decision ranged in value from \$487 to \$4,400 and the seven excess payouts were made over a relatively short period of 2 months.
44. The Commission notes that the bet subject of this dispute is the only bet that the complainant has identified where the pool cap was applied by TopBetta. The Commission has reviewed the complainant's full betting account with TopBetta and notes that apart from the bet in dispute and the two bets discussed earlier, in over 50 of the complainant's winning exotic bets struck between 27 January 2018 and 14 April 2018, none of these bets resulted in a winning payout from TopBetta at an amount over that of the pool totals as recorded on TABtouch.com.au. In saying so however, the Commission notes that this has occurred due to the amount of the winning bet falling below the amount of the pool total and not as a result of TopBetta capping the winning payout.
45. Each of the complainant's previous successful exotic bets with TopBetta resulted in the payment of winning amounts that the complainant expected to receive for those bets and as such, based on the complainant's submission that an agreement was in place not to cap winnings to the tote pool, the two bets that the complainant has drawn to the Commission's attention where TopBetta paid out a winning amount in excess of the tote pool would not in the Commission's view, have caused the complainant to specifically note them at the time as being distinctive or remarkable.
46. The Commission has no evidence before it, be it by way of an email received by the complainant from a TopBetta representative or a recording of a phone call between the complainant and a TopBetta representative, that there had been an understanding or agreement reached between the two parties that pool capping was not applicable to the complainant's betting account with TopBetta.
47. As a result, the Commission must look towards the past behaviours of the two parties to determine whether a reasonable expectation existed on the part of the complainant that pool capping would not apply to the complainant's TopBetta betting account. In considering the reasonable expectation test, the Commission has turned its mind to whether it would be reasonable for a person in the position of the complainant to have expected the pool cap to be waived in relation to the winning bet of 8 April 2018. In this respect, the Commission must consider whether the non capping of the two winning payouts which resulted on 13 January 2018 and 31 March 2018, which TopBetta submit was done in error, consists of an established

practice or policy that gives rise to the complainant's reasonable expectation that any future winning exotic bets will receive consistent or equal treatment.

48. The Commission notes that in the matter of Mr L v IASbet, the seven winning payout amounts that the Commission determined were able to be relied upon by Mr L to form a reasonable expectation that the cap would be waived on his betting account were in excess of \$20,000 each. In relation to Mr S v Sportingbet, whilst the value of the payouts were smaller than in the Mr L v IASbet matter, the seven payouts relied upon by Mr S to form a reasonable expectation occurred over a relatively short period of time.
49. There is no evidence before the Commission that the complainant had specifically identified the two betting transactions for which TopBetta paid out winnings in excess of the tote pool prior to the lodging of a dispute with TopBetta and following that, the lodging of the gambling dispute with the Commission. In this respect, the Commission is of the view that had the gambling dispute subject of this decision not arisen, the complainant would not have had cause to review his betting activities with TopBetta and thus would not have specifically identified these two betting transactions as evidence of forming a reasonable expectation that the terms and conditions that applied to his account would be waived with respect to pool capping.
50. There is also no evidence before the Commission that TopBetta had any reason to assume that the complainant was not aware of the TopBetta terms and conditions that applied to the capping of winning payouts. In the Commission's view, it is not a plausible argument that the maximum payout caps encapsulated in TopBetta's terms and conditions, and specifically General Rule 2.5(f) would only be enforced if there was evidence of tote manipulation. Were this to be the case, the Commission is of the view that given the terms and conditions of a sports bookmaker assist the commercial efficacy of the sports bookmaker, TopBetta would have articulated this in its terms and conditions if that was indeed its intention.

Decision

51. On the weight of the evidence before it, the Commission is of the view that the 'First4' exotic bet struck for a stake of \$40 on the outcome of Race 10 of the Canberra Greyhound Races held on 8 April 2018 was a lawful bet pursuant to section 85 of the Act.
52. It is the view of the Commission, that the licensee's actions in capping the winning payout of the bet were in accordance with its terms and conditions and more specifically General Rule 2.5(f), to which the complainant had agreed to at the time of opening his betting account on the TopBetta betting platform.
53. The Commission is not satisfied that the previous payment by TopBetta of winnings over the relevant pool total on two occasions is evidence of a consistent practice being put in place by TopBetta nor that these payments gave rise to a reasonable expectation by the complainant that the cap would be waived on the bet struck on 8 April 2018.
54. As such, it is the view of the Commission that there are no outstanding moneys payable by the sports bookmaker to the complainant.

Review of Decision

55. Section 85(6) of the Act provides that a determination by the Commission of a dispute referred to it pursuant to section 85 of the Act shall be final and conclusive as to the matter in dispute.



Cindy Bravos
Presiding Member
Northern Territory Racing Commission

14 June 2019