

Northern Territory Racing Commission

Reasons for Decision

Applicant:	Mr A
Respondent:	Sportingbet.com Australia Pty Ltd
Proceedings:	Dispute Relating to Betting – Section 85 of the <i>Racing and Betting Act</i>
Heard Before:	Mr David Brooker (Presiding Member)

Background to the Complaint

1. Under section 17 (1) of the *Racing and Betting Act*, the Northern Territory Racing Commission is empowered to determine disputes between aggrieved clients and bookmakers licensed in the Northern Territory.
2. On the 30th September 2012 Mr. A placed a series of wagers with Sportingbet on Devonport Race 8. These wagers included the bet types Win Only, Trifecta and First Four. The Trifecta wagers placed by Mr. A and the interpretation of the conditions governing payouts on this bet type are the subjects of this complaint.
3. Sportingbet have a comprehensive suite of Terms and Conditions that all customers are deemed to be familiar with prior to opening and operating an account with the bookmaker. Amongst other things the Terms and Conditions detail instances where Sportingbet reserves the right to cap payouts in certain circumstances. Such limiting inclusions are generic in the Terms and Conditions of most bookmakers and operate to ensure the commercial efficacy of the business model of a bookmaker.
4. The operative Rule that is at the center of this dispute is Rule 110. It states that:

Unless otherwise stated for non-metropolitan Thoroughbred venues, all Harness venues and all Greyhound venues, for Quinellas, Exactas, Trifectas and First Fours, Sportingbet pays the dividend and winning combinations declared either by the selected tote or SB Odds to a maximum payout of \$25,000 per Client per event.

The purpose and import of the Rule will be discussed below.

5. In his complaint to the Racing Commission, Mr. A asserts that Sportingbet have applied an improper interpretation to Rule 110 and as such applied a cap to his Trifecta payout incorrectly. Of substance in this claim, and worthy of mention at this point, is that the series of wagers placed by Mr. A were so placed in a particular manner that referenced his interpretation of the Rule.
6. The Racing Commission holds the view that Mr. A is perfectly entitled to maximize the returns he receives from his wagering activity and is similarly entitled to structure his wagers in whatever way he chooses in order to achieve such returns. The important caveat to the above is that such wagers must fall within the Terms and Conditions of the bookmaker.

7. Mr. A openly and freely acknowledged that he placed his wagers in order to maximize his return from the race because he had come to the conclusion that the limiting nature of Rule 110 could be exploited by placing wagers across different totalisators. Sportingbet rely on a differing interpretation of the Rule and so it evolves that the matter before the Racing Commission is the proper construction of Rule 110.
8. The decision that follows has been divided into three parts. The first section will consider the purpose of rules such as Rule 110; the second will consider the arguments put by Mr. A and Sportingbet in relation to their differing interpretations of the Rule. The final section will articulate the interpretation favored by the Racing Commission and conclude with the finding of the Commission in respect of the disputed wagers.

The Purpose of the Rule

9. Where issues of proper construction determine whether a complaint succeeds or fails there is an added onus on the adjudicating body to be familiar with the necessity and the import of the Rule. That is, what is the purpose of having the Rule included in the Terms and Conditions in the first place?
10. Certain of the wagering products offered by corporate bookmakers carry an inherent risk that goes beyond traditional bookmaking. Exotic bets, by their very nature, present the punter with potentially enormous winning dividends and commensurately potentially high losses to the bookmaker. The Trifecta bet type, the subject of this dispute, is particularly volatile and prone to large dividends where favored runners do not feature in the winning combination. It is for this reason that such bet types are often the focus of limiting clauses or rules such as Rule 110.
11. The Rule in question operates to limit the exposure of a bookmaker to payouts that skew beyond the higher end of the acceptable risk as deemed by the bookmaker for certain bet types and events. The quantum of this amount is a commercial decision that rests with the bookmaker and is the domain of risk management experts not the Racing Commission. Where Terms and Conditions and the Rules therein are articulate and readily accessible by clients it is in no way proper for the Commission to intervene in the legitimate commercial operational decisions of Licensees.
12. While not strictly within the ambit of the current decision, it has come to the attention of the Racing Commission that the practice of some bookmakers is to arbitrarily and randomly waive their right to cap payouts on certain bet types or events. It is the consistent view of the Racing Commission that where an individual has a reasonable expectation that a limiting clause will be waived the Commission will consider it so waived in any betting dispute, unless there is clear evidence that the reasonable expectation has been extinguished by an express communication to the client.
13. As mentioned above, the insertion of a limiting clause is to quite simply constrain the losses incurred by the bookmaker, or looked at another way, to check the wins of clients. In the specific matter before the Racing Commission at present the Rule functions to protect the bookmaker from losses where the client chooses to receive dividends that reference a pool that is not controlled by the bookmaker.
14. The wagers placed by Mr. A on Devonport Race 8 were:
 - a) 6 (Win Only)

- b) 6: 1 & 5: 1 & 5: 4,7,8,10 & 11 (First Four)
 - c) 6: 1 & 5: 1 & 5: 4,7,8,10 & 11 (First Four)
 - d) 6: 1 & 5: 4,7 & 8: 4,7,8,10 & 11 First Four
 - e) 6: 1 & 5: 4,7 & 8: 4,7,8,10 & 11 (First Four)
 - f) 6: 1 & 5: 10 & 11 (Trifecta)
 - g) 6: 1 & 5: 10 & 11 (Trifecta)
 - h) 6: 1 & 5: 4,7 & 8 (Trifecta)
 - i) 6: 1 & 5: 4,7 & 8 (Trifecta)
 - j) 6:5:1 (Trifecta)
 - k) 6:5:1 (Trifecta)
 - l) 6:1:5 (Trifecta)
 - m) 6:1:5 (Trifecta)
15. The exotic wagers that Mr. A placed straddled the Victorian and TattsBet totalisator pools as is contemplated and permitted under Rule 110. The various stakes and the contentious outcomes will be considered below.
 16. Within the context of the wagers detailed above it is worthwhile exploring the reason why the bookmaker may require access to such relief as that provided by Rule 110. Where a client chooses to have a dividend paid that corresponds to a specific totalisator pool the bookmaker is at once on notice that it may face a potential payout that it has no capacity whatsoever to calculate in advance. The bookmaker may then be exposed to a payout that could exceed its ability to commercially offer the bet type.
 17. The bookmaker has some steps available to mitigate losses in this event. Firstly, the bookmaker may choose to carry some of the risk and lay off the remainder in the corresponding totalisator. Secondly, the bookmaker may choose to carry all of the risk and take a posture that enables risk management to deal with the contingency as it arises. For example, the bookmaker may choose to limit the risk by betting back in other bet types to offset potential payouts. Finally, for absolute certainty the bookmaker can place the wager as submitted by the client into the totalisator pool selected. This ensures that the bookmaker loses nothing on the transaction.
 18. The commercial operations and risk management procedures as determined by the bookmaker need to operate with certainty and, as such, the need to have a cap or limit on certain bet types and events is at once obvious. The Racing Commission is in no doubt that it is common ground between the bookmaker and the client that the force and purpose of the rule was to limit losses and to cap potential exposure.

The Interpretation of Rule 110

19. The parties to this betting dispute have differing interpretations of Rule 110. Mr. A is of the belief that his interpretation enables multiple wagers to be placed on the same event across different totalisator pools thus availing himself of several payouts should his wagers be successful. Sportingbet counter that the effect of the limiting clause is absolute and does not permit multiple payouts from different selected totalisators on the same event.
20. The disputed wagers and payouts the substance of this complaint are (l) and (m) above. Mr. A staked \$150 on each of these wagers across the TattsBet totalisator

and the Victorian totalisator. He asserts that by placing the wagers, or essentially splitting his \$300 overall stake on this bet sequence, he should be entitled to two dividends of up to \$25,000. That is, the cap should apply to (l) and (m) separately but not collectively.

21. Mr. A asserts, and his actions in splitting his wagers across two totalisators evidence his state of mind, that the Rule permits him to place wagers across separate totalisators and receive payouts that reference the dividend declared by the respective operators. The act of placing multiple wagers on the same event that were identical but placing them on different totalisators indicates Mr. A must have contemplated the limiting effect of the Rule. This alone does not make his wagering a breach of the Rule.
22. It is the submission of Mr. A that the Rule should be read as distinguishing between the Selected Totes or Sportingbet Odds. That is, he believes that where Sportingbet Odds are not selected for a particular exotic bet, Rule 110 can be construed as permitting selection of multiple totalisators with the ultimate cap being \$25,000 per totalisator selected. This is consistent with his wagering on the event in question.
23. Sportingbet counter that the operation of Rule 110 is properly construed by distinguishing between selecting other totalisators as a single grouping (that is, all totalisators available to be selected), or in the alternative selecting Sportingbet Odds. The effect of this is that Sportingbet interpret Rule 110 as giving the choice of either a selected single totalisator pool or Sportingbet odds. This interpretation is in direct contrast to the assertion of Mr. A and hence the core of the dispute between the parties.
24. At this point it is useful to summarize the construction of Rule 110 by both parties and consider the nuanced focus each has taken in interpreting the Rule.
25. Mr. A has relied on a reading that exposes in his mind a degree of ambiguity in the syntax of Rule 110 as written. He contends that the import of, 'Sportingbet pays the dividend and winning combinations as declared either by the Selected Tote or Sportingbet Odds to a maximum payout of \$25,000 per client per event', as providing for the selection of multiple totalisators or Sportingbet Odds. That is, on the interpretation of Mr. A he could not have selected the Victorian totalisator for one wager and Sportingbet Odds for another wager.
26. The summary position at this point for Sportingbet, on the other hand, is that the word 'either' limits the selection to one of a Selected Tote or Sportingbet Odds. Sportingbet do not contemplate the selection of multiple totalisators in Rule 110 and consider the maximum payout to apply to the Selected Tote or Sportingbet Odds in a singular sense. This construction is consistent with the payments made to Mr. A.
27. The matter of construction in this complaint is complicated, however, by the conduct of Sportingbet when one considers the totality of wagers placed on the event by Mr. A; that is (b) through (m) above. In a submission to the Racing Commission by Sportingbet, where reliance on Rule 110 was the focus of their right to limit or cap payments, the bookmaker emphasized the words 'per client, per event'. When using this vernacular the Racing Commission can better summarize the respective positions of each party.
28. The position of Mr. A can be summarized as, 'per tote, per client, per event; while the position of Sportingbet is more consistent with a focus on 'per client, per event'.

The Interpretation of Rule 110 Favored by the Racing Commission

29. The Racing Commission recognizes some ambiguity in Rule 110 as read, however, does not believe that it is so ambiguous to render it unintelligible.
30. Various interpretive rules and mechanisms are available to assist in the interpretation of rules where the immediate meaning is unclear, or where a dispute as to the interpretation arises between parties to an agreement. The literal interpretation or plain meaning translation of a particular grouping of words to decipher the import of a rule is the first and foremost consideration in the hierarchy of interpretative apparatus. Where the import cannot be sensibly construed from a literal interpretation other methods to gain full comprehension can be applied.
31. A step down from the literal interpretation is a method of deduction that contemplates the reason that the rule was instituted in the first place and how it was meant to take effect. This interpretation considers, as outlined in detail above, the purpose of the rule and what it was meant to achieve. In the current complaint this mechanism is of some assistance when combined with a literal interpretation; hence the focus on the purpose of the rule earlier in the decision.
32. One further consideration can be included when seeking to determine meaning from a particular rule. The context of its application and extrinsic functioning can be relied upon to provide an explanation of the structural framework within which the rule operates. It is this overall environment of operation that compromises the interpretation of Rule 110 relied upon by Sportingbet.
33. On the race in question Mr. A placed another series of First Four exotic bets; two of these were successful and settled by Sportingbet. The payments totaled \$15,475 and resulted in the overall payout on the series of wagers on Devonport Race 8 being \$40,475; far in excess of the, 'per client, per event' cap relied upon by Sportingbet in their submission to the Racing Commission. The payment of the First Four dividends when combined with the Trifecta dividends (as capped) makes the preferred interpretation of Rule 110 by Sportingbet inconsistent with its actions.
34. It cannot be so that Sportingbet interpret Rule 110 differently for Trifectas and First Fours; however, on the face of it this is exactly what the bookmaker has done. The reason offered for capping the Trifecta bets was that Rule 110 was interpreted as, 'per event, per client' for exotic bet types. As a matter of consistency then it is reasonable to assume that any other exotic payouts should have fallen within the 'per event, per client' cap.
35. The preferred interpretation of Rule 110 by the Racing Commission is different to that of both Mr. A and Sportingbet. In coming to its decision the Commission is of the view that by focusing on the section relating to Quinellas, Exactas, Trifectas, and First Four bet types and reading it as a whole a robust interpretation can be readily arrived at.
36. It is the view of the Racing Commission that the proper and true construction of Rule 110 is achieved when read in its entirety. It is most instructive when contemplating the true intention of Rule 110 to observe and follow the rules of punctuation. The appropriate pauses identified by commas reveal a meaning that is consistent with the conduct of Sportingbet and sympathetic to the purpose of having such limiting clauses in Terms and Conditions. Where the Rule refers to Quinellas, Exactas, Trifectas, and First Fours, Sportingbet are essentially referring to bet types, and it so follows that when unpacking the import of Rule 110 the bet type must be considered.

37. The Racing Commission considers that when read according to rules of syntax and grammar Rule 110 can properly be interpreted as meaning that for each of Quinellas, Exactas, Trifectas, and First Fours the winning dividend will be paid to a cap of \$25,000. Rephrased another way, and perhaps paradoxically stated in long hand for clarity; the maximum payout per Quinella, per client, per event is \$25,000: the maximum payout per Exacta, per client, per event is \$25,000: the maximum payout per Trifecta, per client, per event is \$25,000; and the maximum payout per First Four, per client, per event is \$25,000. The cumulative effect of Rule 110 is that the maximum liability of Sportingbet with regard to exotic bet types as a group per event is \$100,000.
38. To be absolutely clear, where a particular bet has been placed on a certain bet type it is the construction of the Racing Commission that multiple bets could be permitted and paid but to a limit of \$25,000 per bet type. For example, the Commission is of the view that under the practical construction of Rule 110 had the first Trifecta wager paid \$13,000 and the second paid \$8,000 then the amount of \$21,000 would have been the legitimate and proper expectation of Mr. A. Conversely, had the first Trifecta paid \$24,000 and the second Trifecta paid \$15,000 Sportingbet would be permitted within the meaning of Rule 110 as construed by the Commission to pay the entire amount from the first dividend and pay only \$1,000 from the second dividend.
39. The Racing Commission considers the operative focus of the Rule is to limit payouts per bet type, per event, per client. The composition of the bet type, that is whether Sportingbet permit multiple totalisators and combinations incorporating Sportingbet Odds is of no interest to the Commission. The correct construction of the Rule is that the potential return to the client or exposure to the bookmaker is limited to \$25,000 for each bet type (regardless of how many bets are placed and how many different discrete wagers are placed).

The Decision

40. The core of this dispute is whether the client was entitled to avail himself of the dividend payable on two totes? Put another way, can Sportingbet cap wagers placed on a 'per event, per client' basis? This can only be established by using the proper rules of grammar and syntax to achieve a comprehensible meaning of Rule 110. Of utility in an ancillary sense is a consideration of the purpose and ambit of limiting clauses in general. Properly read a literal interpretation of Rule 110 is achievable and gives intelligent effect to the purpose of Rule 110.
41. For the reasons outlined above the preferred position of the Racing Commission is that the true and proper meaning of Rule 110 caps bet types, per event, per client and as such the claim of Mr. A must therefore fail.

David Brooker
Presiding Member

15 February 2013