22 February 2023

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**ZAC PHILLIPS**

**and**

**TAYLA NICHOLSON**

**and**

**ROB O’CONNELL**

**Date of hearing:** 7 February 2023

**Panel:** Judge John Bowman (Chairperson) and Judge Kathryn Kings.

**Appearances:** Mr Andrew Cusumano appeared on behalf of the Stewards.

Mr Rick Jones represented Mr Zac Phillips, Ms Tayla Nicholson and Mr Rob O’Connell.

**Charges and particulars:**

**Zac Phillips**

**Charge No. 1.**

Rule 254A(1) reads as follows:

*A person shall not either directly or indirectly withdraw from a horse, manipulate and reinfuse into a horse homologous, heterologous or autologous blood products or blood cells.*

**The particulars of the charge being:**

1. You were, at all relevant times, a Grade A driver and a person bound by the Australian Harness Racing Rules (**AHRR**);
2. Between August 2020 and September 2020, and in contravention of AHRR 254A(1), you:
3. directly withdrew four vials of blood from the horse ‘*Magicool*’ (**the Horse**) by way of an intravenous needle;
4. manipulated the blood by spinning it in a blood-spinning machine; and
5. reinfused two vials of the autologous blood products or cells into the Horse by way of an intravenous needle.

**Charge No. 2.**

Rule 254A(1) reads as follows:

*A person shall not either directly or indirectly withdraw from a horse, manipulate and reinfuse into a horse homologous, heterologous or autologous blood products or blood cells.*

**The particulars of the charge being:**

1. You were, at all relevant times, a Grade A driver and a person bound by the Australian Harness Racing Rules (**AHRR**);
2. Between August 2020 and September 2020, and in contravention of AHRR 254A(1), you:
3. directly withdrew four vials of blood from the horse ‘*Muscletonian*’ (**the Horse**) by way of an intravenous needle;
4. manipulated the blood by spinning it in a blood-spinning machine; and
5. reinfused three vials of the autologous blood products or cells into the Horse by way of an intravenous needle.

**Charge No. 3.**

Rule 254A(1) reads as follows:

*A person shall not either directly or indirectly withdraw from a horse, manipulate and reinfuse into a horse homologous, heterologous or autologous blood products or blood cells.*

**The particulars of the charge being:**

1. You were, at all relevant times, a Grade A driver and a person bound by the Australian Harness Racing Rules (**AHRR**);
2. Between October 2020 and November 2020, and in contravention of AHRR 254A(1), you:
3. directly withdrew four vials of blood from the horse ‘*Bigjimvalentine*’ (**the Horse**) by way of an intravenous needle;
4. manipulated the blood by spinning it in a blood-spinning machine; and
5. reinfused three vials of the autologous blood products or cells into the Horse by way of an intravenous needle.

**Charge No. 4.**

Rule 254A(1) reads as follows:

*A person shall not either directly or indirectly withdraw from a horse, manipulate and reinfuse into a horse homologous, heterologous or autologous blood products or blood cells.*

**The particulars of the charge being:**

1. You were, at all relevant times, a Grade A driver and a person bound by the Australian Harness Racing Rules (**AHRR**);
2. Between November 2020 and December 2020, and in contravention of AHRR 254A(1), you:
3. directly withdrew four vials of blood from the horse ‘*Dreamers Delight*’ (**the Horse**) by way of an intravenous needle;
4. manipulated the blood by spinning it in a blood-spinning machine; and
5. reinfused three vials of the autologous blood products or cells into the Horse by way of an intravenous needle.

**Charge No. 5.**

Rule 187(2) reads as follows:

*A person shall not refuse to answer questions or to produce a horse, document, substance or piece of equipment, or give false or misleading evidence or information at an inquiry or investigation.*

**The particulars of the charge being:**

1. You were, at all relevant times, a Grade A driver and a person bound by the Australian Harness Racing Rules (**AHRR**).
2. On 30 March 2021, you were interviewed by HRV Investigative Stewards Brad Powell and Stephen Svanosio (**the Stewards**) in relation to the use of a blood-spinning machine and the treatment of horses stabled at 742 Coburns Road, Toolern Vale (**the Interview**).
3. During the Interview, you gave evidence that you borrowed the blood-spinning machine from licensed participant Joe Pace.
4. The evidence (as noted in particular 3) was false or misleading, given that you admitted in a subsequent interview with the Stewards on 7 September 2021 that it was your blood-spinning machine, and that it was not Joe Pace’s.

**Tayla Nicholson**

**Charge No. 1.**

Rule 239A reads as follows:

*A person whose conduct or negligence had led or could lead to a breach of the rules is guilty of an offence*

**The particulars of the charge being:**

1. You were, at all relevant times, a licensed trainer and a person bound by the Australian Harness Racing Rules (**AHRR**).
2. You were, at all relevant times, the trainer of ‘*Muscletonian*’ and ‘*Dreamers Delight*’ (**the Horses**).
3. Between October 2020 and December 2020, you gave permission to licensed participant Zac Phillips to withdraw blood from the Horses, manipulate the blood with a blood-spinning machine and reinfuse into the Horses autologous blood products or blood cells, and by doing so, your conduct or negligence led Zac Phillips to breach AHRR 254A(1).

**Rob O’Connell**

**Charge No. 1.**

Rule 239A reads as follows:

*A person whose conduct or negligence had led or could lead to a breach of the rules is guilty of an offence*

**The particulars of the charge being:**

1. You were, at all relevant times, a licensed trainer and a person bound by the Australian Harness Racing Rules (**AHRR**).
2. You were, at all relevant times, the trainer of ‘*Magicool*’ and ‘*Bigjimvalentine*’ (**the Horses**).
3. Between August 2020 and November 2020, you gave permission to licensed participant Zac Phillips to withdraw blood from the Horses, manipulate the blood with a blood-spinning machine and reinfuse into the Horses autologous blood products or blood cells, and by doing so, your conduct or negligence led Zac Phillips to breach AHRR 254A(1).

**Pleas:** Guilty to all charges

**DECISION**

Mr Zac Phillips has been charged with four offences pursuant to Rule 254(1). This Rule could be summarised as prohibiting the use of what is known as a blood spinning machine (“the machine”). Each of the offences relates to the use of the machine on a different horse or horses.

Ms Tayla Nicholson has been charged with one offence resulting from the giving of permission to Mr Phillips to use the machine on two horses training by her. They were Muscletonian and Dreamer’s Delight, with the offence occurring between October 2020 and December 2020. The Charge is pursuant to Rule 239A.

Mr Rob O’Connell faces one charge similar to that against Ms Nicholson and pursuant to Rule 239A. Mr O’Connell is also a licensed trainer and the horses involved were Magicool and Bigjimvalentine. The use of the machine is alleged to have occurred between August 2020 and November 2020.

Mr Phillips faces an additional Charge of breaching AHRR 187(2) – the giving of false or misleading evidence or information.

We shall leave the last mentioned Charge against Mr Phillips to one side for the moment. The other Charges essentially relate to the same set of facts or circumstances and can be dealt with collectively.

In passing, we would point out that the Charges were not laid until 8 July 2022. The persons now before the Tribunal have had these matters hanging over their collective heads for a long time.

In each instance, Mr O’Connell is effectively attempting to take full responsibility for what occurred. He has a long and successful history of involvement in the industry, having been a highly successful trainer and driver for many years, although he no longer drives. He lives and trains not far from the training operation conducted by Mr Phillips. He is a licensed Grade A driver, who also performs stable foreman duties for Ms Nicholson and Mr O’Connell, each of whom is a Grade A trainer. Mr Phillips and Ms Nicholson are each many years younger than Mr O’Connell and accordingly far less experienced.

There is no argument but that none of the three was aware of the introduction of Rule 254A(1). Each did not know that blood spinning had become a prohibited practice approximately one year or less prior to the occurrence of these events. We would add that Ms Nicholson is in full time employment outside the industry, this being when her health permits, as she has had problems in that regard.

Ignorance of the introduction of the Rule is no excuse for breaching it, but we say now that we are comfortably satisfied that none of the three realised that he or she was in any way committing an offence. Mr Phillips consulted Mr O’Connell about the possibility of blood spinning. Given Mr O’Connell’s work in the industry, his vast experience and his fine reputation, apart from the fact that Mr O’Connell employed Mr Phillips, he was a logical person from whom to obtain advice. We should add one thing. Mr O’Connell is not computer literate. It helps explains why he was unaware of the introduction of the Rule, but does not excuse it.

As stated, Mr O’Connell attempted to take full responsibility for the blood spinning. However, that does not release Mr Phillips and Ms Nicholson from their responsibilities. Each is a Grade A licence holder. Each, whilst nowhere as experienced as Mr O’Connell, has been engaged in the industry for a number of years. Each of the three should have been well and truly aware of the prohibition on blood thinning that had been introduced.

We turn now to the question of penalty. In our opinion, the penalty imposed should be the same for each person charged. We accept that Mr O’Connell has a long and distinguished career and is highly thought of in the industry. Viewed another way, perhaps there was a greater responsibility on him to check that any advice given was up to date and in accordance with the Rules.

Then again, Mr Phillips and Ms Nicholson, whilst being Grade A licenced persons for a shorter period, might have been expected to be careful to keep up with recent developments and current news.

In relation to their records, Mr O’Connell, after decades in the industry, has one relevant offence against his name. That was in 2014, approximately nine years ago, and related to possession of an illegal piece of equipment, for which he was fined. That seems to us to be a comparatively minor offence, now quite old, and we attach no great significance to it.

Mr Phillips and Ms Nicholson have no previous relevant offences on their records, which are clear.

Weighing up all these matters, including their excellent records, we are of the view that the following penalties are appropriate. Each person is suspended for a period of three months, but those suspensions are in turn suspended for a period of twelve months. In the case of Mr Phillips, that penalty is imposed for the breach of Charge 1, with the same penalty for Charges 2, 3 and 4 concurrent with the penalty in Charge 1. In other words, he is suspended for a total of 3 months, which suspension is suspended for a period of 12 months. To summarise it, the penalties imposed on each of the Charges against Mr Phillips and for the individual Charges against Ms Nicholson and Mr O’Connell are identical in that they are of the same effect. The penalties in relation to Mr Phillips are concurrent. If any of them commits a relevant offence during the period of 12 months, the 3 month suspension will be activated. We are confident that shall not occur.

Finally, there is the breach by Mr Phillips of Rule 187(2). When interviewed on 30 March 2021, he told the Stewards that he had borrowed the blood spinning machine from Mr Joe Pace, a licensed industry participant. It was not until 7 September 2021 that Mr Phillips informed the Stewards that it was in fact his own machine.

As we have said in many cases of this type, the Stewards have enough to do without wasting valuable time pursuing lines of enquiry based on falsehoods. This was not a situation where there was a comparatively rapid correction of false information. In these circumstances, Mr Phillips is fined the sum of $750.

Mark Howard

Registrar, Victorian Racing Tribunal