29 October 2019

**DECISION**

**RACING VICTORIA**

**and**

**MR ANDREW HENDERSON**

**Date of hearing:** 25 October 2019

**Panel:** Judge John Bowman (Chairperson), Dr Andrew Gould and Ms June Smith

**Appearances:** Mr Daniel Bolkunwicz instructed by Mr Corie Waller appeared on behalf of the Stewards.

Mr Ross Inglis appeared on behalf of Mr Andrew Henderson.

**Charges and particulars:** Charge One: AR 231(1)(b)(iv)

The Stewards charge you with breaching AR 231(1)(b)(iv) which reads as follows:

*AR 231(1) A person must not*

*…*

*(b) if the person is in charge of a horse - fail at any time:*

*…*

 *(iv) to provide proper and sufficient nutrition for the horse.*

Particulars

1. You are, and were at all relevant times, a stable employee registered with Racing Victoria.
2. On the 12th of March 2019, the horse *Chantilly Milly* was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.
3. Up to and including the 12th of March 2019, you were the person in charge of *Chantilly Milly* and had responsibility for its care.
4. *Chantilly Milly’s* body condition score on the 12th of March 2019 resulted from your failure to provide proper and sufficient nutrition in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iv).

Charge Two (Alternative to Charge One): AR 231(1)(b)(iii)

The Stewards charge you with breaching AR 231(1)(b)(iii) which reads as follows:

*AR 231(1) A person must not*

*…*

*(b) if the person is in charge of a horse - fail at any time:*

*(iii) to provide veterinary treatment to a horse where such treatment is necessary for the horse.*

Particulars

1. You are, and were at all relevant times, a stable employee registered with Racing Victoria.
2. On the 12th of March 2019, the horse *Chantilly Milly* was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.
3. Up to and including the 12th of March 2019, you were the person in charge of *Chantilly Milly* and had responsibility for its care.
4. *Chantilly Milly’s* body score on the 12th of March 2019 resulted from your failure to seek veterinary treatment for *Chantilly Milly* which was necessary to address the reason(s) for *Chantilly Milly’s* poor body condition, in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iii).

Charge Three: AR 231(1)(b)(iv)

The Stewards charge you with breaching AR 231(1)(b)(iv) which reads as follows:

*AR 231(1) A person must not*

*…*

*(b) if the person is in charge of a horse - fail at any time:*

*…*

 *(iv) to provide proper and sufficient nutrition for the horse.*

Particulars

1. You are, and were at all relevant times, a stable employee registered withRacing Victoria.
2. On the 12th of March 2019, the horse *Despict* was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.
3. Up to and including the 12th of March 2019, you were the person in charge of *Despict* and had responsibility for its care.
4. *Despict’s* body condition score on the 12th of March 2019 resulted from your failure to provide proper and sufficient nutrition in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iv).

Charge Four (Alternative to Charge Three): AR 231(1)(b)(iii)

The Stewards charge you with breaching AR 231(1)(b)(iii) which reads as follows:

*AR 231(1) A person must not*

*…*

*(b) if the person is in charge of a horse - fail at any time:*

*…*

*(iii) to provide veterinary treatment to a horse where such treatment is necessary for the horse.*

Particulars

1. You are, and were at all relevant times, a stable employee registered with Racing Victoria.
2. On the 12th of March 2019, the hors*e Despict* was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.
3. Up to and including the 12th of March 2019, you were the person in charge of *Despict* and had responsibility for its care.
4. *Despict’s* body score on the 12th of March 2019 resulted from your failure to seek veterinary treatment for *Despict* which was necessary to address the reason(s) for *Despict’s* poor body condition in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iii).

Charge Five: AR 231(1)(b)(iv)

The Stewards charge you with breaching AR 231(1)(b)(iv) which reads as follows:

*AR 231(1) A person must not*

*…*

*(b) if the person is in charge of a horse - fail at any time:*

*…*

 *(iv) to provide proper and sufficient nutrition for the horse.*

Particulars

1. You are, and were at all relevant times, a stable employee registered with Racing Victoria.
2. On the 12th of March 2019, the horse *Gamelist* was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.
3. Up to and including the 12th of March 2019, you were the person in charge of *Gamelist* and had responsibility for its care.
4. *Gamelist’s* body condition score on the 12th of March 2019 resulted from your failure to provide proper and sufficient nutrition in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iv).

Charge Six (Alternative to Charge Five): AR 231(1)(b)(iii)

The Stewards charge you with breaching AR 231(1)(b)(iii) which reads as follows:

*AR 231(1) A person must not*

*…*

*(b) if the person is in charge of a horse - fail at any time:*

*…*

*(iii) to provide veterinary treatment to a horse where such treatment is necessary for the horse.*

Particulars

1. You are, and were at all relevant times, a stable employee registered with Racing Victoria.
2. On the 12th of March 2019, the horse *Gamelist* was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.
3. Up to and including the 12th of March 2019, you were the person in charge of *Gamelist* and had responsibility for its care.
4. *Gamelist’s* body score on the 12th of March 2019 resulted from your failure to seek veterinary treatment for *Gamelist*, which was necessary to address the reason(s) for *Gamelist’s* poor body condition, in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iii).

Charge Seven: AR 231(1)(b)(iv)

The Stewards charge you with breaching AR 231(1)(b)(iv) which reads as follows:

*AR 231(1) A person must not*

*…*

*(b) if the person is in charge of a horse - fail at any time:*

*…*

 *(iv) to provide proper and sufficient nutrition for the horse.*

Particulars

1. You are, and were at all relevant times, a stable employee registered with Racing Victoria.

1. On the 12th of March 2019, the horse *La Tinkwha* was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.
2. Up to and including the 12th of March 2019, you were the person in charge of *La Tinkwha* and had responsibility for its care.
3. *La Tinkwha’s* body condition score on the 12th of March 2019 resulted from your failure to provide proper and sufficient nutrition in the period you were responsible for its care.
4. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iv).

Charge Eight (Alternative to Charge Seven): AR 231(1)(b)(iii)

The Stewards charge you with breaching AR 231(1)(b)(iii) which reads as follows:

*AR 231(1) A person must not*

*…*

*(b) if the person is in charge of a horse - fail at any time:*

*…*

*(iii) to provide veterinary treatment to a horse where such treatment is necessary for the horse.*

Particulars

1. You are, and were at all relevant times, a stable employee registered with Racing Victoria.
2. On the 12th of March 2019, the horse *La Tinkwha* was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.
3. Up to and including the 12th of March 2019, you were the person in charge of *La Tinkwha* and had responsibility for its care.
4. *La Tinkwha’s* body score on the 12th of March 2019 resulted from your failure to seek veterinary treatment for *La Tinkwha* which was necessary to address the reason(s) for *La Tinkwha’s* poor body condition in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iii).

Charge Nine: AR 231(1)(b)(iv)

The Stewards charge you with breaching AR 231(1)(b)(iv) which reads as follows:

*AR 231(1) A person must not*

*…*

*(b) if the person is in charge of a horse - fail at any time:*

*…*

 *(iv) to provide proper and sufficient nutrition for the horse.*

Particulars

1. You are, and were at all relevant times, a stable employee registered with Racing Victoria.
2. On the 12th of March 2019, the horse *Of The Field* was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.
3. Up to and including the 12th of March 2019, you were the person in charge of *Of The Field* and had responsibility for its care.
4. *Of The Field’s* body condition score on the 12th of March 2019 resulted from your failure to provide proper and sufficient nutrition in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iv).

Charge Ten (Alternative to Charge Nine): AR 231(1)(b)(iii)

The Stewards charge you with breaching AR 231(1)(b)(iii) which reads as follows:

*AR 231(1) A person must not*

*…*

*(b) if the person is in charge of a horse - fail at any time:*

*…*

*(iii) to provide veterinary treatment to a horse where such treatment is necessary for the horse.*

Particulars

1. You are, and were at all relevant times, a stable employee registered with Racing Victoria.
2. On the 12th of March 2019, the horse *Of The Field* was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.
3. Up to and including the 12th of March 2019, you were the person in charge of *Of The Field* and had responsibility for its care.
4. *Of The Field’s* body score on the 12th of March 2019 resulted from your failure to seek veterinary treatment for *Of The Field*, which was necessary to address the reason(s) for *Of The Field’s* poor body condition, in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iii).

Charge Eleven: AR 231(1)(b)(iv)

The Stewards charge you with breaching AR 231(1)(b)(iv) which reads as follows:

*AR 231(1) A person must not*

*…*

*(b) if the person is in charge of a horse - fail at any time:*

*…*

 *(iv) to provide proper and sufficient nutrition for the horse.*

Particulars

1. You are, and were at all relevant times, a stable employee registered with Racing Victoria.
2. On the 12th of March 2019, the horse *Seductive Girl* was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.
3. Up to and including the 12th of March 2019, you were the person in charge of *Seductive Girl* and had responsibility for its care.
4. *Seductive Girl’s* body condition score on the 12th of March 2019 resulted from your failure to provide proper and sufficient nutrition in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iv).

Charge Twelve (Alternative to Charge Eleven): AR 231(1)(b)(iii)

The Stewards charge you with breaching AR 231(1)(b)(iii) which reads as follows:

*AR 231(1) A person must not*

*…*

*(b) if the person is in charge of a horse - fail at any time:*

*…*

*(iii) to provide veterinary treatment to a horse where such treatment is necessary for the horse.*

Particulars

1. You are, and were at all relevant times, a stable employee registered with Racing Victoria.
2. On the 12th of March 2019, the horse *Seductive Girl* was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.
3. Up to and including the 12th of March 2019, you were the person in charge of *Seductive Girl* and had responsibility for its care.
4. *Seductive Girl’s* body score on the 12th of March 2019 resulted from your failure to seek veterinary treatment for *Seductive Girl*, which was necessary to address the reason(s) for *Seductive Girl’s* poor body condition, in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iii).

Charge Thirteen: AR 231(1)(b)(iv)

The Stewards charge you with breaching AR 231(1)(b)(iv) which reads as follows:

*AR 231(1) A person must not*

*…*

*(b) if the person is in charge of a horse - fail at any time:*

*…*

 *(iv) to provide proper and sufficient nutrition for the horse.*

Particulars

1. You are, and were at all relevant times, a stable employee registered with Racing Victoria.
2. On the 12th of March 2019, the horse *Tomi’s Girl* was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.
3. Up to and including the 12th of March 2019, you were the person in charge of *Tomi’s Girl* and had responsibility for its care.
4. *Tomi’s Girl’s* body condition score on the 12th of March 2019 resulted from your failure to provide proper and sufficient nutrition in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iv).

Charge Fourteen (Alternative to Charge Thirteen): AR 231(1)(b)(iii)

The Stewards charge you with breaching AR 231(1)(b)(iii) which reads as follows:

*AR 231(1) A person must not*

*…*

*(b) if the person is in charge of a horse - fail at any time:*

*…*

*(iii) to provide veterinary treatment to a horse where such treatment is necessary for the horse.*

1. You are, and were at all relevant times, a stable employee registered with Racing Victoria.
2. On the 12th of March 2019, the horse *Tomi’s Girl* was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.
3. Up to and including the 12th of March 2019, you were the person in charge of *Tomi’s Girl* and had responsibility for its care.
4. *Tomi’s Girl’*s body score on the 12th of March 2019 resulted from your failure to seek veterinary treatment for *Tomi’s Girl*, which was necessary to address the reason(s) for *Tomi’s Girl*’s poor body condition, in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iii).

**Plea:** Guilty

**DECISION**

Mr Andrew Henderson, in essence you have pleaded “Guilty” to 7 breaches of AR 231(1)(b)(iv) in that you failed to provide proper and sufficient nutrition for 7 horses which you owned and which were located on a property owned by your mother. We will not go into the details of each charge. Suffice to say that the 7 horses were underfed and had body scores of 2 or less. Photographs taken of the horses were placed before us and they certainly show underfed horses with low body scores.

Mr Inglis, on your behalf, put various matters before us concerning your life and the background to these charges and these matters were essentially uncontradicted. You are aged 34, you are single and live at home with your parents near Ballarat. You have always worked with horses from the age of 16 and for a period of 8 years you drove the Cobb & Co coach at Sovereign Hill, Ballarat. You then became a licensed stablehand and trackwork rider and have done that ever since, particularly for some of the older trainers near Ballarat with small teams of horses. You have no other income. You have no prior convictions of any kind – you have an unblemished record.

It was put, and not challenged, that you acquired these horses and a few other when they had reached the end of their racing careers. Some were at risk of finding no home and being put down or auctioned off. You took on more than you could handle. To your credit, none of these horses, including those that were underfed, needed to be euthanised. None developed foot problems or the like. A drought occurred, and you simply were unable to cope. The condition of some of the horses dropped away. You now have no horses.

Excellent references from a very large number of people, and particularly Ballarat racing identities, have been put before us. You have been described as patient and caring in relation to horse welfare. You have been described as being focused on animal welfare. You have extensive knowledge of horse care and, in relation to these particular events, you were attempting to save horses that had no value and no prospects. We could go on and on in relation to the references. You have excellent references from more than 30 racing people and a report from a psychologist. The references are glowing in their praise of you and your attitude to horses.

We accept them. We accept, to use the vernacular, with the very best of intentions “you bit off more than you could chew”. Trying to save horses in a drought, whilst also working for various trainers, was a bridge too far.

We also take into account your guilty plea, your apology, your remorse and your full cooperation with the Stewards from the outset. Whilst there are some similarities with the matter of Fletcher [13 July 2016] to which we were referred, there are also some differences. Indeed, in relation to penalty, the Stewards drew some distinction between the penalty proposed in this case and what occurred in Fletcher.

We are also highly conscious of the image of racing and the need for both specific and, particularly, general deterrence. To put it mildly, the welfare of horses and its public perception are very important matters.

Weighing all these matters up, and particularly bearing in mind that there is no real challenge to the proposition that you started taking these horses with the best of intentions, we have come to the conclusion that the nature of the penalties suggested by Mr Inglis on your behalf are appropriate. However, we shall extend the periods suggested.

We are not of the view that you should be deprived of your only income immediately. In the very individual, almost unique, circumstances of this case, we do not favour immediate suspension or disqualification in relation to your licence.

However, we are of the view that you should be disqualified from owning thoroughbred racehorses or having horses on your property or on the family property, for a period of 18 months.

We are further of the opinion that your licence as a stable employee should be suspended for 12 months, but that period of suspension should be suspended for a period of 2 years. If you commit any relevant offences during that time, the period of 12 months suspension will be activated.

Mark Howard
Registrar, Victorian Racing Tribunal