22 December 2021

**RULING**

**RACING VICTORIA**

**and**

**BRYCE STANAWAY**

**Date of hearing:** 14 December 2021

**Panel:** Judge John Bowman (Chairperson), Justice Shane Marshall (Deputy Chairperson) and Mr Des Gleeson.

**Appearances:** Mr Justin Hooper, instructed by Mr Daniel Bolkunowicz, appeared on behalf of the Stewards.

**Charges:** Australian Rule of Racing (“AR”) 228(a) states:

A person must not engage in:

(a) conduct prejudicial to the image, interests, integrity, or welfare of racing, whether or not that conduct takes place within a racecourse or elsewhere.

AR 228(c) states:

A person must not engage in:

(c) improper or insulting behaviour at any time towards a PRA, the Stewards, a Club, or any official, employee, contractor or agent of any of them in relation to the relevant person’s functions, powers or duties.

Local Racing Rule (“LR”) 94A(a)(i) and 94A(a)(ii) states:

A person must not, at any time or for any purpose:

a. engage in any form of intimidation or abusive conduct (either physical, verbal or

otherwise), in any way related to racing, of:

i. any Steward, Official, or employee or officer of Racing Victoria.

ii. any person representing Racing Victoria and/or its employees or officers.

LR 94B(a) states:

A person must not:

(a) make any express, implied, conditional or unconditional threat (whether physical, verbal or otherwise), in any way related to racing, toward:

i. any Steward, Official, or employee or officer of Racing Victoria;

ii. any person representing Racing Victoria and/or its employees or officers.

AR 231(1)(b)(iii) states:

(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 the horse where such treatment is necessary for the horse.

AR 232(b) states:

A person must not:

(b) fail or refuse to comply with an order, direction or requirement of the Stewards or an official.

AR 232(c)(ii) states:

A person must not:

(c) while the Stewards are exercising their powers, performing their functions or carrying out their duties:

(ii) obstruct, hinder or delay the Stewards in exercising their powers, performing their functions or carrying out their duties

**Particulars of charges: Charge 1: AR 228(a)**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.
2. On Saturday 17 October 2020, a horse trained by you, Moorabool, ran in Race 8 at Bendigo. Moorabool was eased out of the race in the home straight by its jockey. The jockey then dismounted, and Moorabool was attended to by Barrier Attendants and Racing Victoria Veterinarian Dr Chris Heislers.
3. As Moorabool was being attended to, you ran onto the Bendigo racetrack in the direction of the horse, yelling and/or screaming at those attending to the horse to stop doing so and/or that there was nothing wrong with the horse.
4. Your conduct as outlined in particular 3 was prejudicial to the image, interests and/or welfare of racing.

**Charge 2: AR 228(c)**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.
2. On Saturday 17 October 2020, a horse trained by you, Moorabool, ran in Race 8 at Bendigo. Moorabool was eased out of the race in the home straight by its jockey. The jockey then dismounted, and Moorabool was attended to by Barrier Attendants and Racing Victoria Raceday Veterinarian, Dr Chris Heislers.
3. Dr Heislers is an official, employee and/or contractor of Racing Victoria.
4. Dr Heislers sought to apply emergency care to Moorabool, which he considered necessary to address its acute issues.
5. You refused to allow Dr Heislers to undertake emergency care to Moorabool on the racetrack and/or otherwise sought to reverse care undertaken by Dr Heislers when the horse was transferred back to its stall.
6. Your conduct as outlined in particular 5 constituted improper and/or insulting behaviour towards an official, employee and/or contractor of Racing Victoria in relation to that person’s functions and duties as a Race day Veterinarian.

**Charge 3: LR 94A(a)(i)**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.
2. On 20 October 2020, Racing Victoria Stewards James Hitchcock and Raymond Livingstone, and Racing Victoria General Manager of Veterinary Services Dr Grace Forbes (the RV Officials) attended your licensed premises at 595 Blackgate Road, Torquay, Victoria.
3. The purpose for the RV Official’s attendance was to inspect Moorabool, a horse trained by you that had been eased out of Race 8 at Bendigo on 17 October 2020.
4. While the RV Officials were endeavouring to inspect Moorabool, you engaged in intimidating and/or abusive verbal conduct towards them.

**Charge 4: LR 94A(a)(i) and/or 94A(a)(ii)**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.
2. On Saturday 17 October 2020, a horse trained by you, Moorabool, ran in Race 8 at Bendigo. Moorabool was eased out of the race in the home straight by its jockey. The jockey then dismounted, and Moorabool was attended to by Barrier Attendants and Racing Victoria Race day Veterinarian, Dr Chris Heislers (the First Responders).
3. The First Responders are officials of Racing Victoria, and/or employees of Racing Victoria, and/or persons representing Racing Victoria.
4. As the First Responders were seeking to assist Moorabool on the track and/or when the horse returned to its stall, you engaged in abusive verbal conduct towards at least two of them.

**Charge 5: LR 94B(a)**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.
2. On Saturday 17 October 2020, a horse trained by you, Moorabool, ran in Race 8 at Bendigo. Moorabool was eased out of the race in the home straight by its jockey. The jockey then dismounted, and Moorabool was attended to by Barrier Attendants and Racing Victoria Race day Veterinarian, Dr Chris Heislers.
3. Dr Heislers is an official of Racing Victoria, and/or an employee of Racing Victoria, and/or a person representing Racing Victoria.
4. While Dr Heislers was attending to Moorabool, you made a threatening remark to him along the lines of threatening to shoot him and/or put him down.

**Charge 6: AR 231(1)(b)(iii)**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.
2. On Saturday 17 October 2020, a horse trained by you, Moorabool, ran in Race 8 at Bendigo. Moorabool was eased out of the race in the home straight by its jockey. The jockey then dismounted, and Moorabool was attended to by Barrier Attendants and Racing Victoria Race day Veterinarian, Dr Chris Heislers.
3. Dr Heislers advised you that Moorabool required urgent veterinary treatment.
4. From the running of race 8 at Bendigo on 17 October 2020 to at least 9:25am on 20 October 2020, you failed to provide veterinary treatment to Moorabool despite Dr Heisler’s advice that the horse required urgent veterinary treatment.

**Charge 7: AR 232(b)**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.
2. On 20 October 2020, Chairman of Stewards Robert Cram directed you to provide by 5pm, 21 October 2020, a Veterinary Report regarding the injury sustained by Moorabool when it ran in Race 8 at Bendigo on 17 October 2020.
3. On 22 October 2020, Mr Cram extended the deadline by which you needed to provide that report to 10am, 23 October 2020.
4. As at 10am, 26 October 2020, you failed to provide the requested Veterinary Report to the Stewards.

**Charge 8: AR 232(c)(ii):**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.
2. On 20 October 2020, Racing Victoria Stewards James Hitchcock and Ray Livingstone (as well as Racing Victoria General Manager of Veterinary Services Dr Grace Forbes(pursuant to AR 22(2)) attended your licensed premises at 595 Blackgate Road, Torquay, Victoria to inspect a horse trained by you, Moorabool.
3. While the Stewards were seeking to carry out their duties to inspect Moorabool, you obstructed and/or hindered them from doing so, by requesting that they and Dr Forbes leave your licensed premises and/or refusing them access to inspect the horse.

**Pleas:** Not guilty to all charges.

Charge 7 withdrawn by the Stewards.

**DECISION**

1. On 14 August 2021, the Tribunal published its decision in this matter dealing with seven charges laid against Mr Stanaway by Stewards of Racing Victoria. Five of the charges concerned conduct by Mr Stanaway either directed at race day officials and/or relating to the welfare of a horse trained by him. All charges were found proven. Since that time, the Tribunal has been attempting to schedule a hearing to hear submissions about appropriate penalties for the conduct referred to in the charges. A penalty hearing was set down for 9 September 2021. A directions hearing dealing with the matter was held on 7 September 2021, but Mr Stanaway failed or refused to attend. The Tribunal adjourned the penalty hearing to 10 November 2021. Due to a change of solicitor by Mr Stanaway, the hearing was adjourned to 14 December 2021 and an order was made for Mr Stanaway to produce written submissions by 6 December 2021 in response to written submissions supplied by the Stewards after the 7 September 2021 directions hearing.
2. No written submissions as directed have been filed by Mr Stanaway or any legal representative of his. Shortly before 14 December 2021, Mr Stanaway advised of another change of legal representative and informed the Registrar that his new counsel was unavailable on that date. The matter proceeded on that day by way of a directions hearing held to consider the adjournment request. The adjournment was granted in the absence of any appearance on behalf of Mr Stanaway, as the Tribunal considered that it would be assisted by his having competent legal advice and representation. The penalty hearing was adjourned to 3 February 2022 to suit the convenience of counsel. This was on the basis that no other adjournment would be granted, save in exceptional circumstances.
3. At the directions hearing on 14 December 2021, Mr Hooper, counsel for the Stewards, sought an interim order under Section 50Q(1)(g) of the *Racing Act 1958* in order to prevent Mr Stanaway from entering horses in events pending determination of the penalty hearing. No doubt they were frustrated by constant delays and by Mr Stanaway’s unhelpful commentary on racing websites in which he sought to justify his conduct the subject of the charges. The Tribunal decided to deal with the application on the papers.
4. Mr Hooper referred to the seriousness of the charges, including the threats to kill a veterinarian and bullying and intimidating conduct directed at race day staff. He referred to Mr Stanaway’s online criticism of racing officials. He also referred to the damage done to the industry’s good name by permitting egregious conduct to remain unpunished for months while the racing participant involved continued to train. A further consideration was the feelings of affected race day officials concerning about safety at work.
5. The application was opposed by Counsel for Mr Stanaway, Ms Nelson QC. She referred to apologies given by Mr Stanaway to the race day staff involved in the incidents the subject of the charges. She also said she that she had instructions from Mr Stanaway that:

1. he will at all times behave respectfully and appropriately towards any racing officials and;

2. he will desist from making any public comment or remarks before the Tribunal hearing.

1. Ms Nelson also referred to the fact that the matters the subject of the charges involve one day in the life of a trainer who has been in the industry for many years.
2. If we were to make an interim order, for practical purposes it would only have effect for some five weeks initially in the context of an incident that occurred in October 2020 and which was the subject of findings on 10 August 2020. There is no suggestion that Mr Stanaway has engaged in similar conduct other than his inappropriate outbursts on racing websites seeking to justify his conduct.
3. Not without some reluctance, we have decided to accept the undertakings of Mr Stanaway to behave appropriately pending the hearing and determination of the question of appropriate penalties. We refuse the Stewards request for an interim order. The hearing will proceed on 3 February 2022 and the Tribunal will use its best endeavours to give a decision on the question of penalty as soon as reasonably practicable. Had the penalty hearing been further away than early February we may have been less resistant to an interim order.

1. We remind Mr Stanaway and Ms Nelson that Mr Stanaway is currently non-compliant with an order to file and serve written submissions in response to those filed and served by the Stewards on penalty. This should be remedied as soon as possible and by no later than 17 January 2022.
2. In rejecting the application for an interim order stopping Mr Stanaway from nominating horses for events, we accept the submission of Ms Nelson that it would be pointless Mr Stanaway attending training when suspended if he is unable to enter horses to race. Further a period of interim suspension without the benefit of full submissions and if necessary, evidence, is far less preferable to the Tribunal considering in totality all submissions regarding penalties in one sitting held within about 5 weeks.
3. For the above reasons we reject the application for an interim order but we note that we would consider any new application of that sort in the event that Mr Stanaway breaches any of the undertakings referred to above.

Mark Howard

Registrar, Victorian Racing Tribunal