1 December 2021

**DECISION**

**RACING VICTORIA**

**and**

**DANNY O’BRIEN**

 **Date of hearing:** 23 November 2021

**Panel:** Judge John Bowman (Chairperson).

**Appearances:** Mr Daniel Bolkunowicz appeared on behalf of the Stewards.

Mr Damien Sheales represented Mr Danny O’Brien.

**Charge:** Australian Rule of Racing (“AR”) 240(2) states:

(2) Subject to subrule (3), if a horse is brought to a racecourse for the purpose of participating in a race and a prohibited substance on Prohibited List A and/or Prohibited List B is detected in a sample taken from the horse prior to or following its running in any race, the trainer and any other person who was in charge of the horse at any relevant time breaches these Australian Rules.

**Particulars of charge:** 1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.

2. You were at all relevant times, the trainer of “Coin Collector” (the Horse).

3. On 13 March 2021, the Horse was brought to Moonee Valley Racecourse and ran in the Ladbroke IT Grand Handicap Classic over 2500 metres (the Race).

4. On 13 March 2021, prior to the running of the Race, a blood sample was taken from the Horse (the Sample).

5. An analysis of the Sample detected the presence of Phenylbutazone and its metabolite, Oxyphenbutazone.

6. Phenylbutazone and/or Oxyphenbutazone are considered prohibited substances pursuant to Division 1 of Part 2 of Schedule 1 (Prohibited list B) of the Australian Rules of Racing.

**Plea:** Guilty

**DECISION**

Mr Danny O’Brien has pleaded guilty to a breach of Australian Rule of Racing (“AR”) 240(2). The charge relates to a pre-race swab taken from “Coin Collector”, which ran at Moonee Valley in the Ladbroke IT Grand Handicap Classic on 13 March 2021. The swab proved positive to phenylbutazone and its metabolite, oxyphenbutazone, which I shall refer to this as “Bute”. There is no challenge to the swab taking procedure or to the subsequent analysis and its results.

Mr Damien Sheales, who appeared for Mr O’Brien, described in some detail the various supervisory and surveillance measures taken by him in relation to the operation of his various stables, which effectively number three, and of his staff of approximately 76. He has some 130 horses in work. There are even more improvements and surveillance measures in the course of installation.

The Stewards accept that this is simply a case of a staff member giving Bute to the wrong horse. However, Mr O’Brien is responsible for errors made by his staff and, in pleading guilty, has very properly accepted that responsibility.

As has been said time and time again in relation to matters of this nature, the integrity of racing is all important. The concepts of a level playing field and an industry free of illicit medications are vital to the wellbeing of racing. They are directly related to the public perception of an industry that is fair and run honestly.

Specific deterrence does not seem to me to have particular application. There is one prior offence relating to cobalt. I accept that the circumstances were quite different and that wilful interference by a third party occurred. Nevertheless, despite Mr Sheales’ argument, I am of the view that it should be regarded as a prior offence, albeit one that occurred in a different and less culpable situation. Mr O’Brien was effectively fined $2,000 in respect of each of four horses.

Bearing all of the above in mind, I am of the opinion that a fine of $5,000 is appropriate. Further, Coin Collector is disqualified from the Ladbroke IT Grand Handicap Classic on 13 March 2021 and the finished order is amended accordingly.

Mark Howard
Registrar, Victorian Racing Tribunal