22 May 2023

**DECISION**

**RACING VICTORIA**

**and**

**DARRYL HORNER (JNR)**

**Date of hearing:** 18 May 2023

**Panel:** Judge John Bowman (Chairperson) and Dr June Smith.

**Appearances:** Mr Marwan El-Asmar appeared on behalf of the Stewards.

Mr Matthew Hyland represented Mr Darryl Horner (Jnr).

**Charge and particulars:**

**AR 228(b) – Conduct detrimental to the interests of racing**

AR 228(b) reads as follows:

AR 228 A person must not engage in:

…

(b) misconduct, improper conduct or unseemly behaviour

…

**Particulars**

1. You are, and were at all relevant times, a trainer/jockey registered with Racing Victoria.
2. On 3 December 2020, at 39 Bluff Road, Bass, Victoria, 3991, being the licensed premises of trainer Eric Musgrove, you approached licensed trainer Andrew Homann, who was attending to a horse at the time, where you pushed him against the wall and proceeded to strike him twice with a clenched fist to the head.
3. Your conduct, as set out in particular 2 above, was misconduct and or improper conduct, and in contravention of AR 228(b).

**Plea:** Guilty

**DECISION**

Mr Darryl Horner Jnr, you have pleaded guilty to a breach of AR 228(b). In essence, that Rule involves misconduct, improper conduct or unseemly behaviour.

The charge arises out of an incident on 3 December 2020 and is related to the charge brought against Ms Jackie Beriman, which matter was heard by this Tribunal yesterday. The case has taken a long time to get on because the Victorian Police became involved and a court hearing, along with a diversion programme, ensued. No conviction as such was recorded. We would add that the fact that the legal process took some time is in no way a criticism of the police or the legal procedures involved.

The incident of 3 December 2020 concerned an assault by you on Mr Andrew Homann, a licensed trainer.

The assault took place at the stables operated by Mr Eric Musgrove. As stated, it was related to and occurred at approximately the same time as the incident involving Ms Beriman.

At the time that you assaulted Mr Homann, he was attending to a horse. You pushed him against a wall and struck him twice to the head with a clenched fist.

You have since showed considerable remorse. You pleaded guilty to the charge at a very early stage and admitted guilt to the police. The court ordered that you take part in a diversion programme. You complied with this order, undertaking a 12 week course. This cost you $1,200. There is no suggestion but that you undertook it fully.

You are 30 years of age and have been a licensed jockey. You are still so licensed, but have commenced in a new area of employment. You are in your first year as an apprentice carpenter, a course which will take four years. You have not been engaged in racing work, but you are still licensed. Whether you will renew your jockey’s licence at the end of this racing year is something concerning which you are not certain. You may apply for a renewal so that you still possess a licence should your apprenticeship not work out, but you are fully enjoying it at the moment.

This change of occupation to that of an apprentice carpenter has resulted in a substantial drop in income. As we understand it, you now receive approximately $800 gross per week, although this will increase to $900 at some future date.

You are a divorced man and you pay $200 per week for child assistance. You are also paying $200 per week rent and $80 per week for your car. By the time living expenses are met, obviously there is very little left.

Matters of general and specific deterrence must be considered. We accept that specific deterrence may not have a large role to play in your case, but general deterrence is an important factor. The risks associated with blows to the head are well known. Such behaviour is not acceptable and as stated, general deterrence has a big role to play. We take into account that you have undertaken the action required by the Magistrates Court and by the Police.

We also accept that you do not have any relevant prior offence, that you are of good character and that you are truly remorseful.

In all the circumstances, we have arrived at the following penalty. You are fined the sum of $1,500, but of that penalty the sum of $500 is suspended for a period of 24 months. Should you offend again in relation to this Rule during that period, that amount of $500 will become payable. The sum of $1,000 is payable immediately, but as Mr El-Asmar has indicated, arrangements may well be able to be made in that regard. That is not a matter for us today, but is one that can be discussed by the parties.

Mark Howard
Registrar, Victorian Racing Tribunal