11 December 2020

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**DYLAN SCHEMBRI and MATTHEW TALTY**

**Date of hearing:** 18 November 2020

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

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

Mr Dylan Schembri and Mr Matthew Talty represented themselves.

**Charges:** Australian Harness Racing Rule (AHRR) 238 states a person shall not fail to comply with any order, directions or requirement of the Controlling Body or Stewards relating to harness racing or to the harness racing industry.

 Australian Harness Racing Rule (AHRR) 245 A person shall not direct, persuade, encourage or assist anyone to breach these rules or otherwise engage in an improper practice.

**Particulars of charges: Charge 1 – Matthew Talty AHRR 238**

1. On 5 April 2020, due to the Covid-19 pandemic, HRV Stewards published a direction to industry participants which stated the following: “HRV stewards direct all industry participants and stakeholders to abide by the following requirements which must be adhered to at all Victorian race meetings and trials:

 • Only licensed Trainers, Drivers and Stablehands may attend a race meeting or trial and only where they have a horse engaged, a driving engagement or are assisting a Trainer with a horse engaged in a race meeting or trial”

2. On 19 May 2020, you attended Kilmore Racing Club (KRC) trial meeting with Dylan Schembri in a vehicle towing a horse float.

3. At the relevant time, you were unlicensed.

4. After you were refused entry to the Kilmore racecourse by KRC staff due to being unlicensed, Mr Schembri and yourself drove the vehicle out of sight of the KRC staff so that you could hide within the horse float.

5. Mr Schembri and yourself returned the to the KRC trial meeting where you gained entry to racecourse by hiding within the horse float. 6. On 19 May 2020, by entering the KRC trial meeting when unlicensed, you have failed to comply with a direction of the HRV Stewards.

**Charge 1 – Dylan Schembri AHRR 245**

1. On 5 April 2020, as a result of the Covid-19 pandemic, HRV Stewards published a direction to industry participants which stated the following: “HRV stewards direct all industry participants and stakeholders to abide by the following requirements which must be adhered to at all Victorian race meetings and trials:

 • Only licensed Trainers, Drivers and Stablehands may attend a race meeting or trial and only where they have a horse engaged, a driving engagement or are assisting a Trainer with a horse engaged in a race meeting or trial”

2. On 19 May 2020, you attended Kilmore Racing Club (KRC) trial meeting with unlicensed person Matthew Talty, driving a vehicle towing a horse float.

3. After Mr Talty was refused entry to the Kilmore racecourse by KRC staff due to being unlicensed, you drove the vehicle out of sight of the KRC staff so that Mr Talty could hide within the horse float.

4. You returned the to the KRC trial meeting and you were granted entry to the racecourse by KRC staff who were unaware that Mr Talty was hiding in the horse float.

5. On 19 May 2020, by entering the KRC trial meeting driving a vehicle towing a horse float with Mr Talty hidden inside, you have encouraged and/or assisted Mr Talty in breaching AHRR 238 for failing to comply with an HRV Stewards direction.

**Pleas:** Guilty

**DECISION**

For more than one reason, this is a very unusual case. We shall explain that further in the course of this decision. Because of the facts involved, these cases were heard together.

Mr Dylan Schembri is charged with a breach of AHRR 245. Mr Matthew Talty is charged with a breach of AHRR 238. The charges arise out of the same factual scenario. Each has pleaded guilty, but there are further complexities in the case of Mr Talty. A potential question of law and jurisdiction has arisen and this will require an ultimate Ruling by the Chairperson, with the assistance of Dr Smith. It is similar, but not identical, to the reserved Ruling in HRV Stewards v Kevin Trickey, in which written submissions are being provided. In all the circumstances, we decided to proceed with the question of appropriate penalties, but, in the case of Mr Talty, indicate what we believe to be an appropriate penalty if the jurisdictional point raised in the case of Kevin Trickey is found not to operate in his case. Both Mr Schembri and Mr Talty are young men who represented themselves. Neither has legal training. Mr Schembri, aged 18, is a registered stablehand. Mr Talty, aged 23, is a concreter, who helps out around stables and is in the process of seeking registration as a stablehand. Doubtless the possible jurisdictional problems in Mr Talty’s case meant very little to them, but we thought it best be proceed in this fashion.

Mr Cusumano, on behalf of the Stewards, agreed. It seems a sensible solution. We shall hand down the penalty in Mr Schembri’s case and indicate our view as in relation to Mr Talty’s case, subject to the decision regarding the jurisdictional issue raised in the case of Trickey.

The charge against each concerns the COVID-19 protocols of HRV which came into operation on 5 April 2020. Strict controls were put in place concerning entry to HRV tracks, whether for race meetings or trials. Entry was and is very tightly regulated.

On 19 May 2020 there were trials at the Kilmore track. Mr Schembri was to convey a horse or horses to the trials. Mr Talty, an unlicensed person, decided to help him out when another person had a family health problem. The two went to the Kilmore track in a car driven by Mr Schembri and towing a horse float. At the gate at Kilmore, Mr Talty was denied entry. They then drove away out of sight and Mr Talty hid himself in the horse float. Mr Schembri drove back, towing the float containing Mr Talty, and was granted entry. Thus, Mr Talty was conveyed into the grounds of the track. What had occurred was discussed subsequently. Each has admitted what had happened and has been fully co-operative. We accept that greater responsibility rests with Mr Schembri.

As submitted by Mr Cusumano, the COVID-19 protocols have been of great importance to the industry and to all those involved in it. Apart from their personal health and well-being, those in the industry are dependent upon compliance with the protocols for its very operation over this lengthy period. Without compliance with the protocols, it would have had to shut down.

The Stewards, via Mr Cusumano, have sought financial penalties. We agree that, for offences of this nature and in these circumstances, they are appropriate. That is assuming, for the moment, that there is jurisdiction in the case of Mr Talty.

Mr Schembri is, as stated, aged 18 years. He has no dependants. He is on a modest wage of $650 per week and has no outgoings, save for car payments. There are no relevant prior offences of such a nature. We take into account his co-operation and guilty plea. This is a serious matter. In our view, the appropriate fine is $2,000.

Mr Talty is aged 23 years. He has a partner and an 18 month old child. As stated, he works as a concretor on a full-time basis. He pays rent for the house in which he lives with his family. His earnings are considerably in excess of these of Mr Schembri. As did the Stewards, we consider his role in what occurred less culpable than that of Mr Schembri, but still serious. We note his co-operation throughout.

If jurisdiction exists, and pending the Ruling in Trickey, we would consider that the appropriate penalty is a fine of $1,500. When the Ruling in Trickey is handed down, we shall make final orders one way or the other.

Mark Howard
Registrar, Victorian Racing Tribunal