2 March 2022

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**GARY DONALDSON**

**Date of hearing:** 18 February 2022

**Panel:** Magistrate John Doherty (Chairperson) and Dr June Smith.

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

Mr Damian Sheales represented Mr Gary Donaldson.

Mr Lance Justice provided character evidence.

**Charges and Particulars:**

**Charge No. 1.**

Australian Harness Racing Rule 190 (1) which reads as follows:

*A horse shall be presented for a race free of prohibited substances.*

**The particulars of the charge being:**

1. At all relevant times, you were a licensed trainer and driver with HRV and a person bound by the Australian Harness Racing Rules
2. At the relevant time you were the trainer of ‘Liberland’;
3. On 17 September 2020, the horse ‘Liberland’ was presented to race at the Horsham harness racing meeting in Race 3, the ‘Darryl Edwards H&DHRC Committee Maiden Pace’;
4. Following Race 3, the ‘Darryl Edwards H&DHRC Committee Maiden Pace’, a urine sample was collected from ‘Liberland’ with subsequent analysis of that sample revealing a cobalt concentration in excess of the allowable threshold;
5. As the trainer of ‘Liberland’ on 17 September 2020, you presented that horse to race in the ‘Darryl Edwards H&DHRC Committee Maiden Pace’ at Horsham not free of cobalt, a prohibited substance when present at a concentration in excess of 100 micrograms per litre in urine.

**Charge No. 2.**

AHRR 190B which reads as follows:

*(1) A trainer shall at all times keep and maintain a log book:-*

 *(a) Listing all therapeutic substances in his or her possession;*

 *(b) Recording all details of treatment administered to any horse
 in his or her care and including as a minimum requirement:*

 *(i) the name of the horse*

 *(ii) the date of administration of treatment*

 *(iii) the name of the treatment (brand name of active constituent)*

 *(iv) the route of administration*

 *(v) the amount given*

 *(vi) the name and signature of the person or persons
 administering and/or authorising the treatment.*

**The particulars of the charge being:**

1. At all relevant times, you were a licensed trainer and driver with HRV and a person bound by the Australian Harness Racing Rules;
2. On 15 September 2020, you administered an oral paste labelled ‘Recovery Aid’ and an intravenous drip containing ‘Hartmann’s Solution’ to ‘Liberland’, being a horse in your care (**the Treatments**);
3. The Treatments were not recorded in your log book when inspected by the HRV Stewards on 27 October 2020;
4. You have failed to keep and maintain a log book as required.

**Charge No. 3.**

AHRR 194(c) which reads as follows:

*A person who:*

1. *Procures or attempts to procure;*
2. *Has in his possession or on his premises or under his control;*
3. *Administers or attempts to administer;*

*any substance or preparation that has not been registered, labelled, prescribed or obtained in compliance with relevant State and Commonwealth legislation is guilty of an offence.*

**The particulars of the charge being:**

1. At all relevant times, you were a licensed trainer and driver with HRV and a person bound by the Australian Harness Racing Rules;
2. On 27 October 2020 and 10 November 2020, during stable inspections at your training property, you made admissions to previously administering the substances or preparations “H.A Plus” and “Super-C” to horses in your care;
3. “H.A Plus” and “Super-C” are not registered in compliance with relevant State and Commonwealth legislation.

**Pleas:** Guilty to all charges

**DECISION**

On 17 September 2020, licensed A Grade trainer and owner Mr Gary Donaldson presented ‘Liberland’ to race at Horsham Harness Racing meeting in Race 3. It finished in first placing. A post-race urine sample was collected. Stewards allege that a subsequent analysis of both the primary and reserve samples was positive for cobalt above the allowable threshold, containing 112 µg/L and 120 µg/L.

Subsequently, Mr Donaldson has been charged with 3 offences. Charge 1 – An alleged breach of AHRR 190(1) – as the trainer of ‘Liberland’, he presented the horse to race when not free of cobalt, a prohibited substance when present at a concentration in excess of 100 micrograms per litre in urine.

To this Charge Mr Donaldson has pleaded guilty.

Charges 2 and 3 relate to stable inspections of Mr Donaldson racing establishment at Junortoun on 27 October 2020 and 10 November 2020. Charge 2 alleges that, on 15 September 2020, Mr Donaldson administered an oral paste labelled ‘Recovery Aid’ and an intravenous drip containing ‘Hartmann’s Solution’ to Liberland (the Treatments) and that those treatments were not recorded in his log book on 27 October 2020 (a breach of AHRR 190B).

To this charge, Mr Donaldson has pleaded guilty.

Charge 3 alleges a breach of AHRR 194(c) as follows. On 2 October 2020 and 10 November 2020, during stable inspections at his property, Mr Donaldson admitted to Stewards administration of the substances or preparations “H.A Plus” and “Super-C” to horses in his care. Those substances and preparations are not registered in compliance with relevant State and Commonwealth legislation.

To this charge, Mr Donaldson has pleaded guilty.

On 27 October 2020, Stewards attended Mr Donaldson’s racing establishment. Mr Donaldson was told of the result of the preliminary swab sample and a stable inspection followed. Mr Donaldson told Stewards that, on 13 September 2020, ‘Liberland’ was given injectable treatment of ‘V.A.M’, Dynaject and H.A Plus, which were recorded in the log book.

Mr Donaldson also stated that, after the race on 15 September 2020, he had administered an I.V drip containing ‘Hartmans Solution’ and an oral paste labelled ‘Recovery Aid’ to ‘Liberland’. These treatments were not recorded in the log book.

Mr Donaldson further stated that the H.A Plus and the Super C injectables found in a stable refrigerator were rarely administered to horses, having being presented by a veterinarian a number of years ago.

Following the stable inspection, Stewards took possession of syringes labelled ‘Recovery Aid’ and an intravenous infusion bag labelled “Hartmann’s Solution”. A subsequent analysis by RASL of the items revealed:

-Material within the syringes labelled “Recovery Aid” had a cobalt concentration of >0.1 mg/kg.

-Material within the intravenous infusion bag labelled “Hartmann’s Solution” had a cobalt concentration of >0.1 mg/kg.

On 10 November 2020, Mr Donaldson was further questioned by Stewards at his training property about his treatment regime for Liberland prior to its racing on 17 September 2020. Following, this inspection, Stewards took from the property for analysis by RASL the following:

-White bottled labelled ‘Ranvet Energy Plus’.

-Amber bottle labelled ‘H.A Plus’.

-Amber bottle labelled ‘Super C’.

RASL reported (On 14 November 2020) that the material in the Energy Plus had a cobalt concentration of 3.16 mg/L. The cobalt concentration for H.A Plus and Super C was >0.1 mg/L.

The reasons for Liberland having an elevated cobalt level in breach of the Rules is a mystery. According to Professor Mills, an expert witness on behalf of HRV, the reported treatment regime by Mr Donaldson would have been highly unlikely to be responsible.

In support of seeking a partial suspension of Mr Donaldson’s licence, HRV have relied upon past penalties in the matters of Graham, O’Brien, Mark and Lawrie Callick, Hellen and John Scott, Farrugia and Schembri.

Mr Donaldson has relied upon a penalty imposed upon David Reichstein in November 2021, when a $500 fine was imposed upon appeal to the ACT Racing Appeals Tribunal for a breach of the prohibited substance Rule after an initial period of 3 months disqualification had been imposed.

Mr Donaldson is aged 64 years. He was first licenced as a trainer/driver some 42 years ago. Apart from an arsenic offence in 2018, he has never been charged with a prohibited substance offence. He is a very well-respected businessman in regional Victoria. Testimonials in support from persons well connected in the Harness Racing Industry illustrate a person who is hard working, honest and a person of integrity. We also accept Mr Lance Justice’s oral evidence that Mr Donaldson, whose health has been compromised in recent times, has been genuinely distraught about these charges against him. We also note his pleas of guilty to the charges today.

The breach of a prohibited substance charge is serious and general deterrence is an important consideration in determining penalty. Specific deterrence does not have the same relevance in this case. We would be very surprised if Mr Donaldson would transgress these Rules again, given his longevity in the industry and the esteem in which he is held.

In relation to Charge 1, the presentation offence, we suspend Mr Donaldson’s training licence for four months, such period to be wholly suspended for 12 months pending no further breach of the prohibited substance Rule. In addition, Liberland is disqualified from the subject race on 17 September 2020. The finishing order is to be amended accordingly and any prize money is forfeited to HRV.

In relation to Charge 2, we impose a fine of $250.

In relation to Charge 3, we impose a fine of $500.

Mark Howard
Registrar, Victorian Racing Tribunal