18 September 2020

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**MR GREGORY BURNS & MR TYSON BURNS**

**Date of hearing:** 27 August 2020

**Panel:** Judge John Bowman (Chairperson) and Ms Judy Bourke.

**Appearances:** Mr Andrew Cusumano instructed by Ms Lucy Lingard-Smith appeared on behalf of the Stewards.

Mr Gregory Burns and Mr Tyson Burns represented themselves.

**Charges:** Australian Harness Racing Rule (AHRR) 217 states

 A person whether alone or in association with others shall not conceal or attempt to conceal the identity of a horse.

 AHRR 243 states

A person employed, engaged or participating in the harness racing industry shall not behave in a way which is prejudicial or detrimental to the industry.

**Particulars of charges: Charge 1 – Gregory Burns**

 1. On 30 August 2019, the licensed trainer Robert King made arrangements with you to have the injured gelding ‘Gerry Giraffe’ euthanized;

2. On 31 August 2019, your son Tyson Burns attended at a private property at Lewis Lane, Chepstowe where he euthanized ‘Gerry Giraffe’ by shooting the gelding twice in the head, before cutting the gelding’s throat;

3. At your direction Tyson Burns then removed the gelding’s brand, by removing the area of the gelding’s skin which contained the horses brand;

4. On Monday 2 September 2019, ‘Gerry Giraffe’ was located deceased at the property at Lewis Lane, Chepstowe Victoria;

5. By directing your son, Tyson Burns to remove the brand from ‘Gerry Giraffe’ you have attempted to conceal the identity of a horse.

**Charge 2 – Gregory Burns**

1. On 30 August 2019, the licensed trainer Robert King made arrangements with you to have the gelding ‘Gerry Giraffe’ euthanized as a result of the gelding suffering an injury;

2. On 31 August 2019, ‘Gerry Giraffe’ was taken from the registered training stables of Robert King and transported to a private property at Lewis Lane Chepstowe, where the gelding was euthanized;

3. Your son Tyson Burns euthanized ‘Gerry Giraffe’ and on your direction removed the horses brand from its neck;

4. On Monday 2 September 2019, ‘Gerry Giraffe’ was located deceased on the private property at Lewis Lane, Chepstowe Victoria;

5. As a person engaged in the harness racing industry, by arranging for the injured gelding ‘Gerry Giraffe’ to be euthanized on private property without the permission of the owner of that property and by instructing your son Tyson Burns to remove the gelding’s brand you have behaved in a manner that is detrimental to the industry.

**Charge 1 – Tyson Burns**

1. On 30 August 2019, the licensed trainer Robert King made arrangements with your father Gregory Burns to have the injured gelding ‘Gerry Giraffe’ euthanized;

2. On 31 August 2019, you attended at a private property at Lewis Lane, Chepstowe where you took custody of ‘Gerry Giraffe’ and euthanized the gelding by shooting it twice in the head, before cutting the gelding’s throat;

3. At your farther Gregory Burns’ direction you then removed the gelding’s brand, by removing the area of the gelding’s skin which contained the horses brand;

4. On Monday 2 September 2019, ‘Gerry Giraffe’ was located deceased at the property at Lewis Lane, Chepstowe Victoria;

5. By removing the brand from ‘Gerry Giraffe’ you have attempted to conceal the identity of a horse.

**Charge 2 – Tyson Burns**

1. On 30 August 2019, the licensed trainer Robert King made arrangements with your farther Gregory Burns to have the gelding ‘Gerry Giraffe’ euthanized as a result of the gelding suffering an injury;

2. On 31 August 2019, ‘Gerry Giraffe’ was taken from the registered training stables of Robert King and transported to a private property at Lewis Lane Chepstowe, where you euthanized the gelding by shooting it twice to the head and then cutting its throat;

3. After euthanizing ‘Gerry Giraffe’ you removed the horses brand from its neck;

4. On Monday 2 September 2019, ‘Gerry Giraffe’ was located deceased on the private property at Lewis Lane, Chepstowe Victoria;

5. As a person engaged in the harness racing industry, by euthanizing the injured gelding ‘Gerry Giraffe’ on private property without the permission of the owner of that property and by removing the gelding’s brand you have behaved in a manner that is detrimental to the industry.

**Plea:** Guilty

**DECISION**

Mr Gregory Burns and Mr Tyson Burns have each pleaded ‘guilty’ to two charges. Charge 1 is a breach of Rule 217, which concerns concealing or attempting to conceal the identity of a horse. Charge 2 relates to behaviour in a way which is prejudicial or detrimental to the industry. Charge 1 is the more serious charge and the penalties sought by the Stewards reflect this.

The charges against both persons arise out of the same set of facts and have been dealt with by this Tribunal together. The factual background is as follows.

Mr Gregory Burns is aged 63 and lives with his wife and some family members on some 200 acres near Ballarat. There are 3 houses on the property. These are stables and a small track on the property.

One son of his, Damien, trains from the property, and there are some 10 horses there. Mr Gregory Burns is a licensed person, having been a trainer, but now has a stablehand licence and does other work.

Mr Tyson Burns is another son of Mr Gregory Burns. He lives in Ballarat in rented premises. He is a bachelor. He is a licenced person, being a registered owner. He is a shearer, but also is licensed to put down livestock.

The horse involved was ‘Gerry Giraffe’. The registered trainer and managing owner of Gerry Giraffe was Mr Robert King, who was dealt with by this Tribunal on 11 June 2020.

Gerry Giraffe was to race at Stawell on 1 September 2019, but sustained a serious injury to the left hind fetlock. It was scratched on 31 August 2019.

There is no argument but that the injury to Gerry Giraffe was a serious one. A certificate from a veterinary surgeon had been obtained. We emphasise now that there is no dispute but that the injury was a major one. There is no dispute but that euthanasia was appropriate. These offences arise out of that euthanasia and the circumstances surrounding it. We emphasise that there is no suggestion of cruelty to the horse prior to it being euthanased or in the manner of it being euthanised. There is no dispute that Mr Tyson Burns is an authorised slaughterman who put the horse down in an appropriate fashion.

Mr King had sought the assistance of Mr Gregory Burns and Mr Tyson Burns in relation to the euthanasia of the horse. This was provided, and it is in this regard and as to what then happened that these charges arise. The Burns took the horse to a property of a person whom they knew. They did not seek that person’s approval prior to so doing. Without his knowledge or permission, they entered his property with the horse and it was then shot by Mr Tyson Burns. The corpse was dragged into some bushes and left there, with their being the intention to return and chop up the body at a later date. However, before they departed, Mr Gregory Burns directed Mr Tyson Burns to cut from the horse the identity brand mark, apparently so it would not be seen to be a harness racing horse. Mr Tyson Burns did this. They then left the property. The body of the horse was discovered by children prior to their returning. The property owner was contacted and ultimately the charging process commenced.

This is a most unusual case. The essence of it is that what occurred could have been quite within the Rules if proper procedures had been followed.

We again emphasise that the euthanasia was appropriate and that there was nothing inherently against the Rule in the way that the putting down of the horse was performed.

By doing this on private property without the owner’s permission and removing the area of skin which contained the brand mark, each person charged breached the two Rules in question.

This case does not involve animal welfare per se. However, as was said in the case of Mr King, animal welfare and the public perception of how horses are looked after and treated are very important matters. We also stated in Mr King’s case, and we repeat it now, that what occurred in this case had a very unfortunate appearance. It had the potential to attract very adverse attention to the industry. Both persons behaved in a way which is prejudicial or detrimental to the industry. By removing the brand, both attempted to conceal the identity of the horse. That makes the situation worse and the public perception risk very much greater.

There are some matters in favour of both parties. Each has pleaded guilty to both charges. Each has co-operated with the Stewards. Mr Gregory Burns has been in the industry for a long time, having been an A grade trainer from 1979 until 2002 and also having held a stablehand licence since 2017. He has a clear history, which represents a very good record indeed. Mr Tyson Burns is a registered owner and there is nothing alleged against him in relation to his history. Thus, each has an unblemished record insofar as anything of significance is concerned.

As stated, each is in employment. Mr Gregory Burns does what could be described as horse related work, such as shoeing and the like. Mr Tyson Burns is a shearer.

The ‘set up’ at Mr Gregory Burns’ property, with the three houses and the operation of his son Damien’s training facility, would represent a major problem in the event of a disqualification, as sought by the Stewards. We are not of the view that disqualification is appropriate, given the circumstances which we have outlined.

We would also point out that the breach of Rule 217, the concealing of the identity of a horse, was in no way associated with an attempt to deceive or gain some unfair financial advantage in relation to a race. It is an unusual breach of Rule 217, but a breach nevertheless.

Bearing all of the above in mind, we have fixed upon the following penalties, which are the same. We believe that the culpability of Mr Gregory Burns and Mr Tyson Burns is effectively identical.

In relation to the breach of Rule 217, each is suspended for a period of 12 months, with 6 months of that penalty in turn suspended for a period of 2 years.

In relation to the breach of Rule 243, each is fined the sum of $1,500.

Mark Howard
Registrar, Victorian Racing Tribunal