18 October 2022

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**JOSEPH BAJADA**

**Date of hearing:** 12 October 2022

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

**Appearances:** Mr Brett Day appeared on behalf of the Stewards.

Mr Lance Justice represented Mr Joseph Bajada.

Mr Brian Kiesey appeared as a witness.

Mr Joseph Bajada attended the hearing.

**Charge:** Australian Harness Racing Rule (“AHRR”) 259(1)(g) and (h) states:

(1) A disqualified person or a person whose name appears in the current list of disqualifications published or adopted by a recognised harness racing authority or a person warned off cannot do any of the following -

(g) enter any premises used for the purposes of the harness racing industry;

(h) participate in any manner in the harness racing industry.

**Particulars of charge:** The particulars of the charge related to Mr Bajada entering a property on 31 March 2021 where registered standardbreds were kept and further him purchasing and facilitating the delivery of hay to this property for registered standardbreds and by doing so he entered a premises used for purposes of the harness racing industry and he participated in the harness racing industry.

In assessing penalty Stewards considered:

* Mr Bajadas’ personal circumstances;
* The seriousness of breaching AHRR 259(1);
* General and specific deterrence;
* Previous Victorian penalties imposed for similar offending;
* The property involved in the breach was not used for training purposes;
* The standardbreds involved in the breach were not in training of any kind;
* The relatively low-level offending involved in the rule breach.

Stewards accordingly imposed a further 6 month period of disqualification which results in Mr Bajada remaining a disqualified person up until 20 December 2023.

**Plea:**  Guilty

**DECISION**

Mr Joseph Bajada, you are appealing against a decision of the Stewards following an inquiry held on 23 February 2022. That decision was that a period of six months disqualification be imposed and that it be cumulative upon a period of three years disqualification, which is due to expire on 19 June 2023. That period of disqualification related to the stomach tubing of a horse and what could be described as the destruction of evidence or an attempt to do so. Thus, pending this appeal you are now disqualified until 20 December 2023.

The additional disqualification imposed is pursuant to Australian Harness Racing Rule (“AHRR”) 259(1)(g) and (h). This involves a breach of an existing disqualification. You are pleading guilty to this offence and have done so for a considerable time.

The circumstances of the charge and breach are as follows. On 31 March 2021, you entered a property on Troups Road South, Mount Cottrell. On that property were registered standardbred horses, essentially owned by your wife. You entered that property in order to facilitate the delivery of hay. Your entry may also have been related to the provision of water, although, as I understand it, the water is turned on by means of a telephone link. It is not suggested that these horses were in work or that you were actively engaged in their training. There also seems no argument but that you had sought permission to perform functions such as this. However, as at the time of this offending, such permission had not been forthcoming.

Mr Brian Kiesey, who is also involved in the harness racing industry and who has property on the same road as where your wife’s horses were kept, has given evidence as follows. Shortly before 31 March 2021, a car had driven through the fence at your property, causing three horses to escape. Ultimately, all were put down. Contact was made with Mr John O’Halloran, then Investigative and Compliance Manager at Harness Racing Victoria (“HRV”). It is alleged that he said that it would be permissible for you to attend the property at least for the purposes of repairing fences or inspecting damage and the like. Mr Kiesey, and presumably you, were of the view that Mr O’Halloran’s oral statements went as far as permitting you to visit the property for certain activities, such as putting out feeds, not directly connected to engagement in harness racing activities. Mr O’Halloran is no longer employed by HRV and no evidence from him was adduced by either party.

The bottom line is this. You are a person with a poor record, having been disqualified on three separate occasions, all to do with actual racing, prohibited substances and the like. I accept that, in relation to this offence, your attendance at the property was solely to do with the upkeep and proper maintenance of your wife’s horses, none of which were racing. I also accept that the accident which resulted in the damage to the fence and destruction of three horses may have precipitated your attendance at the paddock. Further, I accept that some contact was made with Mr O’Halloran and that some limited permission to attend the paddock may have been obtained. Whether it was extended to visiting the paddock for the purposes of feed and water is another matter and, as stated, Mr O’Halloran did not give evidence.

I do accept that you had contacted HRV about being able to attend the property, but no permission in that regard had been obtained when these offences occurred.

Mr Day, on behalf of the Stewards, has directed my attention to the similar cases of Mr Zeke Slater, Ms Kymberley Barr and Ms Kylie Hughes. Each received a penalty of an additional six months disqualification, the same as the penalty imposed on you in this case. Each case, including yours, was considered to be at the lower end of offending.

I agree that your offending is at the lower end. I am also conscious of your poor record, although not in relation to this Rule. I am also aware of the particular and individual circumstances of your offending and your very early plea of guilty.

Mr Lance Justice, representing you, has asked for a fully suspended period of additional disqualification. This is an offence of quite some gravity and the industry must be aware that the breach of penalties of periods of suspension or disqualification carries with it the risk of an additional period of same.

In all the circumstances of your case, some of which are comparatively unique, I have decided to uphold your appeal. However, despite Mr Justice’s eloquence, I am of the view that an additional period of disqualification should be imposed. The appeal is allowed. The period of additional disqualification will be reduced to terminate on 31 October 2023, that is a period of a little over four and a half months. If my mathematics are incorrect, or if I have made errors in relation to dates, do not hesitate to draw it to my attention. My intention is that there be an additional period of disqualification of a little under four and a half months, which, rounded out, extends that period to 31 October 2023.

That seems to me to be the appropriate penalty in this unusual case.

Kathleen Scully  
Assistant Registrar, Victorian Racing Tribunal