11 April 2022

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**JOSHUA MASIEROWSKI**

**Date of hearing:** 6 April 2022

**Panel:** Judge John Bowman (Chairperson) and Judge Julie Nicholson.

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

Mr Joshua Masierowski did not appear.

**Charges and particulars:**

**Charge No. 1.**

The Stewards charge you with a breach of Rule 193 (3) which reads as follows:

*A person shall not administer or allow or cause to be administered any medication to a horse on race day prior to such horse running in a race*

**The particulars of the charge being:**

1. You were, at all relevant times, a person bound by the Australian Harness Racing Rules.
2. ‘*Tale Of The Dragon*’ was nominated to compete in Race 2, ‘The Gateway Pace’ at the Mildura harness racing meeting on 5 March 2021 (**the Race**).
3. On 5 March 2021, you administered a medication to ‘*Tale Of The Dragon*’ on race day prior to that horse running in the Race.

**Charge No. 2.**

The Stewards charge you with a breach of Rule 193 (3) which reads as follows:

*A person shall not administer or allow or cause to be administered any medication to a horse on race day prior to such horse running in a race*

**The particulars of the charge being:**

1. You were, at all relevant times, a person bound by the Australian Harness Racing Rules.
2. ‘*Impetuoso*’ was nominated to compete in Race 6, the ‘Gannon’s Harness Racing Colours Pace’ at the Mildura harness racing meeting on 5 March 2021 (**the Race**).
3. On 5 March 2021, you administered a medication to ‘*Impetuoso*’ on race day prior to that horse running in the Race.

**Charge No. 3.**

The Stewards charge you with a breach of Rule 91(1) which reads as follows:

*A person shall not carry on an activity regulated by licence -*

1. *If that person is not the holder of a current licence*

**The particulars of the charge being:**

1. You were, at all relevant times, bound by the Australian Harness Racing Rules.
2. At all relevant times, you did not hold a stablehand licence.
3. Between on or about 22 February 2021 and 5 March 2021, you were carrying on activities regulated by a stablehand licence, namely, carrying out track work, assisting with the management, care and control of horses and assisting with the pre-race preparation of horses.

**Pleas:** Reserved

**DECISION**

1. The Stewards have charged Mr Joshua Masierowski with three offences. Essentially Mr. Masierowski has not appeared in person, on a video link-up, or on the telephone for any recent directions or the like. He has not appeared today. He did not appear when a jurisdictional point was considered – I would refer to our Ruling of 9 February 2022. The Registrar has attempted to keep in contact with him and keep him informed of developments and hearings, but that has not been easy.

2. At the time of the offences, Mr Masierowski was not a licensed person and apparently has no interest in becoming one. He is in full time employment elsewhere and has not wished to interrupt that employment by being involved in the hearing of these charges. On 9 February 2022, we ruled that, even though he was not a licensed person, the charges related to his activities at a registered training establishment and hence there was jurisdiction for this Tribunal to deal with the matters.

3. We turn now to the charges. Charge 1 involves Rule 193 (3) and race day administration of medication to the horse *Tale Of The Dragon* at Mildura on 5 March 2021. Charge 2 concerns a breach of the same Rule. It concerns *Impetuoso*, which also was to race at Mildura on that date. Charge 3 is based upon a breach of Rule 91 (1), in that Mr Masierowski was performing various activities regulated by a stablehand license without being the holder of such a license.

4. At today’s hearing, Mr Andrew Cusumano appeared on behalf of the Stewards. In relation to the charges, he sought the following penalties:

Charge 1 – disqualification for a period of two months.

Charge 2 – disqualification for a period of two months, cumulative upon the penalty for Charge 1.

Charge 3 – a fine of $200.

We say now that we consider these to be appropriate penalties.

5. We accept that Mr Masierowski may have played only the role of an assistant, Mr Mark Callick being the instigator and principal administrator of the substances. We would refer to our decision in relation to Mr Mark Callick, handed down on 17 November 2021. Of course, he faced a greater number of charges.

6. We accept that the substances administered were not prohibited substances. Nevertheless, they were administered on the afternoon prior to the two horses racing that night and were so administered with the objective of enhancing performance. Such behaviour has the capacity to undermine the concept of a level playing field and the image of the industry.

7. At the time, Mr Masierowski had previously applied for a stablehand’s licence, but, due to an error on his part, such application had not been processed. However, nevertheless he helped carry out these administrations and had performed other stablehand duties, such as the driving of the jogger and the like.

8. Because of his repeated failure to attend before us, we know very little of Mr Masierowski’s background and circumstances. We do know that initially he co-operated with the Stewards and made full admissions. We also understand him to be in employment away from the industry.

9. Weighing up all of the above, we impose the penalties set out in Paragraph 4 above.

Mark Howard
Registrar, Victorian Racing Tribunal