24 June 2020

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**MR KEN ROGERS, MS KAELA HRYHOREC, MICHELLE PHILLIPS**

**Date of hearing:** 17 June 2020

**Panel:** Judge John Bowman (Chairperson) and Ms Heidi Keighran.

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

Mr Ken Rogers represented himself.

Ms Kaela Hryhorec represented herself.

Michelle Phillips represented herself.

**Charges:** Australian Harness Racing Rule (AHRR) 231(1)(a) states:

1. A person shall not
2. threaten anyone employed, engaged or participating in the harness racing industry or otherwise having a connection with it.

AHRR 231(2) states a person shall not misconduct himself in any way.

AHRR 231(1)(e) states:

1. A person shall not
2. assault anyone employed, engaged or participating in the harness racing industry or otherwise having a connection with it.

**Particulars of charges: Ken Rogers**

1. On 6 February 2020, you attended the Mildura harness racing meeting and participated as a driver;
2. Licensed person Matthew Maguire attended this meeting;
3. Following the running of Race 10 at this race meeting you approached licensed trainer/driver Matthew Maguire and instigated a conversation;
4. During this conversation you remarked to him “if I find out it was you that told the Stewards I will put a bullet in your head” or words to the effect thereof;
5. By making these comments you threatened Mr Maguire a person participating in the harness racing industry.

**Kaela Hryhorec**

**Charge 1**

1. On 6 February 2020, a harness racing meeting was conducted at Mildura which you attended;
2. Licensed person Michelle Phillips attending this meeting and participated as a driver;
3. Subsequent to the running of Race 10 on this evening you engaged in a verbal alteration with licensed person Michelle Phillips in the stabling area;
4. By doing so you misconducted yourself.

**Charge 2**

1. On 6 February 2020, a harness racing meeting was conducted at Mildura which you attended;
2. Licensed person Michelle Phillips attended this meeting and participated as a driver;
3. Subsequent to the running of Race 10 on this evening you engaged in a verbal altercation with Ms Phillips in the stabling area;
4. Shortly afterwards Ms Phillips walked towards you and you grabbed Ms Phillips around the neck, held her by the collar, pushed her up against a wall and punched her in the back of the head;
5. By grabbing, holding, pushing and punching Ms Phillips, you assaulted Ms Phillips a person participating in the harness racing industry.

**Michelle Phillips**

**Charge 1**

1. On 6 February 2020, a harness racing meeting was conducted at Mildura which you attended and participated as a driver;
2. Licensed person Kaela Hryhorec attending this meeting;
3. Subsequent to the running of Race 10 on this evening you engaged in a verbal alteration with licensed person Kaela Hryhorec in the stabling area;
4. By doing so you misconducted yourself.

**Charge 2**

1. On 6 February 2020, a harness racing meeting was conducted at Mildura which you attended and participated in as a driver;
2. Licensed person Kaela Hryhorec attended this meeting;
3. Subsequent to the running of Race 10 on this evening you engaged in a verbal altercation with Ms Hryhorec in the stabling area;
4. Shortly afterwards you walked towards Ms Hryhorec to confront her in response to the verbal altercation and were grabbed around the neck, held her the collar, pushed up against the wall of the wash bay and punched in the back of the head by Ms Hryhorec;
5. You retaliated by pushing Ms Hryhorec and pulling her hair;
6. By pushing Ms Hryhorec and pulling her hair, you assaulted Ms Hryhorec a person participating in the harness racing industry.

**Plea:** Guilty

**DECISION**

We shall hand down our decision on penalty in these matters separately. The three persons involved have pleaded guilty to all charges. However, the charges arise out of the one set of facts or events, which we shall summarise briefly at the outset.

Mr Ken Rogers is a harness racing driver based in South Australia and is currently serving a period of suspension. Ms Kaela Hryhorec is a licenced driver who also resides in South Australia. She is the partner of Mr Rogers and lives with him. Ms Michelle Phillips is a harness racing driver based in Victoria. She is also a full-time employee of Mr Chris Svanosio, who is an A Grade Trainer/Driver with a training establishment at Romsey. The boyfriend of Ms Phillips at the relevant time was Mr Matthew Maguire, who is also a trainer/driver. There is some history of a relationship between Mr Maguire and Ms Hryhorec prior to his relationship with Ms Phillips, which relationship has now ceased.

All four persons were present at the Mildura harness racing meeting on 6 February 2020. There were some rumours of possible trouble developing at the Mildura meeting.

After the running of Race 10, a verbal dispute developed between Mr Rogers and Mr Maguire at the track. Mr Rogers threatened to put a bullet in the head of Mr Maguire if he had been talking to the Stewards about certain matters. This is the subject of the charge against Mr Rogers.

During this confrontation, Ms Phillips was also on the scene. She claims that she tried to break up the situation, but Ms Hryhorec also arrived. Insults were exchanged and Ms Phillips, having commenced to walk away, returned. We accept that Ms Hryhorec then grabbed Ms Phillips in the vicinity of the throat and pushed her up against a wall. It would seem that punches were exchanged before other people intervened. The end result was that Ms Phillips suffered lacerations in the area of the neck, to the right side of the head and the eyebrow. Ms Hryhorec lost an acrylic fingernail. We would add that the whole thing was a particularly bad look for harness racing and shameful behaviour by all involved.

We turn now to the individual charges and penalties. We would repeat that all three pleaded guilty to all charges.

**Mr Ken Rogers – breach of Rule 231(2)**

Mr Rogers is aged 32 years and is currently serving a period of suspension. There is also a suspended fine of $250 hanging over his head. Mr Rogers has a very poor record, having three prior convictions for misconduct offences. He has been suspended and, on various occasions, fined.

The threat which he made to Mr Maguire of putting a bullet in his head if he had told the Stewards of certain matters was a particularly nasty one.

Mr Rogers told us that he and Mr Maguire effectively settled the matter on amicable terms within 5 minutes. Even if this is so, a seriously nasty threat had been made publicly and one that involved revenge for a possible reporting to the Stewards.

Even if the threat was made on the spur of the moment and later retracted, it was a very serious and public threat made at a meeting and made by one licenced person against another.

We are of the view that a period of suspension is inevitable. However, we also take into account the guilty plea and co-operation of Mr Rogers and the apparently undisputed fact that the situation was under control and finalised within a very short time.

In the circumstances, we are of the opinion that a period of suspension of 4 months is warranted and that it should be cumulative upon the period of suspension currently being served by Mr Rogers. The fine of $250 is now payable.

**Ms Kaela Hryhorec – breaches of Rule 232 and Rule 231(1)(e)**

Ms Hryhorec is aged 20 years. She has pleaded guilty to 2 charges. She lives with Mr Rogers at his Buchfield house in South Australia. The house is on a property where harness racing horses are stabled. Her income is from driving and from looking after horses that are being rehabilitated.

In our opinion, she was the person who started the physical side of this confrontation. The verbal dispute with Ms Phillips may have been on foot, but it was Ms Hryhorec who launched a physical attack on Ms Phillips. That attack caused some damage to the head and face of Ms Phillips. The whole affair at a harness racing meeting and in front of others made it a particularly bad look, in addition to Ms Phillips sustaining the injuries which she did.

We agree with the Stewards that a fine is warranted on the misconduct charge. We also agree that the penalty for this breach of Rule 231(2) should be a fine of $1,000, with $500 of that amount suspended for a period of 2 years.

We also agree that a period of disqualification is warranted for a breach of Rule 231(1)(e). Bearing in mind the very good record of Ms Hryhorec, her guilty plea and her co-operation with the Stewards throughout, we are of the view that she should be disqualified for a period of 4 months.

**Ms Michelle Phillips – breaches of Rule 232 and Rule 231(1)(e)**

Ms Phillips is aged 22 years. She is a licenced driver and stable hand. She put before us very impressive references, including one from her employer, Mr Chris Svanosio. Her income is from driving and her full-time work for Mr Svanosio.

Her contribution to the dispute was to intervene between Mr Rogers and Mr Maguire, but also to turn back and return to confront Ms Hryhorec. We accept that the physical aspect of the confrontation was launched by Ms Hryhorec, but Ms Phillips also admits to throwing punches. These appear to have had little impact and she certainly emerged the worse for wear. She did take part in this very unseemly behaviour, but we are of the view that her level of culpability is considerably less than that of Ms Hryhorec.

She pleaded guilty from the outset and co-operated fully with Stewards. She has again expressed remorse and placed before us the references to which we have referred.

We are of the view that, on the misconduct charge, she is fined $1,000, of which $500 is suspended for 2 years.

On the breach of Rule 231(1)(e), the assault charge, we agree with the Stewards that a financial penalty is appropriate. However, in all the circumstances, we are of the opinion that it should be in the sum of $2,500 with $500 suspended for a period of 2 years.

Mark Howard
Registrar, Victorian Racing Tribunal