2 March 2022

**RULING and DECISION**

**HARNESS RACING VICTORIA**

**and**

**MATTHEW TALTY**

**Date of hearing:** 18 November 2020

**Panel:** Judge John Bowman (Chairperson) and Dr June Smith.

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

Mr Matthew Talty represented himself.

**Charge and particulars:**

Charge No. 1.

Australian Harness Racing Rule (AHRR) 238 which reads as follows:

*A person shall not fail to comply with any order, directions or requirement of the Controlling Body or Stewards relating to harness racing or to the harness racing industry.*

The particulars of the charge being:

1. On 5 April 2020, due to the Covid-19 pandemic, HRV Stewards published a direction to industry participants which stated the following:

*“HRV stewards direct all industry participants and stakeholders to abide by the following requirements which must be adhered to at all Victorian race meetings and trials:*

* *Only licensed Trainers, Drivers and Stablehands may attend a race meeting or trial and only where they have a horse engaged, a driving engagement or are assisting a Trainer with a horse engaged in a race meeting or trial”*
1. On 19 May 2020, you attended Kilmore Racing Club (KRC) trial meeting with Dylan Schembri in a vehicle towing a horse float.
2. At the relevant time, you were unlicensed.
3. After you were refused entry to the Kilmore racecourse by KRC staff due to being unlicensed, Mr Schembri and yourself drove the vehicle out of sight of the KRC staff so that you could hide within the horse float.
4. Mr Schembri and yourself returned the to the KRC trial meeting where you gained entry to racecourse by hiding within the horse float.
5. On 19 May 2020, by entering the KRC trial meeting when unlicensed, you have failed to comply with a direction of the HRV Stewards.

**Plea:** Guilty

**RULING - JURISDICTION**

A preliminary point concerning jurisdiction has been raised by the Tribunal in this matter, which was otherwise uncontested. Effectively, Mr Talty, who is not a licensed person, was prepared to plead guilty to a breach of AHRR 238. Accordingly, we heard the case, which, subject to the jurisdictional point, we were prepared to find proven. On the same basis, we heard, and agreed with, the proposed financial penalty. Of course, this depended upon the Ruling on the preliminary point.

Submissions, and particularly detailed written submissions, were advanced by Mr Cusumano on behalf of the Stewards. These were in support of the proposition that jurisdiction exists. No submissions were advanced by or on behalf of Mr Talty.

At the outset, the following points are made.

Firstly, jurisdiction cannot be created by consent or by lack of opposition. If any doubt or argument exists, a Ruling is required. This involves a question of law. Bearing in mind Section 50X of the Racing Act 1958, this Ruling is that of the Chairman alone, but I acknowledge the valuable input of Dr June Smith.

Secondly, I would refer to the decision of the Tribunal in the case of *Harness Racing Victoria v Kevin Trickey* (delivered 25 February 2021) and to the very recent Ruling in *Harness Racing Victoria v Joshua Masierowski* (delivered 18 February 2022). The decision in *Trickey* can be found under the case name of *Steenhuis,* as there were a number of people charged in that matter and separate decisions were included in the one judgement.

Thirdly, I would apologise for the delay in handing down the Ruling in this matter. It was originally reserved pending the decision in *Trickey.* After that was given, it was further delayed in order to ascertain if there was any appeal by the Stewards in that matter. Ultimately, there was not. However, by a letter of 19 March 2021, the Stewards indicated that the *Trickey* judgement was still under consideration and effectively requested the Tribunal to await the submissions of the Stewards in the present case prior to handing down its decision. Those submissions arrived on 12 April 2021.

I am afraid that it then “dropped off the radar”. Nothing further was heard from Mr Talty. The charge is not a particularly serious one, and the penalty proposed by the Stewards, if jurisdiction exists, is a comparatively modest one. Regrettably, it was not until another case (*Masierowski)* involving the same point came along that it was realised that no Ruling or final decision had ever been given in the present case. I can only apologise.

Turning to the factual background and the jurisdictional point, it arises because, at the time of his offending, Mr Talty was not a licensed person pursuant to the Rules. However, as in *Masierowski,* the offence took place on licensed premises, in this instance the Kilmore racecourse.

The facts could be summarised as follows.

On 5 April 2020 HRV Stewards had published a direction, in the context of the COVID-19 pandemic, that, in summary, only licensed persons could attend race meetings or trials and when they had a horse engaged. Clearly, this is an order or direction within the meaning of AHRR 238.

On 19 May 2020, Mr Talty arrived at a trial meeting at Kilmore. He was in a vehicle with a friend, a licensed person whom he assisted regularly. The vehicle was towing a loaded horse float. Mr Talty was refused entry, as he was not a licensed person. The vehicle was then driven away out of sight. Mr Talty hid in the float, which then returned with just his licensed friend visible. Entry to the course was gained. Mr Talty was found subsequently. Whilst it is relevant to penalty only, Mr Talty had applied for a stablehand’s licence at the time, but his application had not been processed and finalised.

The key difference between this case and *Trickey* is that Mr Talty’s offence took place on licensed premises. I would refer to my observations in *Masierowski.* I would also refer to the emphasis given in *Trickey* to the fact that the conduct in question in that case was not only that of an unlicensed person, but was not on licensed property or premises.

In summary, in my opinion jurisdiction exists in the present case.

**DECISION**

We have already set out the key facts of the offending. We take into account the plea of guilty. The Stewards submitted that an appropriate penalty was a fine of $1,500. We agree. This was conduct designed to breach the direction given, and after the earlier attempt to enter the course had been unsuccessful. It was deliberate behaviour in the context of a very worrying pandemic.

Accordingly, Mr Talty is fined $1,500. Given that presumably he is still an unlicensed person, how such a fine is to be collected or this order enforced is another matter. Thankfully, at least for the moment, it is not a concern of this Tribunal.

Mark Howard
Registrar, Victorian Racing Tribunal