12 March 2021

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**NATHAN JACK**

**and**

**MARK PITT**

**and**

**RUSSELL JACK**

**and**

**TAMMY GIBBONS**

**Date of hearing:** 12 February 2021

**Panel:** Magistrate John Doherty (Deputy Chairperson) and Judge Marilyn Harbison.

**Appearances:** Ms Amy Wood, instructed by Mr Andrew Cusumano, appeared on behalf of the Stewards.

Mr Damien Sheales represented Mr Nathan Jack, Mr Russell Jack and Ms Tammy Gibbons.

Mr Mark Pitt represented himself.

**Charge:** Australian Harness Racing Rule (“AHRR”) 187(2) states:

A person shall not refuse to answer questions or to produce a horse, document, substance or piece of equipment, or give false or misleading evidence or information at an inquiry or investigation.

AHRR 187(3) states:

 A person shall comply with an order or direction given by the Stewards.

AHRR 91(1)(a) states:

 A person shall not carry on an activity regulated by licence if that person is not the holder of a current licence.

 AHRR 90A(2.9)(a) states:

 The holder of a trainer's licence shall ensure that all persons carrying out the activities of a stable hand are licenced as stable hands.

 AHRR 119C states:

1. A trainer shall not without the prior approval of the Stewards stable any horse trained by him in any location other than any registered training establishment of the trainer.
2. A trainer who fails to comply with sub-rule (1) is guilty of an offence and in addition to any other penalty that may be imposed, the nomination of the horse concerned may not be accepted or if after acceptance, be rejected and the horse withdrawn from or disqualified from the race.

**Particulars of charge: Nathan Jack**

 **Charge 1**

1. On 7 September 2018, you were notified of an order of the HRV Stewards under Australian Harness Racing Rule (AHRR) 183(d), suspending all licenses held by you;
2. This order was affirmed by the HRV Racing Appeals and Disciplinary (RAD) Board on 16 November 2018, and the Victorian Civil and Administrative Tribunal (VCAT) on 14 December 2018;
3. On 6 May 2020, you carried on activities regulated by licence, namely assisting with the training, management, care and control of horses, and carrying out track work; and by doing so failed to comply with an order of the HRV Stewards.

**Charge 2**

1. On 6 May 2020, HRV Stewards observed you in attendance at 575 New Dookie Road, Lemnos; the registered training establishment of licensed trainer-driver Russell Jack;
2. At various stages on 6 May 2020, you assisted with the training, management, care and control of horses; and carried out track work;
3. You refused to answer questions of HRV Stewards in relation to your attendance at the registered training establishment of Russell Jack, and your assistance with the training, management, care and control of horses; and carrying out track work on 6 May 2020.

**Charge 3**

1. On 6 May 2020, HRV Stewards observed you in attendance at 575 New Dookie Road, Lemnos; the registered training establishment of licensed trainer-driver Russell Jack;
2. At various stages on 6 May 2020, you assisted with the training, management, care and control of horses; and carried out track work;
3. At all relevant times, you did not hold any form of licence with HRV;
4. On 6 May 2020 you carried on activities regulated by licence, namely assisting with the training, management, care and control of horses, and carrying out track work; while not the holder of a current licence.

**Plea:** Charges 1 and 2 withdrawn

Guilty to charge 3

**Mark Pitt**

**Charge 1**

1. On 7 September 2018, you were notified of an order of the HRV Stewards under Australian Harness Racing Rule (AHRR) 183(d), suspending all licenses held by you;
2. This order was affirmed by the HRV Racing Appeals and Disciplinary (RAD) Board on 16 November 2018, and the Victorian Civil and Administrative Tribunal (VCAT) on 14 December 2018;
3. On 6 May 2020, you carried on activities regulated by licence, namely assisting with the training, management, care and control of horses; and by doing so failed to comply with an order of the HRV Stewards.

**Charge 2**

1. On 6 May 2020, HRV Stewards observed you in attendance at 575 New Dookie Road, Lemnos; the registered training establishment of licensed trainer-driver Russell Jack, where you assisted with the training, management, care and control of horses;
2. HRV Stewards observed Nathan Jack and you leave the registered training establishment of Russell Jack on a Polaris Ranger 4x4 vehicle when Stewards attended the property;
3. You gave evidence that Nathan Jack and you did not leave the property of Russell Jack on a Polaris Ranger 4x4 vehicle when Stewards attended there;
4. You gave this evidence knowing it to be false, in that Nathan Jack and you did leave the registered training establishment of Russell Jack on a Polaris Ranger 4x4 vehicle when Stewards attended the property on 6 May 2020.

**Charge 3**

1. On 6 May 2020, HRV Stewards observed you in attendance at 575 New Dookie Road, Lemnos; the registered training establishment of licensed trainer-driver Russell Jack;
2. At various stages on 6 May 2020, you assisted with the training, management, care and control of horses;
3. At all relevant times, you did not hold any form of licence with HRV;
4. On 6 May 2020, you carried on activities regulated by licence, namely assisting with the training, management, care and control of horses, while not the holder of a current licence.

**Plea:** Charge 1 withdrawn

Guilty to charges 2 and 3

 **Russell Jack**

 **Charge 1**

1. At all relevant times you were a licensed Grade A Trainer-Driver;
2. On 6 May 2020, you were in attendance at 575 New Dookie Road, Lemnos; your registered training establishment;
3. You gave evidence that neither Nathan Jack nor Mark Pitt had attended your stables that morning; and that neither person had carried out track work;
4. You gave this evidence knowing it to be false, in that you knew Nathan Jack and Mark Pitt had attended your registered training establishment on 6 May 2020 and that Nathan Jack had carried out track work.

**Charge 2**

1. At all relevant times you were a licensed Grade A Trainer-Driver;
2. On 6 May 2020, unlicensed persons Nathan Jack and Mark Pitt were in attendance at 575 New Dookie Road, Lemnos; your registered training establishment;
3. While at your registered training establishment, Nathan Jack and Mark Pitt assisted with the training, management, care and control of horses; and Nathan Jack carried out track work;
4. On 6 May 2020, you failed to ensure that all persons carrying out the activities of a stable hand are licensed as stable hands.

**Charge 3**

1. At all relevant times you were a licensed Grade A Trainer-Driver and the registered trainer of the horse ‘Jaxnme’; and had full care and control of the horses ‘Command Me’, ‘RNR Windermere NZ’ and ‘Scotlynn Beach NZ’;
2. On 6 May 2020, you had ‘Jaxnme’, ‘Command Me’, ‘RNR Windermere NZ’ and ‘Scotlynn Beach NZ’ stabled at 45 Paul Road, Lemnos; a training establishment not registered with any harness racing authority;
3. Without the prior approval of Stewards, ‘Jaxnme’, ‘Command Me’, ‘RNR Windermere NZ’ and ‘Scotlynn Beach NZ’ were stabled at 45 Paul Road, Lemnos; a training establishment not registered with any harness racing authority, on 6 May 2020.

**Plea:** Guilty to all charges

 **Tammy Gibbons**

1. At all relevant times you were a licensed Stablehand;
2. On 6 May 2020, you were in attendance at 575 New Dookie Road, Lemnos; the registered training establishment of licensed trainer-driver Russell Jack;
3. You gave evidence that neither Nathan Jack nor Mark Pitt had attended the stables that morning; and that neither person had carried out track work there;
4. You gave this evidence knowing it to be false, in that you knew Nathan Jack and Mark Pitt had attended the registered training establishment of Russell Jack on 6 May 2020; and that Nathan Jack had carried out track work.

**Plea:** Guilty

**RULING: WITHDRAWAL AND AMENDMENT OF CHARGES – NATHAN JACK AND MARK PITT**

In respect to the submissions this morning, we accept the withdrawals by the Stewards in relation to Mr Nathan Jack (charges 1 and 2) and Mr Mark Pitt (charge 1).

After considering submissions in respect of charge 3, being amended back to its original form, that is carrying on activity whilst unlicenced (Australian Harness Racing Rule (“AHRR”) 91(1)(a)). This represents the original position to which Mr Jack and Mr Pitt intended to plead guilty to.

As a point of preliminary debate on 15 December 2020, oral submissions were received by both parties which, after the intervention of counsel, caused Stewards to reflect and ultimately be persuaded by the argument of Mr Damien Sheales about the correctness of charge 1 which has consequences in respect of charge 3.

Notably, the hearing proper in receiving evidence has not occurred. In all the circumstances, it appears to us that no injustice would flow to Mr Jack which could not be rectified by an appropriate costs order in respect of the hearing on 15 December 2020.

We are of the view that charge 3 can and will be amended as proposed by the Stewards and an order for costs thrown away be made in respect of Mr Jack for the hearing on 15 December 2020.

**DECISION**

The allegations against Mr Nathan Jack, Mr Mark Pitt, Mr Russell Jack and Ms Tammy Gibbons are formally proven.

**Nathan Jack**

Mr Nathan Jack has pleaded guilty to a breach of AHRR 91(1)(a).

In setting a penalty, we take into account specific and general deterrence and Mr Jack’s extensive experience within the Harness Racing Industry and his activity record.

In all the circumstances, we impose a fine of $5,000, with $2,500 suspended for a period of 12 months, provided there is no further breach of AHRR 91 in the next 12 months.

**Mark Pitt**

Mr Mark Pitt has pleaded guilty to a breach of AHRR 187(2) and 91(1)(a).

In setting a penalty, we take into account specific and general deterrence and Mr Pitt’s activity record. It is noted that Mr Pitt’s activity record is not as extensive as that of Mr Nathan Jack.

In all the circumstances, we impose the following penalties:

Charge 2: $1,000 fine.

Charge 3: $2,000 fine.

**Russell Jack**

Mr Russell Jack has pleaded guilty to a breach of AHRR 187(2), 90A(2.9)(a) and 119C.

In all the circumstances, we impose the following penalties:

Charge 1: $1,000 fine.

Charge 2: $500 fine.

Charge 3: $300 fine.

**Tammy Gibbons**

Ms Tammy Gibbons has pleaded guilty to a breach of AHRR 187(2).

In all the circumstances, we impose a fine of $1,000.

Kathleen Scully
Assistant Registrar, Victorian Racing Tribunal