28 September 2021

**DECISION**

**RACING VICTORIA**

**and**

**NICK SMART**

 **Date of hearing:** 7 September 2020

**Panel:** Judge John Bowman (Chairperson) and Judge Marilyn Harbison.

**Appearances:** Mr Daniel Bolkunowicz appeared on behalf of the Stewards.

Mr Andrew Nicholl appeared on behalf of Mr Nick Smart.

**Charge:** Australian Rule (AR) 240 - Prohibited substance in sample taken from horse at race meeting

(2) Subject to subrule (3), if a horse is brought to a racecourse for the purpose of participating in a race and a prohibited substance on Prohibited List A and/or Prohibited List B is detected in a sample taken from the horse prior to or following its running in any race, the trainer and any other person who was in charge of the horse at any relevant time breaches these Australian Rules.

**Particulars of charge:** 1.You are, and were at all relevant times, a trainer licensed by Racing Victoria.

2. You are, and were at all relevant times, the trainer of Mr Coyne.

3. On 23 August 2020, Mr Coyne was brought to the Ballarat Racecourse and ran in the Ecycle Solutions BM120 Steeplechase over 3200 metres (the race).

4. Caffeine (and its metabolites Theophylline, Paraxanthine and Theobromine) were detected in a post-race urine sample taken from Mr Coyne following the running of the race.

5. Caffeine (and its metabolites Theophylline, Paraxanthine and Theobromine) are considered to be prohibited substances pursuant to Division 1 of Part 2 of Schedule 1 (Prohibited list B) of the Australian Rules of Racing.

**Plea:** Guilty

**DECISION**

Mr Nick Smart, you have pleaded guilty to a breach of AR 240(2). A post-race sample taken from Mr Coyne, trained by you, proved positive to caffeine. This followed the running of a 3200 metre steeplechase at Ballarat on 23 August 2020. Mr Coyne ran second in the event.

The cause of the sample proving positive to caffeine is unknown. Various suggestions have been made, such as coffee spilling into a feed bin, the possible use of a substance called Itz Magic, although this is strongly denied, and the like.

Mr Andrew Nicholl, who appeared for you and assisted you, stated that the probable cause was accidental and due to poor housekeeping. That seems to us to be a fair statement of what probably occurred. We emphasise that direct administration was not suggested and there is no evidence of it.

You have been a trainer for some 11 years and are 35 years of age. You originally trained in South Australia, but have been in this state for approximately four years. As is evident, you train jumpers, as well as flat performers. Currently you have a small team trained out of Torquay. Mr Coyne has been a successful jumper for you. You have no offences of any relevance recorded against you and have pleaded guilty to this offence at a very early stage.

We do not consider specific deterrence to be of great relevance, although your poor housekeeping may have been the cause of this offence. We have no doubt but that you have learned a lesson from it.

General deterrence is important. Positive swabs to prohibited substances can damage the image of racing and the concept of a level playing field.

The Stewards have suggested a penalty of a fine of $2,000. Effectively you and Mr Nicholl do not argue with this. It also seems to us to be appropriate. It is a penalty that has been imposed in a similar case.

Accordingly, you are fined $2,000. Mr Coyne is disqualified from the Ecycle Solutions BM 120 Steeplechase at Ballarat on 28 August 2020 and the finishing order is amended accordingly.

Mark Howard
Registrar, Victorian Racing Tribunal