1 December 2021

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**PETER O’BRIEN**

**Date of hearing:** 11 November 2021

**Panel:** Magistrate John Doherty (Deputy Chairperson) and Mr Robert Abrahams.

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

Mr Peter O’Brien represented himself.

**Charge:** Australian Harness Racing Rule (“AHRR”) 190(1) states:

A horse shall be presented for a race free of prohibited substances.

**Particulars of charge:** 1. At all relevant times, you were a licensed trainer and driver with Harness Racing Victoria (“HRV”) and a person bound by the Australian Harness Racing Rules (“AHRR”);

2. At all relevant times, you were the registered trainer of the horse “Graceful Art”;

3. On 30 March 2021, the horse Graceful Art was presented to race at the Mildura harness racing meeting in Race 3, the “TAB Long May We Play Pace”;

4. Prior to Race 3, the TAB Long May We Play Pace, a blood sample was collected from Graceful Art with subsequent analysis of that sample revealing a plasma total carbon dioxide (TCO2) concentration in excess of the allowable threshold;

5. As the trainer of Graceful Art on 30 March 2021, you presented that horse to race in the TAB Long May We Play Pace at Mildura whilst not free of alkalinizing agents, a prohibited substance when evidenced by total carbon dioxide (TCO2) present at a concentration in excess of 36 millimoles per litre in plasma.

**Plea:** Not Guilty

**DECISION**

Licensed trainer, Mr Peter O’Brien, has pleaded not guilty to one charge brought against him by Harness Racing Victoria (“HRV”) Stewards, alleging a breach of Australian Harness Racing Rule (“AHRR”) 190(1). A horse he presented for a race was not free of a prohibited substance. The particulars of the charge are stated above.

The blood sample analysed by Racing Analytical Services Limited (“RASL”) and relied upon to sustain the charge, returned a plasma total carbon dioxide (TCO2) concentration of 37.7 millimoles per litre (“mmol/l”), which was in excess of the allowable threshold. The reserve sample sent to Queensland for analysis returned 37.9 mmol/l.

Stewards interviewed Mr O’Brien at his training establishment on 10 April 2021. The explanation for the elevated reading was that the TCO2 readings of “Graceful Art” go up when the horse is ‘crook’ and that the horse was crook when it won the subject race on 30 March 2021 at Mildura. Notwithstanding that, HRV Stewards have presented the Tribunal with conclusive evidence, in the form of two independent samples, to prove their case. Mr O’Brien’s explanation has no forensic or evidentiary value and, in this case, the taking, management and continuity of the blood sample taken is beyond any doubt. In these circumstances, the charge against Mr O’Brien is sustained.

In determining an appropriate penalty, reference has been made to the cases of Mr Alfio Grasso, Ms Cassandra O’Brien, Mr Rick Holmes and Mr Brad Angove and the penalties imposed in those cases. The present case is a serious offence under the Rules and, combined with Mr O’Brien’s history of breaches, leads the Tribunal to reiterate the need for a level playing field for all participants and the need for drug free racing.

Mr O’Brien has chosen to plead not guilty but having been found guilty of the offence, cannot avail himself of the benefit of an early plea. He is 54 years of age, receives a disability pension and is currently unlicensed. Mr O’Brien was first licensed in Victoria in 1989. Presently, he does not intend to return to the harness racing industry.

The minimum penalty guidelines for a breach of the Rule 190(1) suggests a period of 18 months suspension as a starting point.

In the event, the Tribunal imposes an 18 month period of disqualification. It is further ordered that Graceful Art be disqualified from Race 3 at Mildura on 30 March 2021.

Kathleen Scully
Assistant Registrar, Victorian Racing Tribunal