11 May 2021

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**RICK O’BRIEN**

**Date of hearing:** 28 April 2021

**Panel:** Justice Shane Marshall (Deputy Chairperson) and Judge Marilyn Harbison.

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

Mr Lance Justice represented Mr Rick O’Brien.

**Charges:** Australian Harness Racing Rule (AHRR) 239A states “A person whose conduct or negligence has led or could lead to a breach of the rules is guilty of an offence”.

 AHRR 231(2) states “A person shall not misconduct himself in any way”.

**Particulars of charges: Charge 1**

The particulars of the charge are that on the 23 May 2020 you contacted Mildura harness racing club manager Michelle McGinty-Wilson via telephone and entered an unnamed horse into the unofficial education trial to be conducted the following day the 24 May 2020 when in fact you were not the trainer and the horse was trained by Raharna McDonald and by doing so, by doing so your conduct led to Raharna McDonald breaching the Australian Harness Racing Rules by presenting a horse to participate in the unofficial education trial when not the holder of a current trainer’s licence in breach of Rule 203.

**Charge 2**

The particulars of the charge are that on 17 July 2020 when HRV Steward Mr Wayne Smith was present at your place of employment for the purposes of confiscating your mobile telephone as part of an ongoing investigation you misconducted yourself by remarking towards Mr Smith with words to the effect of “you’re a fucking arsehole”.

**Plea:** Guilty

**DECISION**

1. Mr Rick O’Brien is a registered harness racing trainer. After a hearing before the Stewards, he was found guilty of two offences under the Australian Harness Racing Rules.
2. The first charge was under Rule 239A, which prohibits conduct which leads to a breach of the Rules. The evidence in support of that charge includes the fact that Mr O’Brien entered a horse to race in a trial in his name after agreeing to the request of another unlicensed person to do so, thereby leading to her breaching the Rules of harness racing. Mr O’Brien pleaded not guilty to the charge. He was found guilty and received a $1,000 fine.
3. The second charge was under Rule 231(2), which prohibits misconduct. The evidence in support of the charge was that Mr O’Brien called a Steward a “fucking arsehole”. Mr O’Brien pleaded not guilty to that charge. He was found guilty and given a $500 fine, $250 of which was suspended pending no further breach of a conduct related rule in the next 12 months.
4. Mr O’Brien has appealed against the penalties on each charge. He has not appealed against the guilty findings. The essential facts supporting each charge, as set out above, must be accepted on this appeal as facts upon which to adjudicate an appropriate penalty. Mr Justice, on Mr O’Brien’s behalf, acknowledged the correctness of the guilty verdict. Therefore, we are justified in giving a discount for effectively a guilty plea.
5. In setting penalties on each charge, we are free to exercise our discretion afresh without using the penalties imposed as a yardstick, but still taking into account the views of the Stewards on the appropriate penalty as encapsulated by their submissions this morning.
6. We take into account Mr O’Brien’s good record and his remorse, which is shown by his lack of challenge to the guilty verdicts. We also take into account the seriousness of the charges. Charge 1 goes to a matter that strikes at the integrity of the industry, because trainers should only enter horses that they train for races and not assist others to trial or race horses when not licensed to do so. Charge 2 relates to the expectation that Stewards as integral parts of the regulation of the industry, be treated respectfully. We accept that Mr O’Brien was naive in wanting to help another person and wrong to feel that the Stewards were singling him out.
7. In all the circumstances, we consider that the appropriate penalties are as follows:

On charge 1, we impose a penalty of $750 with $250 suspended for a period of 12 months pending no further breach of Rule 239A.

On charge 2, we impose a penalty of a $200 fine, fully suspended for a period of 12 months pending no further conduct related offences.

Mark Howard
Registrar, Victorian Racing Tribunal