31 March 2021

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**TERRY FRENCH**

**Date of hearing:** 22 March 2021

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

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

Mr Terry French 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. On 6 July 2020, the horse “Joeys Hangover” was presented to race at the Shepparton harness racing meeting in Race 3, the ‘Hicks Transport Group Pace’;

2. At the relevant time you were the trainer of “Joeys Hangover”;

3. Following Race 3, the “Hicks Transport Group Pace”, a urine sample was collected from “Joeys Hangover” with subsequent analysis of that sample revealing an arsenic concentration in excess of the allowable threshold;

4. As the trainer of “Joeys Hangover” on 6 July 2020, you presented that horse to race in the ‘Hicks Transport Group Pace’ not free of arsenic, a prohibited substance when present at a concentration in excess of 0.30 micrograms per millilitre in urine.

**Plea:** Not Guilty

**DECISION**

Licensed grade A trainer, Terry French, has pleaded not guilty to one charge of breaching Australian Harness Racing Rule (“AHRR”) 190(1). The particulars of the charge are that on 6 July 2020 a horse he trained, “Joeys Hangover”, was presented to race at Shepparton in Race 3, the ‘Hicks Transport Group Pace’. A post-race urine sample revealed an arsenic concentration in excess of the allowable threshold of 0.30 micrograms per millilitre in urine. “Joeys Hangover” finished in first place.

Racing Analytical Services Limited (“RASL”) analysis revealed a concentration for arsenic at 0.37 and the reserve sample analysed by the Racing Chemistry Laboratory (Western Australia) returned an analysis of 0.35.

A phone interview was conducted by Harness Racing Victoria (“HRV”) Stewards, Ms Lucy Lingard-Smith and Mr Daniel Caruana, with Mr French on 29 July 2020. During that interview, it became apparent that “Joeys Hangover” may have had access to a wooden fence post in an adjoining property, which had been chewed. This property does not belong to Mr French, but abuts a day paddock where Mr French allows his horses to roam on non-race days. There is no evidence that Mr French has used any commercial preparations containing arsenic on “Joeys Hangover”.

A sample of wood taken from the post on the adjoining property to Mr French’s was analysed by RASL and was found to contain arsenic levels consistent with Copper Chrome Arsenic (“CCA”) treated timber. It is noted that Mr French used concrete posts in the construction of his stables and paddocks.

Expert opinion was sought by HRV Stewards from Professor Edward Whitten. He concluded that, assuming “Joeys Hangover” had access to the adjoining neighbours fence and ate the necessary amount of wood from that fence in the 24-30 hour period prior to the urine sample being taken, it was possible that the wood eating could have caused the urinary arsenic concentration to exceed the threshold. In our opinion, this is the only accurate hypothesis as to why “Joeys Hangover” exceeded the allowable threshold in its post-race urine samples.

Any suggestion that the control sample was contaminated can be dismissed if one accepts the evidence, as we do, of Dr Richard Cust and his assistant, Mr Wayne Aylett. In Dr Cust’s opinion, in order for a sample to be contaminated, there would have to have been a considerable amount of straw and debris from the swabbing area in the control plate transferred into the bottles with the urine, which is very rare. In our opinion, the samples of urine taken post-race from “Joeys Hangover” were not contaminated. The control sample certificate also confirms non-contamination.

In any event, we find the presentation charge proven to our comfortable satisfaction.

**PENALTY**

In relation to penalty, we are of the strong view that Mr French is somewhat a victim of circumstance. His case is unique in the sense that he has no responsibility for the maintenance of his neighbours property. However, yet because of unforeseen circumstances and today’s finding of guilt, his horse will be disqualified from the race and any prizemoney is forfeited to HRV.

In our view, any other penalty ought to be suspended. As such, he is fined $500 and such penalty is suspended for 6 months, provided there is no further infraction of the Rule.

In our view, due to the unique circumstances of this case, it would be wrong and disproportionate to resurrect any suspended penalty. This is not, in our view, a case for either general or specific deterrence. It would be otherwise if the offending post was found on the property of Mr French.

Finally, this case should not either be seen by the general public as a precedent of what to expect in these arsenic cases. The penalty in this case is reflective of its own unique circumstances.

Kathleen Scully  
Assistant Registrar, Victorian Racing Tribunal