18 September 2020

**DECISION**

**RACING VICTORIA**

**and**

**MR MICHAEL WALKER**

**Date of hearing:** 4 September 2020

**Panel:** Judge John Bowman (Chairperson).

**Appearances:** Mr Darren Triandafillou appeared on behalf of the Stewards.

 Mr Matthew Hyland appeared on behalf of Mr Walker.

**Charge:** Australian Rule (AR)209(2)(b) states

(2) Subject to subrule (3), if a horse carries less weight than what it is required to carry in a race:

(b) notwithstanding subrules (1) and (2)(a), any person at fault in relation to the failure to carry the correct weight may also be penalised.

**Particulars of charge:** Michael Walker pleaded guilty to a charge under the provision of AR209 (2)(b) in that after weighing out for Race 6 he failed to ensure that Excelmancarried the lead bag for which Michael Walker weighed out with to make up its weight of 61 kgs, as a consequence Michael Walker weighed in underweight which resulted in Excelmanbeing disqualified from the race. In all the circumstances Michael Walker was fined $2,000 in assessing the penalty Stewards took into account his guilty plea and his unblemished record in this area.

**Plea:** Guilty

**DECISION**

Mr Michael Walker, you have pleaded ‘guilty’ to a breach of AR209(2)(b). To summarise the situation, you are so pleading in relation to weighing in one kilogram light or underweight after your ride on ‘Excelman’ in Race 6 at Sale on Sunday 30 August.

Excelman was a short-priced favourite, having been backed from $3.60 to $2.70. Mr Triandafillou, on behalf of the Stewards, has informed us that the amount held by the principal betting agency was $516,000. That excludes other betting agencies and the amount invested in first fours, quadrellas and other exotic bets. The race was the first leg of the quadrella. Of course, there is also the issue of stake money and the satisfaction and value given to connections in relation to a winner. Thus, the ramifications are very significant.

There is no argument but that you weighed out without a one kilogram lead bag. It was subsequently located on the floor a short distance from the scales. I shall return to the circumstances shortly. There is also no argument but that you mounted the horse without checking every piece of equipment and did not realise that, however it may have occurred, the lead bag had been left behind. You were completely and unpleasantly very shocked when, the horse having won, you weighed in one kilogram underweight. You were interviewed at length by the Stewards, but ultimately they had no alternative but to disqualify Excelman and amend the finishing order accordingly. At the end of the hearing, you were fined the sum of $2,000 and it is in relation to that amount that you are appealing.

On your behalf, Mr Hyland went into considerable detail concerning the arrangements for jockeys that were prevailing at Sale on this day. He asked that they be taken into account in relation to penalty. I shall return to them after I make the following remarks.

To the great surprise and delight of many people, racing has been able to continue uninterrupted during this period of the COVID-19 epidemic and lockdown. Sacrifices have been made by many. All sorts of temporary arrangements and provisions have been put in place. This has taken great effort and compromise by all involved – jockeys, trainers, stewards, clubs, support staff and the like. Many of us are filled in admiration for what has been achieved.

At Sale, compromises have had to be made. As is the case at other tracks, the jockeys are divided into two teams, green and gold. At Sale, the green team jockeys use temporary accommodation. They have scales, the scale clerk, the valets and the like, but they use the upstairs committee room and bar. Without going into great detail, it means that gear is spread on the floor. It appears from the photo put in evidence that there are no lockers. They jockeys are not far from the scales and the weighting out facilities generally. Their gear maybe spread on the floor. This is no criticism. It is a pragmatic solution. One team, the gold team, used the pre-existing jockey facilities. The members of the green team used the makeshift accommodation provided in the committee room, as does the clerk of scales and selected persons and equipment. It is against this far from perfect, but necessary, background that this offence occurred.

The scales clerk did not hear you, Mr Walker, mentioning the lead bag. You were adamant that you did. How it ended up on the floor, nobody knows. You had been assembling your gear on the floor only about two metres from the scales. Clearly something went wrong. You remain adamant that the lead bag was part of the equipment that you handed over. What happened thereafter is uncertain.

The ultimate responsibility rests with you, and you, along with Mr Hyland on your behalf, accept this.

Mr Triandafillou has provided the previous penalties imposed on other jockeys, and indicated that they may be almost inadequate. I can understand that, but the penalties are what they are and at least one is comparatively recent.

Mr Craig Newitt was fined $2,000 for a similar offence on 3 January 2010 in relation to Glenariff which won at Cranbourne. Mr Jye McNeil was fined $2,000 in relation to Tigidig Tigidig, which won at the Lakeside course on 6 January 2016. The precise circumstances are not before me, but they are the more recent penalties for situations where the horse concerned was the winner.

You have never breached this Rule previously. To state the obvious, the offences of Messrs Newitt and McNeil occurred before COVID-19 arrived and when jockeys were operating with all the advantages of normal circumstances.

This offence occurred in extraordinary circumstances and when facilities, of necessity, may have been far from perfect, but it is part of the sacrifices made keep racing operating.

The ultimate responsibility was, as I have stated, yours. Having engaged in a lengthy discussion, I now come to my conclusion, which is that some modest reduction from what could be described as the normal penalty seems to be warranted. The appeal is upheld. The fine is reduced to $1,500.

Mark Howard
Registrar, Victorian Racing Tribunal