19 September 2023

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**DYLAN MARSHALL**

**Date of hearing:** 15 September 2023

**Panel:** Justice Shane Marshall (Deputy Chairperson) and Mr Des Gleeson.

**Appearances:** Mr Adrian Crowther appeared on behalf of the Stewards.

Mr Anthony Bull represented Mr Dylan Marshall.

 Mr Daniel Borg appeared as a witness.

 Mr Dylan Marshall appeared as a witness.

 Mr Ross Graham appeared as a witness.

 Mr Robert Walters appeared as a witness.

**Charge:** Australian Harness Racing Rule (“AHRR”) 231(1)(e) states:

(1) A person shall not

(e) assault

anyone employed, engaged or participating in the harness racing industry or otherwise having a connection with it.

**Particulars of charge:** 1. You were, at all relevant times, a licensed B Grade trainer and a B Grade driver and a person bound by the Australian Harness Racing Rule (“AHRR”);

 2. At the Bendigo Harness Racing Club race meeting on 13 June 2023, following the running of Race 10, in which you were the trainer of “Ce Pe Three”, you assaulted licensed person Robert Walters by seizing hold of him by his collar and forcibly pushed him leading to you both then wrestling on the ground.

**Plea:** Not Guilty

**DECISION**

1. Mr Dylan Marshall is a licensed Grade B harness racing trainer and driver. Stewards of Harness Racing Victoria (“HRV”) have charged him with assaulting a person engaged in harness racing at Bendigo on 13 June 2023. The relevant Rule underpinning the charge is Australian Harness Racing Rule (“AHRR”) 231(1)(e). Mr Marshall has pleaded not guilty to the charge.
2. “Assault” is not defined in the Rules of harness racing. The usual definition found in dictionaries, such as the Macquarie Dictionary, is “an unlawful physical attack on another”.
3. On 13 June 2023, Mr Marshall had words with Mr Robert Walters, another harness racing industry participant, after Race 10 at Bendigo that evening. The evidence of a Steward, Mr Daniel Borg, is that Mr Marshall seized hold of Mr Walters by his collar and forcibly pushed him to the ground. That evidence was supported by evidence given by Mr Walters. Mr Marshall gave evidence to the effect that he was concerned by the movement of Mr Walters towards him and that he was also concerned about what Mr Walters might do as Mr Walters appeared agitated to Mr Marshall. Mr Marshall said he applied the minimum force necessary to restrain Mr Walters. He did not deny grabbing Mr Walters by the collar and pushing him to the ground. Further, the evidence of Mr Borg to the same effect was not challenged in cross examination.
4. We find the charge proven. We are comfortably satisfied that the actions of Mr Marshall towards Mr Walters constitute assault within the ordinary meaning of the word. We will now hear submissions on the question of penalty.

**PENALTY**

1. In setting a penalty in this matter, we take into account the importance of general deterrence and the interests of the harness racing industry, its image to the public and its social licence. We also take into account like recent matters involving the same sub-rule which has been transgressed here.
2. Mr Marshall pleaded not guilty and is therefore, not entitled to a discount that would have been applied had he pleaded guilty. On the other hand, Mr Marshall is otherwise a person of good character who has no relevant transgressions of the Rules of racing.
3. We consider that the circumstances of this case, although demonstrating an assault occurred, involves facts that show the transgression was at the lower end of the scale of matters comprehended by the term assault.
4. Although it was wrong of Mr Marshall to grab Mr Walters by the collar and force him to the ground, there were extenuating circumstances.
5. Mr Marshall honestly believed that he was in potential danger from a confrontation with Mr Walters when Mr Walters approached him. Although it was the wrong thing to do, Mr Marshall took what he considered to be pre-emptive action to subdue Mr Walters. However, it was potentially dangerous to do so given Mr Marshall weighs considerably more than Mr Walters.
6. In all the circumstances, we impose a period of suspension of four months, commencing on 20 June 2023. That suspension will cease to take effect at midnight on 20 October 2023.

Mark Howard

Registrar, Victorian Racing Tribunal