25 September 2023

**DECISION**

**RACING VICTORIA**

**and**

**MICK BELL**

**Date of hearing:** 21 September 2023

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

**Appearances:** Mr Scott Hunter appeared on behalf of the Stewards.

Mr Mick Bell represented himself.

**Charges:** Australian Rule of Racing (“AR”) 249(1) states:

1. Notwithstanding the provisions set out in Schedule 1, Part 2, Division 2, a person must not, without the permission of the Stewards:
2. administer; or
3. cause to be administered, any medication to a horse at any time on race day prior to the commencement of a race in which the horse is engaged to race.
4. If a person breaches subrule (1), a disqualification for a period of not less than 6 months must be imposed, unless there is a finding that a special circumstance exists, in which case that penalty may be reduced.
5. The Stewards may order that a horse which has received a medication in breach of subrule (1) be scratched from a race engagement.

AR 104(1) states:

(1) A trainer must record any medication or treatment administered to any horse in the trainer’s care by midnight on the day on which the administration was given.

**Particulars of charges:** **Charge 1 – AR249(1)**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.
2. You are, and were at all relevant times, the trainer of *Solodka* (the **Horse**).
3. On 21 April 2023, the Horse was entered to run in Race 9, the Ladbrokes Yard Comments BM64 Handicap, over 2060 metres at the Cranbourne Racecourse (the **Race**).
4. On the morning of the Race, you caused to be administered to the Horse 10 crushed up tablets of Carafate mixed with 5 ml of water (the **Medication**).
5. You did not obtain permission from the Stewards to administer, or cause to be administered, the Medication to the Horse prior to the Race.

**Charge 2 – AR104(1)**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.
2. You are, and were at all relevant times, the trainer of *Solodka* (the **Horse**).

1. On 21 April 2023, following a request by the Stewards, you provided the Stewards with your treatment records for the Horse.
2. From 17 April 2023 to 20 April 2023, your treatment records did not contain all the information as required by AR 104(2), including but not limited to times of administration, routes of administration, the amount of medication administered, and the reason for administering the medication.

**Pleas:** Guilty to both charges.

**DECISION**

1. Mr Mick Bell is a licensed trainer of thoroughbred horses. At all material times he was the trainer of the horse, “Solodka”.
2. Solodka was entered to compete in Race 9 at Cranbourne on 21 April 2023. On the morning of 21 April 2023, a member of Mr Bell’s staff administered to Solodka ten tablets of a substance known as Carafate crushed and mixed with 5ml of water. Mr Bell did not obtain permission from the Stewards of Racing Victoria for the medication to be administered to Solodka on the morning of the race as is required by Australian Racing Rule (“AR”) 249(1).
3. Stewards of Racing Victoria have charged Mr Bell with an offence under AR 249(1) and also with an offence under AR 104(1) for failing to record in his treatment book matters concerning the times of administration of treatment and the amount of medication administered.
4. Mr Bell has pleaded guilty to both charges. We accept those pleas and are comfortably satisfied that both charges are made out.
5. Solodka, at all material times, was in daily receipt of Carafate to deal with stomach ulcers. The stablehand who administered the medication on the morning of the race did so by oversight and said that it is was a mistake to do so. Mr Bell accepted that he should have told the stablehand not to administer the medication on the morning of the race.
6. The second charge arose on account of Mr Bell’s treatment records, on inspection by the Stewards, being shown to be in an unsatisfactory state with the details required by AR 104 not set out.
7. Mr Bell is an experienced trainer, having trained for the last 8 years but before then in the period 1983 to 2002. He has also been involved in the industry as a licensed farrier for 44 years. Mr Bell accepted responsibility for the breach of the Rule against race day treatment and the record keeping offence. He said that his stable employee who administered the medication was unaware of AR 249 but Mr Bell, should have made him aware. Mr Bell is remorseful for his failure to comply with the Rules of Racing.
8. Under AR 249(2), a finding of a breach of AR 249(1) results in a minimum period of disqualification of 6 months unless there is a finding that “a special circumstance” exists. A finding of transgression against AR 104, in most matters usually results in a fine of $500 with a guilty plea.
9. In setting a penalty for Charge 1 we are compelled by AR 249(2) to impose the penalty there set out unless a special circumstance exists. That gives arise to the question which special circumstances exists on the facts of this matter. On the other hand it is a straight forward matter of negligence in compliance with a mandatory rule. The stablehand concerned was not an inexperienced racing industry person. He had been a trainer and was acting as foreman for Mr Bell. He should have known about the Rule. However, as Mr Bell conceded, it was Mr Bell’s obligation to tell him because Mr Bell is the relevant responsible person. Nonetheless the Stewards submitted that special circumstances existed in this matter. They point to a misunderstanding by Mr Bell that mixing crushed up Carafate with the horse’s daily feed would not offend AR 249(1). That was a genuine error.
10. Under Local Racing Rule 105, special circumstances may be found to exist where a person has co-operated with the Stewards and entered an early guilty plea. Those factors apply here. In addition, special circumstances may exist where in the interests of justice the circumstances may be considered special. The Stewards also rely on the later consideration. They contend and we agree that the Rules of Racing were not intended to punish trainers who make a genuine mistake regarding the feeding of a therapeutic substance which is not a prohibited substance when given to a horse on a non-race day. In all the circumstances, we consider that the mistake justifies a penalty of $4,000. In making that decision we take into account Mr Bell’s relatively good record over a long period time.
11. The only relevant prior offence occurred in South Australia in 2020 when Mr Bell made an error to the withholding period required for the administration of meloxicam. The offence concerned was a presentation one.
12. On the record keeping penalty we note recent decisions of the Tribunal suggesting that the message about record keeping is not getting through to trainers and higher penalties may be required. We refer especially to the matter of Coffey published on 1 September 2023 in which a penalty for a breach of AR 104(1) led to a $1,500 fine. However, in that matter the trainer concerned failed to have a record back at all. In all the circumstances, we fine Mr Bell on the record keeping charge $750 with $250 suspended for a period of 24 months subject to no further breach of AR 104(1) in that period.
13. The total immediately effective penalty is $4,750 with $250 suspended as discussed earlier.

Mark Howard

Registrar, Victorian Racing Tribunal