21 December 2023

**DECISION**

**RACING VICTORIA**

**and**

**JACK MORGAN-BYRNES**

**Date of hearing:** 11 December 2023

**Panel:** Judge John Bowman (Chairperson), Dr Andrew Gould and Ms Judy Bourke.

**Appearances:** Mr Jack Anderson appeared on behalf of the Stewards.

Mr Paul Horvath appeared on behalf of Mr Jack Morgan-Byrnes.

**Charges and particulars:** **Charge One: AR 231(1)(a)**

Australian Rule of Racing (“AR”) 231(1)(a) reads as follows:

***AR 231 Care and welfare of horses***

1. *A person must not:*
2. *commit or commission an act of cruelty to a horse, or be in possession of any article or thing which, in the opinion of the Stewards, is capable of inflicting cruelty to a horse;*

*…*

**Particulars of Charge**

1. You were at all relevant times a Stable Employee registered with Racing Victoria.
2. You were at all relevant times employed by licensed trainer Nick Ryan at his Flemington stables (the **Stables**).
3. On 27 February 2023, after returning the racehorse Red Phantom (the **Horse**) to its box at the Stables, you were aware that the Horse had blood in its mouth and proceeded to collect, fit and check a stallion chain over the bridge of the Horse’s nose.
4. Your conduct, as outlined in particular 3, constitutes an act of cruelty to a horse.

**Charge Two: AR 228(a)**

AR 228(a) reads as follows:

***AR 228 Conduct detrimental to the interests of racing***

*A person must not engage in:*

1. *conduct prejudicial to the image, interests, integrity, or welfare of racing, whether or not that conduct takes place within a racecourse or elsewhere;*

*…*

**Particulars of Charge**

1. You were at all relevant times a Stable Employee registered with Racing Victoria.
2. You were at all relevant times employed by licensed trainer Nick Ryan at his Flemington stables (the **Stables**).
3. In handling the racehorse Red Phantom (the **Horse**) at the Stables during the morning of 27 February 2023, you engaged in conduct prejudicial to the image, interests, integrity or welfare of racing, in that:

(i) you were witnessed pushing and walking the Horse backwards whilst shouting and banging down on the Horse's mouth;

(ii) you were witnessed repeatedly pulling down on the Horse’s bit and mouth;

(ii) whilst the Horse was bleeding from the mouth, you proceeded to collect a stallion chain and fitted and checked the chain over the bridge of the Horse’s nose;

(iv) the bleeding from the Horse’s mouth was witnessed by racing industry participants; and

(v) your overall poor horsemanship and care towards the Horse was observed by racing industry participants.

1. Your conduct, as outlined in particular 3, was prejudicial to the image, interests, integrity and/or welfare of racing.

**Charge Three: AR 228(b)**

AR 228(b) reads as follows:

***AR 228 Conduct detrimental to the interests of racing***

*A person must not engage in:*

*…*

1. *misconduct, improper conduct or unseemly behaviour*

*…*

**Particulars**

1. You were at all relevant times a Stable Employee registered with Racing Victoria.
2. You were at all relevant times employed by licensed trainer Nick Ryan at his Flemington stables (the **Stables**).
3. In handling the racehorse Red Phantom (the **Horse**) at the Stables during the morning of 27 February 2023, you engaged in misconduct, improper conduct or unseemly behaviour in that:

(i) you pushed and walked the Horse backwards whilst shouting and banging down on the Horse's mouth;

(ii) you repeatedly pulled down on the Horse’s bit and mouth; and

(iii) whilst the Horse was bleeding from the mouth, you proceeded to collect a stallion chain and fitted and checked the chain over the bridge of the Horse’s nose;

1. Your conduct, as outlined in particular 3, amounts to misconduct, improper conduct and/or unseemly behaviour.

**Charge Four: AR 231(1)(b)(ii)**

AR 231(1)(b)(ii) reads as follows:

***AR 231 Care and welfare of horses***

*(1) A person must not:*

*…*

*(b) if the person is in charge of a horse – fail at any time:*

…

1. *to take such reasonable steps as are necessary to alleviate any pain inflicted upon or being suffered by the horse;*

*…*

**Particulars of Charge**

1. You were at all relevant times a Stable Employee registered with Racing Victoria.

1. You were at all relevant times employed by licensed trainer Nick Ryan in his Flemington stables (the **Stables**).
2. On 27 February 2023, after returning the racehorse Red Phantom (the **Horse**) to its box at the Stables, you were aware that the Horse had blood in its mouth and proceeded to collect, fit and check a stallion chain over the bridge of the Horse’s nose.
3. In engaging in the conduct as outlined in particular 3, you failed to take such reasonable steps as were necessary to alleviate any pain being suffered by the Horse.

 **Plea:** Charges 1, 2 and 4 were withdrawn

Guilty to Charge 3

**DECISION**

Mr Jack Morgan-Byrnes, you are pleading guilty to a breach of AR228(b). Rule 228 has the heading “Conduct detrimental to the interests of racing”. AR228(b) states that a person must not engage in misconduct, improper conduct or unseemly behaviour.

We emphasise at the start that, at this hearing, you have not been charged with committing an act of cruelty, to summarise AR 231(1)(a), which is headed “Care and welfare of horses”. Such a charge was laid, as were charges pursuant to AR228(a), which involves conduct detrimental to the image of racing and pursuant to AR231(1)(b)(ii). These concern the failure to take reasonable steps to alleviate pain being suffered by a horse. These charges have been withdrawn by the Stewards and only the charge of misconduct and the like remains. Mr Jack Anderson, appearing on behalf of the Stewards, emphasised that the charge facing you and to which you are pleading guilty is not one of cruelty. We accept that.

Mr Anderson, in his opening submissions, stated that the penalty being sought by the Stewards is one of disqualification for one month. As you are not a licensed person, and have not been so for some months, suspension is not an option. Mr Paul Horvath, on your behalf, explained your background and mentioned various references as to your good character and the like. He did not argue against the proposed penalty of disqualification for one month.

Of course, the final decision is one for us. We do take into account the submissions and material put before us. We are also conscious of the fact that two very experienced representatives have effectively put to us an agreed penalty.

You are a young man aged 27 years. You have something of a racing background in your family. You had not been employed as a stable hand for Mr Nick Ryan for very long before this incident occurred at his stables. It occurred on 27 February 2023 and involved the horse Red Phantom. We accept that it can be a difficult horse. We also accept that it got away from you and lacerated its tongue. It is in no way alleged that you were responsible for that laceration. What we do accept is that subsequently, when the horse was back under your control, you repeatedly pulled down on its mouth and employed the use a stallion chain. You maintain that, at least at first, you did not appreciate that it had lacerated its tongue. We also accept that your behaviour constituted misconduct or unseemly behaviour. Indeed, as stated, you have pleaded guilty to such a charge.

Mr Ryan was upset with what had occurred and terminated your services. You have since returned to South Australia, from where you came. You have been working as a concreter. You are keen to return to the racing industry in South Australia. Amongst other things, you are seeking work as a barrier attendant, but the relevant authority in South Australia is awaiting the outcome of this hearing.

We could go on at greater length concerning the material that has been put before us. Suffice to say that we accept that the laceration of the horse’s tongue was not of your doing, but the way that you subsequently handled the horse, and the situation, led to this Charge being maintained. Happily, the horse suffered no long term damage from anything you did. Indeed, as we understand, Red Phantom has successfully resumed its career.

Stable employees, indeed racing industry employees, must be conscious of the importance of the image of racing and particularly when a circumstance which could be interpreted as cruelty or lack of regard for animal welfare is involved. It is something that you should have borne in mind in the circumstances that were prevailing.

In all those circumstances, we are of the opinion that the penalty proposed by Mr Anderson on behalf of the Stewards, and not opposed by Mr Horvath on your behalf, is appropriate.

You are disqualified for a term on one month, effective immediately.

Mark Howard

Registrar, Victorian Racing Tribunal