26 March 2024

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**PADDY LEE**

**Date of hearing:** 1 March 2024

**Panel:** Judge Marilyn Harbison (Deputy Chairperson) and Judge Julie Nicholson.

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

Mr Damian Sheales appeared on behalf of Mr Paddy Lee.

**Charge:** Australian Harness Racing Rule (“AHRR”) 190(1) states:

(1) A horse shall be presented for a race free of prohibited substances.

**Particulars of charge:** 1. At all relevant times, you were a licensed trainer and driver with HRV and a person bound by the Australian Harness Racing Rules;

2. At the relevant time you were the trainer of *Keayang Xena*;

3. On 3 February 2023, the horse *Keayang Xena* was presented to race at the Melton harness racing meeting in Race 7, the “Aldebaran Park Vicbred Platinum Trotting Mares Sprint Championship Final”;

4. Following Race 7, a urine sample was collected from *Keayang Xena* with subsequent analysis of that sample revealing the presence of dexamethasone;

5. As the trainer of *Keayang Xena* on 3 February 2023, you presented that horse to race in the “Aldebaran Park Vicbred Platinum Trotting Mares Sprint Championship Final” at Melton not free of the prohibited substance dexamethasone.

**Plea:** Not Guilty

**DECISION**

1. Paddy Lee is the trainer of a horse named Keayang Xena. On 3 February 2023 he presented that horse in a harness race at Melton and the horse finished first. At the conclusion of the race, the horse was tested and found to have dexamethasone present in its system.
2. It transpired that the trainer had arranged for two injections of a veterinary drug known as Dexafort to be given to the horse on 20 January 2023. Dexafort is the trade name of the drug dexamethasone. The horse was treated at the same time with Kenacort. The injections were administered by and on the recommendation of a vet who commonly treated the horse. That vet was Dr John Russell. The injection was given as the horse was suffering from muscle soreness. The use of dexamethasone as a therapeutic substance to treat stress injuries to the joints and ligaments of horses is widespread. When he administered the drug, Dr Russell advised Mr Lee that the withholding period of the drug was 14 days. The horse could not race within 14 days as the dexamethasone would not be excreted from the system until after that time.
3. No other injections were given after that date.
4. On exactly the 14th day after these injections, the horse participated in the race on 3 February 2023.
5. The Stewards interviewed Mr Lee in depth regarding his administration of dexafort. They also conducted an in-depth interview with Dr Russell.
6. Mr Lee told the Stewards that his practice was to comply with whatever withholding period was recommended by his vet. He said that he was very careful when using dexamethasone.
7. Dr Russell said that he recalled advising Paddy Lee that the withholding period from racing for this medication was 14 days. He said that that was his usual practice and that, in the ten years that he has been practising in Australia, he has treated over 40,000 horses and has never found a difficulty with the 14-day recommendation. He described this case as being an ‘outlier’. He said that it was the first time in his career that he had ever come back with a positive swab for any medication. He said that there was no rule book or book of information that a vet could use when deciding withholding periods. He said that, on his long experience, he thought that it was perfectly safe for the horse to be racing after 14 days.
8. We were also provided with a statement from Dr Richard Cust, who is a veterinary consultant to Harness Racing Victoria. He described dexamethasone as being a very strong anti-inflammatory and immunosuppressive drug which is very potent and which has a long duration of presence in the body before it is excreted. He said that this medication was valuable in veterinary medicine for treatment of severely stressed horses with damage to their joints and ligaments.
9. Dr Cust said that recommended withholding periods are a guide only and may vary considerably. He said that the variation depended on the dose size and the concurrent use of other medications. He stressed that detection times are not accurate and can be extremely variable from horse to horse.
10. Dr Cust opinion was that the withholding period for dexamethasone should be more than one month. He recommended that owners should sample test a horse before racing after administering dexamethasone. His opinion was that it was very risky to present a horse at a race rafter 14 days of an injection of dexamethasone, because that left very little time for variation in excretion and washout times. Mr Sheales, in penalty submissions, challenged Dr Cust’s opinion, but did not cross examine him.
11. Paddy Lee has pleaded guilty to this charge. We heard the following matters which we take into account in assessing penalty.
12. He has been a horse trainer for 8 years. He has never been dealt with for any serious offence, apart from one matter which arose in July 2018. At that time, he was convicted of two offences of administering an anabolic androgenic steroid and presenting the horse in a race with that substance present in its system. This prior offence is relevant to our sentencing task today.
13. We were told the following about that incident In that case there was a period of only one month between the notice to the industry regarding this substance and the time of administration. Thus, there was only a short period for Mr Lee to acquaint himself with the rule.
14. In relation to setting penalty, Mr Sheales has submitted on Mr Lee’s behalf that any penalty should be nominal, given that Mr Lee at all times followed his vets advice and there is little else that he could have been expected to do in order to avoid being in this situation. We acknowledge the strength of this submission. However, it is the nature of a presentation offence that often the person presenting the horse will have no knowledge of the presence of the substance in the horse’s system. If the horse is knowingly presented, then a different charge and different consequences apply. The onus is clearly on the trainer to ensure that the horse is free of a prohibited substance. The cases to which we have been referred make it clear that this is a consequence of the policy that drugs play no part in the racing industry. It is a severe approach, but is clearly established in the cases referred to in this hearing. We intend to underscore this policy in this instance, whilst also taking into account the personal matters put to us on Mr Lee’s behalf.
15. On this presentation charge, the penalty which we impose is as follows.

A $6,000 fine with $5,000 suspended for 12 months. In addition, we order that the horse be disqualified from the race at Melton on 3 February 2023 and that the finishing order and placings be amended accordingly.

Mark Howard

Registrar, Victorian Racing Tribunal