26 March 2024

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**RICK HOLMES**

**Date of hearing:** 9 February 2024

**Panel:** Justice Shane Marshall (Deputy Chairperson) and Dr Andrew Gould.

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

Mr Rick Holmes represented himself.

**Charges and particulars: Charge 1 of 3: Australian Harness Racing Rule (“AHRR”) 218**

Rule 218 reads as follows:

*A person having responsibility for the welfare of a horse shall not fail to care for it properly*

**The particulars of the charge being:**

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. Between 29 January 2021 and 14 May 2021, you were a person responsible for the welfare of the horse *Dakota Warrior*;
3. In the period that you were responsible for the welfare of *Dakota Warrior*,you failed to care for the horse properly, in that:
   1. On or about 10 April 2021, you abandoned *Dakota Warrior* at your stable address, namely 183 Millewa Road, Redcliffs, Victoria; and
   2. You failed to provide sufficient food and nutrition to *Dakota Warrior*, resulting in the horse being severely emaciated with a body condition score of 0.5 to 1 out of 5 when examined by Veterinarian Dr Megan Ginifer on 14 May 2021.

**Charge 2 of 3: AHRR 187(2)**

Rule 187 (2) reads as follows:

*A person shall not refuse to answer questions or to produce a horse, document, substance or piece of equipment, or give false or misleading evidence or information at an inquiry or investigation*

**The particulars of the charge being:**

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. On 21 June 2021, during an interview with HRV Stewards, you gave evidence to the effect that the horse *Dakota Warrior* went into a paddock at Werrimull between about mid-February 2021 and mid-April 2021;
3. The evidence that you gave during the interview with HRV Stewards (as outlined in paragraph 2) was knowingly false or misleading, given that you admitted during a subsequent interview with HRV Stewards on 9 September 2022 that *Dakota Warrior* never went to Werrimull.

**Charge 3 of 3: AHRR 187(1)**

Rule 187 (1) reads as follows:

*A person who is directed to do so by the Stewards shall attend an inquiry or investigation convened or conducted by them*

**The particulars of the charge being:**

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. On 19 September 2022, the HRV Stewards directed you to attend an interview on 20 September 2022, at 11:00am, in relation to their investigation into the poor body condition score of *Dakota Warrior* on 14 May 2021;
3. You refused to attend the interview.

**Pleas:** Guilty to both charges

**DECISION**

1. Mr Rick Holmes at all material times was a licensed harness racing Grade C driver and Grade B trainer. He has been charged by Stewards of Harness Racing Victoria (“HRV”) with three offences. He has pleaded guilty to all three charges.
2. The first charge is under Australian Harness Racing Rule (“AHRR”) 218, which prohibits a person having responsibility for the welfare of a horse failing to care for the horse properly. The horse concerned here was Dakota Warrior, which has since been retired from racing and rehabilitated by new interstate owners. The horse was formerly owned and trained by Mr Holmes.
3. Between 29 January 2021 and 14 May 2021, Mr Holmes failed to provide sufficient food and nutrition to Dakota Warrior, which resulted in the horse having an emaciated body condition scale of 0.5 to 1 out of 5. At the time the horse was agisting at a property which had little to no grass on it and Mr Holmes would occasionally drive by the property and throw hay over the fence.
4. The condition of the horse was so poor that, by mid-May 2021, it would not have been capable of surviving much longer. The veterinarian who inspected the horse on 14 May 2021 described the horse’s condition as the second worse she had ever seen. The horse had been abandoned from 10 April 2021 at Mr Holmes stables.
5. Charge 2 concerns a breach of AHRR 187(2) which, amongst other things, compels industry participants to give true evidence when questioned by Stewards. Mr Holmes admitted giving false evidence to Stewards about the whereabouts of Dakota Warrior when asked on 21 June 2021.
6. Charge 3 concerns a breach of AHRR 187(1), which compels industry participants who are directed to attend a Steward’s inquiry do so. On 19 September 2022, Mr Holmes was directed by Stewards to attend for an interview on 20 September 2022. He refused to do so. He was affected by drugs and alcohol at the time. It helps so explain the conduct, but does not excuse it or his non-attendance.
7. On the first charge, the matter is so serious that it calls for a period of disqualification of significant length. Animal welfare is the most critical consideration for the industry. If not observed, the social licence of the industry to conduct the sport would be imperilled. In setting a penalty, we take into account the very high level of the offending, as well as general deterrence. We also take into account penalties give in recent like cases, as well as the guilty plea. In all the circumstances, we impose a period of disqualification of 3 years. Although Mr Holmes requested a suspension so that he could continue to work as a farrier in the industry, the offending is so serious as to demand a disqualification and not a suspension.
8. On Charge 2, we take into account the importance of industry participants being frank with the Stewards. The job of the Stewards is difficult enough without industry participants making that work harder by misleading them. We take into account general and specific deterrence, recent penalties in like matters and the guilty plea. In all the circumstances, we impose a penalty of a fine of $1,500.
9. On Charge 3, which involved a failure to attend an inquiry, we take into account penalties in recent like cases. We also take into account the guilty plea and the stress Mr Holmes was under at the time. Failure to appear at an inquiry when requested undermines the integrity of the industry. A period of disqualification is required. That period should be cumulative upon the period in Charge 1, as it involves different factual considerations. In all the circumstances, we impose a penalty of 6 months disqualification.
10. The total period of disqualification imposed is 3 years and 6 months, commencing today. In addition, a $1,500 has been imposed in respect of Charge 2. In setting the periods of disqualification, we have set lower penalties than we may otherwise have set because of the HRV’s delay in bringing these matters to hearing.

Mark Howard

Registrar, Victorian Racing Tribunal