20 May 2024

**DECISION**

**RACING VICTORIA**

**and**

**ANTHONY PEASNELL**

**Date of hearings:** 8 June 2023, 9 June 2023, 12 October 2023 and 13 October 2023 and 10 May 2024.

**Date of decision:** 3 May 2024

**Date of penalty:** 10 May 2024

**Panel:** Judge Kathryn Kings (Deputy Chairperson), Dr Andrew Gould and Mr Des Gleeson.

**Appearances:** Mr Damien Hannan instructed by Mr Marwan El-Asmar and Mr Scott Hunter appeared on behalf of the Stewards.

Mr Damian Sheales appeared on behalf of Mr Peasnell.

Ms Sinead Peebles appeared as a witness.

Ms Jade Jillings appeared as a witness.

Mr Simon Zahra appeared as a witness.

Ms Bridie Kinghorn appeared as a witness.

Bill Morgan appeared as a witness.

Dr Grace Forbes appeared as a witness.

Mr Anthony Peasnell appeared as a witness.

**Charge and particulars:**

**Charge 1 of 5: AR 231 (1) (a)**

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 are, and were at all relevant times, a registered Owner and Stablehand licensed by Racing Victoria;
2. On 30 December 2021, you were employed as the Foreman of Simon Zahra stables at Flemington;
3. On 30 December 2021, you entered the bull ring at the Flemington Racecourse with the horse *‘Age of Infinity’* (**the horse**) where you committed the following acts:

* Yelling and shouting at **the horse**;
* Striking **the horse** with a stock whip with force;
* Striking **the horse** numerous times (approximately 12) prior to the horse jumping the first obstacle;
* Striking **the horse** in the head with the stock whip;
* Striking **the horse** on each lap with the stock whip despite the horse free jumping on the circle;

1. Your conduct as outlined in paragraph 3 amounts to an act of cruelty to a horse, or be in possession of an article, being a stock whip, which in the opinion of the Stewards is capable of inflicting cruelty to a horse.

**Charge 2 of 5: AR 133 (b)**

AR 133 (b) reads as follows:

**Possession of stockwhip**

*A person must not have in his or her possession a stockwhip:*

1. *At a racecourse*
2. *At a thoroughbred racing stable; or*
3. *At premises otherwise used for training or pre-training a horse; unless the person satisfies the Stewards that the stockwhip is in his or her possession at those premises for reasons unrelated to the training or pre-training of a horse.*

**Particulars of charge**

1. You are, and were at all relevant times, a registered Owner and Stablehand licensed by Racing Victoria.
2. On 30 December 2021 you were employed as the Foreman of Simon Zahra stables at Flemington.
3. On 30 December 2021 you entered the bull ring at the Flemington Racecourse with the horse *‘Age of Infinity’* (**the horse**) whilst in possession of a stock whip.

**Charge 3 of 5: AR 231 (4)**

AR 231 (4) reads as follows:

**AR 231 Care and welfare of horses**

*(4) A person must not use a stockwhip on a horse in any circumstances relating to racing, training or pre-training, regardless whether the horse is registered.*

**Particulars of charge**

1. You are, and were at all relevant times, a registered Owner and Stablehand licensed by Racing Victoria.
2. On 30 December 2021 you were employed as the Foreman of Simon Zahra stables at Flemington.
3. On 30 December 2021 you entered the bull ring at the Flemington Racecourse with the horse *‘Age of Infinity’*  (**the horse**) whilst in possession of a stock whip which you then used to encourage the horse to gallop around the bull ring.

**Charge 4 of 5: AR 133 (b)**

AR 133 (b) reads as follows: 

**Possession of stockwhip**

*A person must not have in his or her possession a stockwhip:*

1. *At a racecourse*
2. *At a thoroughbred racing stable; or*
3. *At premises otherwise used for training or pre-training a horse; unless the person satisfies the Stewards that the stockwhip is in his or her possession at those premises for reasons unrelated to the training or pre-training of a horse.*

**Particulars of charge**

1. You are, and were at all relevant times, a registered Owner and Stablehand licensed by Racing Victoria.
2. On 14 May 2022 you were employed as the Foreman of Simon Zahra stables at Flemington.
3. On 14 May 2022 you entered the bull ring at the Flemington Racecourse with the horse *‘Recourse’* (**the horse**) whilst in possession of a stock whip.

**Charge 5 of 5: AR 231 (4)**

AR 231 (4) reads as follows:

**AR 231 Care and welfare of horses**

*(4) A person must not use a stockwhip on a horse in any circumstances relating to racing, training or pre-training, regardless whether the horse is registered.*

**Particulars of charge**

1. You are, and were at all relevant times, a registered Owner and Stable hand licensed by Racing Victoria.
2. On 14 May 2022 you were employed as the Foreman of Simon Zahra stables at Flemington.
3. On 14 May 2022 you entered the bull ring at the Flemington Racecourse with the horse *‘Recourse’* (**the horse**) whilst in possession of a stock whip which you then used to encourage the horse to gallop around the bull ring.

**Pleas:** Guilty to charges 2 to 5.

Not Guilty to charge 1.

**DECISION**

**Introduction:**

Mr Anthony Peasnell is charged with 5 offences. Mr Peasnell pleaded Guilty to charges 2 - 5 and Not Guilty to Charge 1. Accordingly, this judgment only considers Charge 1.

Charge 1 alleges that, pursuant to AR 231 (1)(a) on 30 December 2021, Mr Peasnell committed an act of cruelty on the horse “Age of Infinity” (“the horse”) by engaging in the following conduct:

* Yelling and shouting at the horse;
* Striking the horse with a stock whip with force;
* Striking the horse numerous times (approximately 12) prior to the horse jumping the first obstacle;
* Striking the horse in the head with the stock whip; and
* Striking the horse on each lap with the stock whip despite the horse freely jumping on the circle.

We heard from seven witnesses and received a Brief of Evidence, including exhibits into evidence on 8 and 9 June and 12 and 13 October 2023. Written submissions were filed by Racing Victoria on 1 November 2023 and by Mr Peasnell on 22 December 2023.

The Stewards charged Mr Peasnell with breaching Australian Rules of Racing (AR) 231 (1)(a) which provides 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.

Under AR 2 “cruelty includes any act or omission as a consequence of which a horse is mistreated”.

Reference is also made to the meaning of the cruelty in this context by the cruelty offence provision within S. 9 of the Prevention to Cruelty Animals Act 1986. The relevant part of this provision defines cruelty as being behaviour that:

1. wounds, mutilates, tortures, overrides, overdrives, overworks, abuses, beats, worries, torments or terrifies an animal; or
2. loads, crowds or confines an animal where the loading, crowding or confinement of the animal causes *,*or is likely to cause *,*unreasonable pain or suffering to the animal; or
3. does or omits to do an act with the result that unreasonable pain or suffering is caused or likely to be caused to an animal.

We accept that for Charge 1 to be proven, we must be comfortably satisfied that the conduct of Mr Peasnell, with the horse, Age of Infinity on 30 December 2021 within the bullring amounted to any, or all of the following:

* Mistreatment; and/or
* Wounding; and/or
* Overworking; and/or
* Abusing; and/ or
* Beating; and/or
* Worrying; and/or
* Tormenting; and/or
* Terrifying; and/or
* Committing an act that unreasonable pain or suffering is likely to have been caused.

The burden of proof is one of a comfortable level of satisfaction. Reference is made to the *Briginshaw v Briginshaw* (1938) 60 CLR 336, in which the High Court cautioned against a purely mechanical comparison of mathematical probabilities (civil standard), stating at pp361-2 that the balance of probabilities test requires us to: “feel an actual persuasion of its occurrence or existence before it can be found. It cannot be found as a result of a mere mechanical comparison of probabilities independently of any belief in its reality…At common law…it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal.”

We accept that an offence under AR 231 is serious. The conduct of Mr Peasnell must be voluntary or willed. The subjective intent is not an element that need be proven given the wording in AR 231, using the phrase “consequence of which” as well as the lack of words “intentionally” or “without just cause” in the offence provision under the Prevention of Cruelty to Animals Act 1986.

Racing Victoria accepted that the mere fact of cracking the stockwhip itself, without contact, might not necessarily amount to an act of cruelty under AR 231(1)(a). The shouting or yelling at the horse alone would not be cruel. Rather it is Mr Peasnell’s conduct during the morning of 30 December 2021 that needs to be considered.

Particulars of the Charge were provided. These include that Mr Peasnell was:

1. At all relevant times, a Stable Employee registered with Racing Victoria.
2. On 30 December 2021, employed as the Foreman of Simon Zahra stables at Flemington.

3. On 30 December 2021, entered the bull ring at the Flemington Racecourse with the horse “Age of Infinity “(the horse), where he engaged in the following conduct:

* Yelling and shouting at the horse;
* Striking the horse with a stock whip with force;
* Striking the horse numerous times (approximately 12) prior to the horse jumping the first obstacle;
* Striking the horse in the head with the stock whip; and
* Striking the horse on each lap with the stock whip despite the horse free jumping on the circle.

1. His conduct, as outlined in paragraph 3, amounted to an act of cruelty to a horse, or being in possession of an article, being a stock whip, which in the opinion of the Stewards is capable of inflicting cruelty to a horse.

Mr Peasnell admitted paragraphs 1, 2 and 3 in so far as he “yelled and shouted at the horse”, but otherwise denied that he engaged in the other conduct set out in paragraph 3.

It was not disputed by Mr Peasnell that the stock whip did connect with the hocks or like at the rear of the horse. He denied that the admitted particulars of the Charge in paragraphs 1, 2 and 3 in so far as he yelled and shouted at the horse.

Evidence was given from seven witnesses. However, the witness Ms Bridie Kinghorn gave no evidence relevant to Charge 1. Dr Forbes, veterinarian, gave opinion evidence that is of little probative value, in that our findings as to what occurred at the bull ring will determine the liability finding. It was acknowledged by Racing Victoria that, for it to establish the case against Mr Peasnell, it is necessary for us to be satisfied that the evidence of Ms Peebles was a witness who was both truthful and reliable.

We acknowledge that the witnesses were providing evidence of events that occurred 5 to 6 months before their first interviews with the Stewards and 30 to 33 months before giving evidence to us. A couple of the witnesses contacted the Stewards to change their evidence. In assessing the evidence of the witnesses, we take these matters into account.

It was not in dispute that Mr Peasnell did not know how to use a stock whip. This was the evidence from Ms Peebles, Ms Jillings, Mr Zahra, the Steward Mr Harrison and Mr Morgan Further, it was a hot day, being 30 degrees at 9.30am. Next, Mr Peasnell was instructed by Mr Zahra to take the horse to the bull ring to do 3 to 4 laps. Finally, the horse ran in a race later that day in which it came last. The film of the race was played to us and to some of the witnesses.

There was a dispute on the evidence as to what occurred at the bull ring. Ultimately, we are required to consider all the evidence and make findings of fact as to what occurred at the bull ring on 30 December 2021. In doing so, we will be influenced by our assessment of the witnesses and their evidence.

Racing Victoria relied upon the evidence of Ms Sinead Peebles. Ms Peebles, in an interview with the Stewards on 24 May 2022, said that the horse was being “roared at from the get go”. She also said that a lunge whip (changed to a stock whip 2 hours later) was used by Mr Peasnell by flicking it and hitting it “on the bum”. She also said that Mr Peasnell used a 10 out of 10 force with the whip.

In evidence before us, Ms Peebles said that she saw Mr Bill Morgan hand a stock whip to Mr Peasnell as they were leaving the stables. She said that they were in the centre of the bull ring and that the horse moved freely around. The intention was for the horse to jump the obstacles. The horse did not want to jump and the stock whip was used by Mr Peasnell to encourage it. The first time he hit the horse over the rump, the horse was startled, but did not jump. Eventually it jumped the first obstacle. Ms Peebles could not say how many times the horse was hit before it jumped the first obstacle. After jumping the first obstacle, the horse turned around to go the other way. Pressure was put on the horse and it stumbled over the obstacle the reverse way. The pressure was from Mr Peasnell and Ms Peebles roaring at it. She said that Mr Peasnell was flicking the whip to the back of the horse’s rump and hocks and she saw the horse hit across its face. The horse was quite defeated, tired and distressed. She said that the force used was excessive. Pressure was continued to be put on it despite its distress. It should have been backed off a lot earlier than it was. She said that the horse did 10 to 12 laps. She said that the horse wanted to jump the obstacle the reverse way and stumbled over it.

The horse eventually went over the obstacles. It was tired and sweaty. Pressure was put on the horse despite its distress and it should have been backed off a lot earlier. Ms Peebles told Simon that “the horse was gutsed”. It had done too much. She said “I told Simon the stock whip was overused”.

Ms Peebles also said that she saw welts over the horse’s rump and back end. She said that she was interviewed by the Stewards and did not mention the stock whip. There was a lunge whip. She rang Mr Gary Harrison (the Steward) after the first interview and said that she wanted to talk further. She told the truth in her second interview.

In cross-examination, Ms Peebles said that the force used by Mr Peasnell when using the stock whip was 10 out of 10 and that there was no breaking of the skin. She agreed that she had never seen anyone hit a horse with a stock whip what she would describe as 10 out of 10 force. She saw welts on the horse. She could not remember telling Mr Zahra about the welts. She disagreed with the suggestion that it was inconceivable that she would not have shown Mr Zahra the welts. Ms Peebles was shown the replay of the race, in which the horse ran on 30 December 2021. She said she could not see welts on the horse on the replay of the race. Ms Peebles’ explanation was that the welts were on the near side (the side away from the camera) of the horse. She agreed that it was nonsensical that a trainer would send a horse to the races covered in welts. The horse would be scratched. Further, she said that training practice is to “sharpen them up on race day and is only a couple of laps”. Doing 12 laps on race day is inexplicable. She said the horse was struck “a lot”. She said that the horse jumped the wrong way. She agreed that it was dangerous. She agreed that Mr Peasnell and Ms Peebles ran the horse up to the obstacle and it refused to jump. She said that it was hit going over. The horse was hit 10 to 15 times before it went over any obstacle. It was hit going over every obstacle after that. It was hit numerous times. She said that she was not counting. Mr Peasnell would “hit it in all different ways. He’d run around, he’d run across, he’d run diagonal. He was chasing or directly going across to get at the next obstacle”.

She said the horse got going “under its own steam” after about 4 obstacles. She did not remember seeing a mark on the face of the horse. She disagreed with the suggestion that the stock whip was only used around the horse’s hocks and that the horse evidenced no further change from normal, other than being sweaty, and having undergone strenuous physical activity.

In re-examination, she stated that the stockwhip was used after the horse was going around under its own steam, as persuasion, but she could not say whether the whip contacted the horse or not. She stated that “The horse – it was done.” When she viewed the video of the race, she did not expect to see welts because the race was at about 3.30pm. The events in the bull ring event were about 9.30am. She had never seen marks on a horse in a race or on video.

Ms Jade Jillings, a strapper/stable hand with Simon Zahra, witnessed the incident on 30 December 2021.

In evidence, Ms Jillings said that she went to the bull ring with Mr Peasnell, Mr Morgan and Ms Peebles. She said that, when interviewed on 24 May 2022 she did not tell the truth that when she said there was no stock whip taken to the bull ring. She did not tell the truth because she worked for Mr Peasnell and was scared. A few days later, she contacted Mr Harrison in order to change her statement regarding the use of the stock whip and the presence of Mr Bill Morgan. She stated that Mr Peasnell used the stock whip on the horse 3 times. She did not tell Mr Harrison about having a bet on the horse in her first interview, but had gone through her betting history and saw that she had. When questioned about her text to Mr Peasnell after the race in which the horse ran last that day, her reference to 100 laps did not mean the horse ran 100 laps, the horse did too many laps and was sweaty.

In cross examination, Ms Jillings agreed that the $50 bet on the horse was a large bet on her limited income. She hoped that the work which the horse did in the morning would enhance its performance that day. She lied to the Stewards when first interviewed because she thought she could be in trouble. She was surprised and uncertain as to where it could lead. She did not want to get others in trouble. She initiated contact with the Stewards so as to clear her conscience.

The horse was struck around the heels and was never struck across the rump or the head. The force used by Mr Peasnell was appropriate. There was no 10 out of 10 hard striking of the horse. The horse did not jump the wrong way against the obstacle as that would be dangerous. The horse took a few goes. That is when we had to chase it with the use of the stock whip at the back of the horse. They were encouraging the horse, giving it confidence – basically “carrot and stick.” She saw nothing cruel about the use of the stock whip by Mr Peasnell and the horse was no worse than if it had run in a race.

When further examined before us on 12 October 2023, she said that she did not see Mr Peasnell make contact using the stock whip 10 to 12 times as Ms Peebles had suggested. Ms Jillings said that contact was made no more than 3 times. She disagreed that contact was made to the rump, but said it was made to the bottom of the hind legs and with a force that was appropriate. That contact was not 10 out of 10 and was not aggressive or hard.

Ms Jillings said that she was the person who shampooed the horse after it had been at the bull ring. When shampooing horses that are going to a race, she always looks over the horse and if she detects a problem, she tells the trainer. It was more precautionary because of the horse racing that day. She was asked whether she checked the rump of the horse. She said that she shampooed the horse from head to toe. She knows that there were not any marks.

Ms Jillings said that, if a horse is facing the wrong way, she would take hold of the horse and push it around to face in the right direction. She disagreed that she saw forceful striking of the horse more than three times. The horse was distressed at one stage when facing the wrong way. The whip was not used on the horse’s face, but was used to turn it around by contact with its chest. Mr Peasnell used the stockwhip around the hocks or to crack it, when the horse was cantering around and jumping, before each obstacle “to keep him going in a forward motion….because otherwise it would just stop”.

Ms Jillings said the horse did between 6 to 10 laps. She had a sizeable bet on the horse because she liked its chances.

Mr Simon Zahra, horse trainer, gave evidence. He was not “really aware” of the change of rules about stock whips in 2009. He did not tell Ms Peebles to tell the Stewards that there was no stock whip and that Mr Bill Morgan was not present. He could not remember Mr Bill Morgan telling him that the horse was “cooked” after the bull ring incident.

Mr Zahra said that Ms Peebles walked into the stables about 5 minutes behind the horse and said that the horse did too much work. They could not stop the horse. It was sweating up, having a good blow. Mr Zahra spoke to Ms Jillings who told him the horse did a few extra laps than normal “cause it was fired up”. He ran his hands over the horse and checked it again 30 minutes later, a time frame in which a horse cools down and if there were markings they would probably protrude right out, at that time.

He did not see welt marks on the horse. He would not send the horse to the races with a welt mark on its body. In his experience marks can last several hours in his experience.

Mr Bill Morgan gave evidence before the Tribunal. He was present at the bull ring when a stock whip was being used. He had used a stock whip on cattle properties. The use was not intended to strike at cattle, but rather create a noise. Stock whips are “not really easy to use” and it took him years to be able to use one.

The stock whip was not making the noise it was meant to make if properly used. Mr Peasnell was waving the stock whip around “like a drunken cowboy” before the horse jumped the first obstacle. He was telling the truth when he had earlier said in evidence that, when he hit the horse on the face and legs with the stock whip, the force “was very, very little”.

Mr Morgan stated that, after the horse jumped the first obstacle, “I think it might have backed back and it might have tried to go around a different way. We made it go the other way because you don’t want them to jump that way.” After the horse jumped the first obstacle it was “pretty good” and then we could not get it to stop. The horse did 7 to 10 laps, possibly.

Mr Peasnell put the stock whip down after the horse jumped on its own. The horse did not have welts. The force used was not 10 out of 10, but low range impact when it “sort of” connected.

In cross-examination Mr Morgan said that he could not tell how many times Mr Peasnell hit the horse. The stock whip was used before the horse jumped the first obstacle and he did not pick it up again. They were at the bull ring for 10 minutes. They could not pull the horse up. The horse was happy going around without encouragement.

Mr Anthony Peasnell said that he was reintroduced into the industry during COVID.

During his first visit to the bull ring, he watched others. When he went to the bull ring on the day in question, he had received instructions from Mr Zahra to take the horse there to do 3 to 4 laps. He did not have a stock whip. Mr Bill Morgan handed him the stock whip. After chasing the horse over the first obstacle, he started to use the stock whip. He was waving the whip and was trying to hit around the horse’s hocks.

The horse went over the obstacle and then turned back around. Mr Peasnell did not use the stock whip to stop him going towards the obstacle the wrong way. He could not remember whether he used the stock whip to encourage the horse at all after the second obstacle.

Mr Peasnell said the horse did 6 to 8 laps, but that was a guess. Once the horse was going, ”we sought of let him go”. The horse did not have welts. To his knowledge the horse was never struck on the flank, rump, chest or head. He could not remember discussing backing the horse with Jade. He did not back the horse. In cross examination he said the purpose of the bull ring training was “to wake up, chase up, hunt” trying to get horses to perform better. He disagreed with the suggestion that stockwhips were used in the bull ring to scare horses and sting them when contacted.

When asked about his answers to questions of the Stewards during his interview on 24 May 2023, he said that he had no idea that they (the Stewards) were going to ask about Age of Infinity six months earlier. He said that he had not turned his mind to that event until the Stewards started asking questions. He felt that he had been told to hit the horse, he was under stress and under pressure. He does not know what he was thinking. He was in shock.

Mr Peasnell felt that he was getting told the answer to the question he was being asked in the interview, but he did not hit the horse 10-15 times, terrorise, torment or scare it. The encouragement for the second obstacle was yelling and carrying on “rah rah rah”. He did not use the whip after it eventually jumped itself.

**Analysis of the evidence.**

Our findings of fact will depend upon the evidence which we find to be truthful and reliable.

Mr Peasnell’s evidence was that, as instructed by Mr Zahra, he was to take the horse to the bull ring for the horse to do 3 or 4 laps. After a period at the bull ring the horse undertook the activity of jumping the obstacles under its own steam.

It was not in dispute that Mr Peasnell took the horse to the bull ring as instructed by Mr Zahra and was accompanied by Ms Jillings, Mr Morgan and Ms Peebles and that Mr Peasnell was handed a stock whip. He had never used a stock whip before. Mr Morgan was the only witness who had experience with a stock whip and said stock whips are difficult to use. It took him years to be able to use a stock whip. Mr Morgan had a leg injury and was using crutches. What is an issue was whether Mr Peasnell’s conduct during the morning of 30 December 2021 amounted to cruelty.

Ms Peebles’ evidence was that Mr Peasnell used a force of 10 out of 10 when using the stock whip. This evidence was not supported by the other witnesses. Ms Jillings denied that there was any 10 out of 10 striking of the horse. She said that the force used was “appropriate”. Mr Morgan described the force used as a low range impact when it (the stock whip) “sort of connected.” He said that the force was “very, very little” and did not amount to 10 out of 10. Mr Peasnell said he could not remember using the stock whip after the second obstacle. He denied that he used a 10 out of 10 force. We accept Mr Peasnell’s evidence that, when he was interviewed by the Stewards, he was in shock. Given that this was the first time Mr Peasnell had used a stock whip and that Mr Morgan’s evidence that it took him years to be able to use a stock whip, we are comfortably satisfied that the force used by Mr Peasnell was of a low range impact when it “sort of connected“. That level of impact was supported by Ms Jillings, who described the force used as appropriate, and was “very, very little”. We reject the evidence of Ms Peebles that Mr Peasnell used a force of 10 out of 10.

It is alleged that Mr Peasnell engaged in conduct of striking the horse numerous times (approximately 12) prior to the horse jumping the first obstacle.

Ms Peebles said that Mr Peasnell made contact with the horse 10 to 12 times. In cross- examination, she said she was not counting the number of strikes, but conceded that “it was a lot.” This was not supported by Ms Jillings, who said contact was made 3 times and directed to the hocks. Mr Morgan said that he did not know. He then said the stock whip was used before the horse jumped the first obstacle and Mr Peasnell did not pick it up again. Mr Morgan also said that he could not remember whether Mr Peasnell used the stock whip to encourage the horse at all after the second obstacle. Mr Peasnell said that he was aiming to hit the hocks. He was unable to say how many times he did in fact hit around the hocks. We accept the evidence of Ms Jillings, which was consistent with the evidence of Mr Morgan namely, that the contact which was made with the horse was limited, low impact and directed to the hocks.

It is alleged that Mr Peasnell engaged in conduct of striking the horse in the head with the stock whip.

Ms Peebles said that the horse was hit on the face, the horse went to turn around and was hit in the face with the stock whip. She thought that it was only once.

Ms Jillings said that Mr Peasnell did not use the stockwhip when the horse turned around and that the horse was not struck on the head, only around the heels and with a force that was appropriate. Mr Zahra said “No one said the horse was hit in the face” and added “It’s pretty impossible to hit a horse with a stock whip to the face. Mr Morgan stated that he did not see contact made with the head. He did not see contact made to the face. (T241.11-19). Mr Peasnell said the horse was not struck in the head with the stock whip by him or by anyone else. We accept that Mr Peasnell did not strike the horse in the head.

It was alleged that Mr Peasnell engaged in conduct of striking the horse on each lap with the stock whip despite the horse freely jumping.

Ms Peebles said that pressure was continued to be applied on the horse despite its distress. She conceded that, despite the stock whip being used as persuasion, she could not say whether the stock whip connected or not. Mr Peasnell could not remember if he ever used the stock whip after the second obstacle. He added that the horse was jumping himself. This was consistent with Mr Morgan’s evidence. Ms Jillings said the stock whip was only used 3 times while at the bullring.

We accept that there is no evidence that Mr Peasnell engaged in the conduct of striking the horse on each lap despite the horse freely jumping.

Ms Peebles said that the horse was encouraged to jump the wrong way over one of the obstacles. That evidence was contrary to the evidence of Mr Peasnell, Ms Jillings and Mr Morgan. Mr Peasnell said that the horse did not jump the obstacle the wrong way. Ms Jillings stated that the horse did not jump the wrong way as that would be dangerous. She said that at one stage that the horse was facing the wrong way. Mr Morgan said that the horse was encouraged to jump the correct way. We accept the evidence of Mr Peasnell, Ms Jillings and Mr Morgan that the horse did not jump the obstacle the wrong way.

Ms Peebles also said the horse did 12 to 15 laps of the bull ring whilst being hit a lot around the hocks, over the rump, and across the face. This evidence was not supported by the other witnesses. Mr Peasnell said that the horse undertook 6 to 8 laps, but that was a guess. He aimed to hit the horse around the hocks. He said that once the horse was going under its own steam, “we let him go”. He could not remember using the stock whip after the second jump. This was consistent with the evidence of Mr Morgan, who said that once the horse was jumping, it did 7 to 10 laps and accordingly to Ms Jillings, a few extra laps. Ms Jillings said that the horse was struck around the heels and never across the rump or head. The stock whip was not used to its face, but it was used to turn the horse around to go the correct way, “by contact with its chest”. She said that the contact was not hard. This was confirmed by Mr Morgan. We accept that the horse performed extra laps “under its own steam”, and after that Mr Peasnell did not use the stock whip at all.

On returning from the bull ring, Ms Peebles spoke to Mr Zahra and reported that the horse had been overworked. Mr Zahra said that he spoke to Ms Jillings, who reported that the horse did a few more laps because it was “fired up”. Mr Zahra’s evidence was that he examined the horse by running his hands over it for markings. He checked it again after 30 minutes, being a timeframe in which he would expect the horse to cool down and, if there were markings, they would be obvious. He said that he did not see any welt marks on the horse and would not send a horse to a race if it had markings as it would be scratched if it did. Welts in his experience, would be visible for up to a day after the use of non-padded whips. We accept Mr Zahra’s evidence on markings, which was reinforced by our viewing the replay of the race. We could not see any markings on the horse. Furthermore, this evidence was supported by Ms Jillings.

Ms Jillings was the person who shampooed the horse on its return from the bull ring. She said that she always looks over the horses when shampooing them, and if she detects a problem, she would report it to the trainer. On this occasion she checked the horse’s hocks and shampooed the horse from top to toe. She knew that there were no marks on the horse. Mr Peasnell, Mr Zahra and Mr Morgan did not observe welt marks.

Furthermore, Ms Peebles reported welt marks on the horse, but failed to show them to Mr Zahra. Her explanation for not doing so was essentially “not in front of people”. We regard this as unsatisfactory. She was shown the replay of the race in which the horse ran later in the day. She admitted that she could not see the welts on the horse and offered an explanation. It was that welts were on the near side, being the side of the horse away from the camera. Her explanation for not seeing the welts which she observed on the horse on the replay of the race did not assist her evidence. We also found that her explanation for not seeing the welts on the horse on the replay of the race to be unlikely, given that she accepted that a trainer would not send a horse to a race if the horse had welts on its body. The only witness who reported welt marks was Ms Peebles. The Tribunal finds that her evidence on this topic is untruthful.

The Tribunal accepts the evidence of Ms Jillings that there were no markings on the horse. She was the person who was responsible for shampooing the horse before the race. It was part of her job to ensure that there were no injuries, because if there were, the horse would be scratched. Her evidence was supported by Mr Zahra, Mr Morgan and Mr Peasnell. We accept Mr Zahra’s evidence that he would not have sent a horse to race if there was any suggestion of markings on the horse.

Dr Forbes, veterinarian, gave expert evidence. She said that the continual application of a negative stimulus, in this case the use of a stock whip, is only appropriate and effective if the horse is rewarded for displaying appropriate behaviour. A basic principle is that the negative stimulus is removed when the horse produces the desired results. To not do so is considered both cruel and inappropriate. She further said that in relation to the similarity of characteristics of human skin and equine skin on the rump their characteristics are similar. Ultimately, her evidence was of little assistance in that the findings of fact of the Tribunal as to what occurred at the bull ring will determine the liability issue.

In essence, we were influenced by the evidence of Ms Jillings. She knew the horse, having worked in the stables of Mr Zahra. She is an experienced horsewoman. She gave carefully considered answers to questions. In large part, her evidence was supported by the evidence of the witnesses, namely Mr Zahra, Mr Morgan and Mr Peasnell. There was a number of inconsistencies in the evidence of Ms Peebles which we have referred to above.

Based on all the evidence we make the following findings of fact.

1. As instructed by Mr Zahra, Mr Peasnell’s intention was that, on attending the bull ring, the horse would do 3 to 4 laps. After a period, the horse undertook the jumping of “the obstacle” under its own steam.
2. At all relevant times, Mr Peasnell intended to direct the stock whip to the hocks.
3. Mr Peasnell did not intend to strike the horse with the stock whip when the horse was attempting to go the wrong way. We find that the horse was struck in the chest with the stock whip, which was unintentional.
4. The horse was not struck in the head or face with the stock whip at any time.
5. The horse did not go over the obstacle the wrong way.
6. After the horse began progressing around the bull ring under its own steam, Mr Peasnell did not use the stock whip.
7. Equine and human skin are sufficiently similar such that, if struck by force, there should be similar evidence of injury.
8. There were no visible welts upon the horse at any time on the day in question. If Ms Peebles is a reliable witness, there would have been evidence of welt marks.
9. Had Mr Peasnell struck the horse with inappropriate force as suggested by Ms Peebles, welt marks would not have resolved within the relevant time frame and would have been observed by Mr Zahra upon the horse’s return to the stables. They would have been observable to Mr Zahra 30 minutes later after the horse returned to the stables and when he inspected the horse after it had cooled down. Were it otherwise, he would have scratched the horse from the race.
10. We accept that Mr Peasnell did not commit an act of cruelty by engaging in the conduct of striking the horse with a stock whip with force.
11. We accept that Mr Peasnell did not engage in the conduct of striking the horse on approximately (12) times prior to the it jumping the first obstacle.
12. We accept that Mr Peasnell did not engage in the conduct of striking the horse in the head with the stockwhip; and
13. We accept that Mr Peasnell did not engage in conduct of striking the horse on each lap with the stock whip despite the horse free jumping on the circle.

For the above reasons the Tribunal cannot be comfortably satisfied to the requisite degree that the conduct of Mr Peasnell on 30 December 2021 amounted to cruelty and a breach of the relevant Rule.

Accordingly, Charge 1 is dismissed.

**PENALTY**

Mr Peasnell pleaded guilty to 4 charges. This judgment deals with the penalties for those charges.

Charge 2 relates to the possession of a stockwhip on 30 December 2021 at the bullring at the Flemington Racecourse with the horse “Age of Infinity”. This was associated with the training of the horse.

Charge 3 relates to the use of a stockwhip on 30 December 2021 at the bullring at the Flemington Racecourse. Whist in possession of it, the stock whip was used to encourage “Age of Infinity” to gallop around the bullring.

Charge 4 relates to the possession of a stockwhip on 14 May 2022 at the bullring at the Flemington Racecourse and concerns the horse “Recourse”.

Charge 5relates to the use of a stockwhip at the bullring at the Flemington Racecourse with the horse “Recourse” the stockwhip was used to encourage the horse to gallop around the bullring.

The Stewards submitted that they were not seeking any period of disqualification or suspension. They sought a fine of $12,000.

In respect to the “possession” charges, the Stewards sought a fine of $1,000 on each to be concurrent with the “use” charges, for each of which they sought a fine of $6,000. The Stewards sought that the two $6,000 fines be cumulative because these were two separate incidents, the incidents did not involve the same course of conduct and occurred at different times.

The Stewards argued that the quantum of the fines and their accumulation were justified for the following reasons.

* 1. It has been an offence to use a stockwhip for 15 years. The rule exists to prevent mistreatment of horses.
  2. In this case, specific and general deterrence must be considered. General deterrence plays a greater role. Mr Peasnell pleaded guilty at an early stage.
  3. There were two separate incidents on different dates involving two different horses.
  4. Contact was made to the chest and the hocks of the horse. The purpose of using the stockwhip is to elicit a cracking sound.
  5. The stockwhip was used in the presence of staff. Mr Peasnell was not acting under instruction.
  6. The image of horse racing was undermined. The use of a stockwhip raises issues of animal welfare.
  7. Regard should be had to penalties in like matters.

The Tribunal was referred to two relevant decisions. In May 2023, the Queensland Racing Appeals Panel considered charges of possession and use of a stockwhip. In that case, the stockwhip was used on the horse as it entered a pool. The horse started to play up. The stockwhip was flicked at the horse. The horse fell and the rear leg was injured. In that case a fine of $6,000 was imposed. That case can be distinguished from the present case, because the horse was injured in the process and the stockwhip was continued to be used. That is not this case.

In the case of Mr Kane Harris, the Stewards found that he had in his possession a stockwhip which he had used when attempting to load the horse onto a treadmill. The Stewards fined him $2,000.

This Tribunal takes into account that in both decisions the applicants were both licensed trainers. We note that Mr Peasnell is an employee, as opposed to being a licenced trainer.

Mr Peasnell pleaded guilty at an early stage and has co-operated with the Stewards. We have taken that into account.

In imposing a penalty, we stress the importance of specific and general deterrence. We take into account penalties in like matters. We also note that Mr Peasnell has no prior offences.

Taking all matters into consideration, we impose the following:

On Charge 2 a fine of $500.

On Charge 3 a fine of $2,000.

The fine on Charge 2 is concurrent with Charge 3.

On Charges 4 a fine of $500.

On Charge 5 a fine of $2,000.

The fine on Charge 4 is concurrent with Charge 5. The fine on Charge 3 is concurrent with Charge 5.

Thus, the total fine to be paid forthwith is $2,000.

Mark Howard

Registrar, Victorian Racing Tribunal