31 May 2024

**DECISION**

**RACING VICTORIA**

**and**

**PATRICK PAYNE SNR**

**Date of hearing:** 29 May 2024

**Date of decision:** 29 May 2024

**Panel:** Judge John Bowman (Chairperson) and Mr Des Gleeson.

**Appearances:** Ms Georgina Lewis appeared on behalf of the Stewards.

Mr Patrick Payne Snr, supported by Ms Bernadette Payne, represented himself.

**Charges:** Australian Rule of Racing (“AR”) 227(a) states:

Without limiting any other powers, a PRA or the Stewards may penalise any person who:

(a) commits any breach of the Rules, or engages in conduct or negligence which has led or could have led to a breach of the Rules.

AR 251(1)(a) states:

(1) A person must not, without the written permission of the Stewards, have in his or her possession:

(a) on a racecourse where a race meeting is being conducted;

any prohibited substance, or a syringe, needle, naso-gastric tube or other instrument that could be used:

(i) to administer a prohibited substance to a horse; or

(ii) to produce a prohibited substance in a horse.

**Particulars:** During a routine pre-race inspection of “Magic Opal”, which was resuming from a spell, Stewards identified a bottle of Flunixon, a jar of Vicks Vaporub and several needles and syringes in the raceday gear. Stewards, having initially interviewed Patrick Payne Snr and Bernadette Payne, were satisfied, on the balance of probabilities, that Magic Opal had not been administered any treatments in breach of the Rules and therefore permitted Magic Opal to take its place in the field. Stewards did however order the pre-race collection of blood and urine samples from Magic Opal. At a subsequent inquiry, Mr Payne was found guilty of a charge under the provisions of AR 227(a) relevant to his negligent conduct. The particulars being Mr Payne, trainer of Magic Opal, was negligently found to have on inspection a bottle of Flunixon, an opened jar of Vicks Vaporub and needles and syringes in his raceday bag without the written permission of Stewards therefore in breach of AR251(1)(a). Mr Payne was fined $1,000. In assessing penalty, Stewards took into account the circumstances, the nature of substances and items collected and his record in relation to the Rule.

**Plea:** Guilty

**DECISION**

Mr Patrick Payne, you are appealing against the penalty imposed on you by the Stewards at Ballarat on 24 March 2024. You had a runner, namely “Magic Opal”, in Race 3.

Prior to that race, a Stewards inspection revealed that you had with you a bag in which there were various items. These included some unused needles and syringes, a bottle of Flunixon and some Vicks Vaporub. Ultimately, the horse was cleared to run in the race, but the Stewards interviewed you and a fine of $1,000 was imposed. You are appealing against the severity of that penalty.

We accept that what had occurred in relation to the bringing of the bag on to the track was completely accidental and that there was absolutely no intention on your part to bring items of this nature on to the course.

There had been fires in the Ballarat region. This bag had been packed with items that may have had to be taken with you if you had been forced to move your horses.

On 24 March 2024, you were assisted in the preparation and transporting of Magic Opal to the course by your daughter, Ms Bernadette Payne, and particularly by your grandson, Mr Steven Payne. He, accidentally, brought the wrong bag to the track. There was no intention to use any of the items in that bag. There is no argument but that this was a complete mistake or accident.

Of course, you, as the trainer, are completely responsible and you are in no way trying to avoid that responsibility.

You have been assisted in this hearing by Ms Bernadette Payne.

We accept that you have been a licensed trainer for approximately 60 years, 20 of those in New Zealand and 40 years in Australia, particularly based at Ballarat.

You have a truly outstanding and unblemished record. You are continuing to train a few horses, with some assistance from Bernadette and Steven. Your record would be hard to match by any licensed person. As stated, you quite openly admit your responsibility for what was a complete mistake by your grandson and of which you were unaware.

Given all the above matters, and particularly the completely accidental bringing of the wrong bag by Steven, the circumstances surrounding that, your total co-operation and your truly outstanding record, we are of the view that the appeal against penalty should be upheld.

The fine of $1,000 remains, but that penalty is wholly suspended for a period of 12 months. In other words, the $1,000 fine is only payable if you commit a relevant offence during that 12 month period. We are confident that you will not.

Kathleen Scully

Assistant Registrar, Victorian Racing Tribunal