9 May 2024

**DECISION**

**RACING VICTORIA**

**and**

**ROGER JAMES**

**and**

**ROBERT WELLWOOD**

**Date of hearing:** 23 April 2024

**Date of decision:** 23 April 2024

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

**Appearances:** Mr Marwan El-Asmar appeared on behalf of the Stewards.

Mr Alan Galbraith appeared on behalf of Mr Roger James and Mr Robert Wellwood.

**Charges and particulars: Charge 1 of 2: AR 240(2)**

AR 240(2) reads as follows:

**AR 240 Prohibited substance in sample taken from horse at race meeting**

**…**

1. *Subject to subrule (3), if a horse is brought to a racecourse for the purpose of participating in a race and a prohibited substance on Prohibited List A and/or Prohibited List B is detected in a sample taken from the horse prior to or following its running in any race, the trainer and any other person who was in charge of the horse at any relevant time breaches these Australian Rules.*

**…**

**The particulars of the charge**

1. You were at all relevant times:
   1. trainers in partnership licensed by Racing New Zealand;
   2. visiting trainers in Victoria; and
   3. bound by the Rules of Racing of Racing Victoria.
2. You were, at all relevant times, the trainers of *Prowess* (the **Horse**)*.*
3. On 11 November 2023*,* the Horse was brought to the Flemington Racecourse and was engaged to run in Race 8, the TAB Champions Stakes, over 2000 metres (the **Race**)**.**
4. On 11 November 2023, prior to the Race, a urine sample (V816693) was taken from the Horse (the **Sample**).
5. An analysis of the Sample (V816693) detected the presence of Phenylbutazone, Oxyphenbutazone and Gamma-hydroxyphenylbutazone
6. Phenylbutazone and its metabolites are prohibited substances pursuant to Division 1 of Part 2 of Schedule 1 (Prohibited list B) of the Australian Rules of Racing.

**Charge 2 of 2: AR 104**

AR 104(1) reads as follows:

**AR 104 Trainers must keep treatment records**

* 1. *A trainer must record any medication or treatment administered to any horse in the trainer’s care by midnight on the day on which the administration was given.*
  2. *For the purpose of subrule (1), each record of administration must include the following information:*

*the name of the horse;*

*the date and time of administration of the treatment or medication;*

*the name of the treatment or medication administered (brand name or active constituent);*

*the route of administration including by injection, stomach tube, orally, topical application or inhalation;*

*the amount of medication given (if applicable);*

*the duration of treatment (if applicable);*

*the name and signature of the person/s administering and/or authorising the administration of the treatment or medication.*

*the reason for administering the treatment or medication.*

*[subrule amended 01/02/21]*

* 1. *For the purposes of this rule “treatment” includes:*
  2. *shock wave therapy;*
  3. *acupuncture (including laser treatment);*
  4. *chiropractic treatment;*
  5. *the use of any electrical stimulation device (including transcutaneous electrical nerve stimulation (TENS));*
  6. *magnetic field therapy;*
  7. *ultrasound;*
  8. *any form of oxygen therapy, including hyperbaric oxygen therapy;*
  9. *the taking of a blood sample.*
  10. *For the purposes of this rule “medication” includes:*
  11. *all Controlled Drugs (Schedule 8) administered by a veterinarian;*
  12. *all Prescription Animal Remedies (Schedule 4), including those listed in Schedule 1, Part 2, Division 2 to these Australian Rules;*
  13. *all Prescription Only Medicines (Schedule 4), prescribed and/or dispensed by a veterinarian for off-label use;*
  14. *all injectable veterinary medicines (intravenous, intramuscular, subcutaneous, intra-articular) not already referred to above;*
  15. *all Pharmacist Only (Schedule 3) and Pharmacy Only (Schedule 2) medicines;*
  16. *all veterinary and other medicines containing other scheduled and unscheduled prohibited substances;*
  17. *all alkalinising agents;*
  18. *all herbal preparations.*

1. *All records required to be kept in accordance with this rule must be retained by the trainer for at least 2 years.*
2. *When requested, a trainer must make available to the Stewards the record of any administration of a treatment and/or medication required under subrule (1).*

**The particulars of the charge**

1. You were at all relevant times:
   1. trainers in partnership licensed by Racing New Zealand;
   2. visiting trainers in Victoria; and
   3. bound by the Rules of Racing of Racing Victoria.
2. You are, and were at all relevant times, the trainers of *Prowess* (the **Horse**).
3. On 22 December 2023, upon request from the Stewards, you produced treatment records for the Horse.

1. From 25 October 2023 to 10 November 2023, your treatment records did not contain all the information as required by AR 104(2), including but not limited to: Times of administration, routes of administration, and the reason for administering the treatment.

**Pleas:** Guilty to both charges.

**DECISION**

Mr Roger James and Mr Robert Wellwood, you are a training partnership based in New Zealand. You were in this state at the time of the last spring carnival. The horse Prowess, trained by you, competed in Race 8 at Flemington on 11 November 2023. Prowess finished sixth. A pre-race urine sample taken on that day proved positive to the prohibited substance, Phenylbutazone. Accordingly, you are charged with a breach of AR 240(2).

The partnership is also charged with a breach of AR 104, which could be described as a failure to keep proper records.

You are pleading guilty to both charges. We say at the outset that we are grateful for the very helpful and professional way in which both your cases and those of the Stewards were presented. We thank Mr Marwan El-Asmar and Mr Alan Galbraith for the manner in which the hearing was conducted. We note that both of you, along with Mr Galbraith who represented you, took part in the presentation of the matter via the video link-up between here and New Zealand.

In relation to the case itself, we accept that there is simply no explanation as to how Prowess came to test positive to Phenylbutazone. Various possibilities have been explored and rejected. The cause of the positive swab is unknown.

Mr El-Asmar drew our attention to similar cases, and particularly those of Mr Peter Moody and Mr Danny O’Brien. There are certainly clear parallels. Each of those trainers pleaded guilty, as have you, and each was fined $5,000 by this Tribunal. Mr Galbraith does not challenge the proposition that such a fine is an appropriate penalty in the present case.

Of course, the final decision is ours. However, when experienced representation has in essence agreed upon a penalty, that is indeed at least persuasive as far as we are concerned. We consider it appropriate in the present case and accordingly your partnership is fined the sum of $5,000 for the breach of AR 240(2). We might add that a prior offence of Mr James is of such a vintage that we attach minimal weight to it.

There is also the charge of the breach of AR 104 – the inadequate history. The keeping of proper and accurate records is of great importance and assists in the smooth running of the industry. We accept that the extent of required record keeping in New Zealand may be a little below what is required here, particularly since the more recent “toughening up” of the Act by reason of an increased suggested penalty.

In the circumstances, peculiar to this case, we are of the view that a fine should be imposed, but that it should be in the sum of $750.

Finally, Prowess is disqualified from Race 8 at Flemington on 11 November 2023 and the finishing order is amended accordingly.

Mark Howard

Registrar, Victorian Racing Tribunal