2 July 2024

**DECISION**

**RACING VICTORIA**

**and**

**DANNY O’BRIEN**

**Date of hearing:** 13 June 2024

**Date of decision:** 13 June 2024

**Panel:** Judge John Bowman (Chairperson).

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

Mr Damian Sheales represented Mr Danny O’Brien.

**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 are, and were at all relevant times, a trainer licensed by Racing Victoria and a person bound by the Rules of Racing.
2. You were, at all relevant times, the trainer of *Princeofcambridge* (the **Horse**)*.*
3. On 22 February 2024*,* the Horse was brought to the Sportsbet Pakenham Racecourse and was engaged to race in Race 5, G’Day Ink Tattoo Studio, Pakenham Handicap, over 1600 metres (the **Race**).
4. On 22 February 2024, prior to the Race, a blood sample (V692926) was taken from the Horse (the **Sample**).
5. An analysis of the Sample detected the presence of Triamcinolone Acetonide.
6. Triamcinolone Acetonide is a 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]*

**The particulars of the charge**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria and a person bound by the Rules of Racing.
2. You were, at all relevant times, the trainer of *Princeofcambridge* (the **Horse**) and responsible for the maintenance of treatment records for any horse in your care.
3. On 8 February 2024, the Horse was administered Bomeral and Kenacort (Triamcinolone Acetonide).
4. On 8 February 2024, you did not record all medications or treatments administered to the Horse by the end of the day on which the administration was given, as required by AR 104(1).

**Pleas:** Guilty to both charges.

**DECISION**

Mr Danny O’Brien, you are pleading guilty to two Charges. Charge 1 relates to a breach of AR 240(2). Charge 2 is pursuant to AR 104(1).

Charge 1 arises from a positive pre-race blood sample taken by the Stewards from Prince of Cambridge, trained by you, on 22 February 2024 at Pakenham racecourse. The sample was intended to be pre-race, the horse being in Race 5. However, prior to that race, the meeting was abandoned.

The sample proved positive to Triamcinolone Acetonide (cortisone). The most likely cause of the positive return was an injection into the stifle joint. This was performed by a veterinary surgeon, Dr Emma Wood, on the morning of 8 February 2024. A report from Dr Wood was placed in evidence. Prior to administering the injection, she had a conversation with you and your stable foreman. Whilst a withhold period of 8 days is prescribed or advised, there was some discussion of a 10 day withhold period and ultimately what was done represented a withhold period of 14 days.

The horse in fact was not taken to the races for another 14 days. Thus, this positive return was outside the recommended non-presentation period. As stated, the pre-race test was positive.

I accept that there was little more that Mr O’Brien could have done. Despite his many years in racing as a very busy and highly successful trainer, he had not encountered the use of this particular medication previously. It was recommended by a veterinary surgeon. The date of the resumption of racing was discussed, bearing in mind the eight day prohibition. The end result was a resumption date that erred very substantially on the side of caution. For some inexplicable reason, this proved to be inadequate.

Mr O’Brien may not have been aware of it at the time, but a similar problem had occurred previously. I would refer to cases such as that of Mr Austy Coffey.

Strict liability can produce unfortunate results. The present case is one of them. It is hard to think of what more Mr O’Brien could have done. He sought, obtained and followed veterinary advice, indeed going beyond the specified time frame. He erred quite substantially on the side of caution.

This is a situation where thought may be given by those in charge to the introduction of some flexibility or discretion into the relevant Rule. Such discretion may have to be extremely limited, but a case such as the present highlights its desirability.

However, pursuant to the Rule as presently worded, a finding of guilt and an appropriate penalty are required.

I bear in mind the penalty that was imposed in the case of Mr Coffey, a case which bears some similarities to the present case.

The fine that I impose is one of $3,000. I am bearing in mind the prior offence. I am also bearing in mind the sequence of events, which could well be described as very unlucky, and the guilty plea.

In relation to Charge 2, the failure to keep any or any proper records, I bear in mind the fact that any omission was rapidly corrected. A fine of $1,000 seems to me to be appropriate.

Thus, the fines total $4,000.

Mark Howard

Registrar, Victorian Racing Tribunal