

DATE: 24 April 2024

TRIBUNAL: Chairman: Teresa Hall
Deputy Chairman: Alastair Shields
Member: James Pratt

APPELLANT: Graeme (Dick) Leech

IN THE MATTER of an Appeal by Mr Dick Leech against a decision of Thoroughbred Racing Northern Territory Stewards.

BREACH OF RULE: AR 254(1)(a)(i)

DETERMINATION

Background

On 18 March 2024, Mr Dick Leech lodged an appeal against the severity of the penalty imposed by the Stewards on that date. The appeal was subsequently amended to include an appeal against the conviction by the Stewards.

This is therefore an appeal by Mr Leech against both the decision of, and penalty imposed by, Thoroughbred Racing Northern Territory (TRNT) Stewards made on 18 March 2024 to disqualify Mr Leech for a period of 12 months for a breach of Australian Rule of Racing 254(1)(a)(i).

The particulars of the charge are that between 7.05 am and 1.15 pm on 3 February 2024, Mr Leech, the licensed trainer of the gelding ENVENOMATE, which was engaged to run in race 2 of the Darwin Turf Club programme on that day, namely the Chinese New Year BM76 Handicap of 1300 metres, injected the gelding without the permission of the Stewards, contrary to Australian Rule of Racing 254(1)(a)(i).

Australian Rule of Racing 254 provides:

“AR 254 Injections prohibited at certain times

(1) A person must not, without the permission of the Stewards:

(a) inject;

(b) cause to be injected;

(c) attempt to inject; or

(d) be a party to the injection or attempted injection of, a horse engaged to run in any race:

(i) at any time on the day of the scheduled race and prior to the start of that race; and/or

(ii) at any time during the 1 clear day prior to 12.00am on the day of the scheduled race.

(2) If a person breaches subrule (1), or the Stewards reasonably suspect that such a breach has been committed, they may order the scratching of the horse from the relevant race.

(3) If a person breaches subrule (1), but the horse competes in the race, the horse may be disqualified from the race.

(4) For the purposes of this rule:

(a) "inject" includes, but is not limited to, the insertion of a hypodermic needle into a horse;

(b) it is not necessary to establish whether any substance was injected, or the nature of any substance injected."

The following extract from the reasons for decision provides further details about the findings and reasonings of the Stewards:

"At the race meeting at the Darwin Turf Club on Saturday, 3 February 2024, the TRNT Stewards released the following report:

Whilst conducting routine examinations of each runner upon arrival on course the Stewards identified that ENVENOMATE trained by D Leech had a swollen haematoma on the near side jugular vein. Veterinarian Dr J Farebrother examined the site of the haematoma and reported that in his opinion, an injection had been administered within the previous 24 hours. Acting under the provisions of AR254(2) the Stewards withdrew the gelding from competing in its engagement in Race 2. Stewards collected blood and urine samples from the gelding. An inquiry was opened into this matter and after taking initial evidence and statements, the matter was adjourned pending the results of the collected samples.

The blood and urine samples collected from ENVENOMATE have been analysed by Australian Racing Forensic Laboratory (ARFL) and no prohibited substances were detected.

The TRNT Stewards continued this inquiry on Thursday 7th and Friday 15th March 2024 and considered evidence from Mr Leech, foreperson K Byrnes, veterinarians Dr J Farebrother, Dr A Vermeulen and RWWA Head of Veterinary Services Dr J Medd. A full review of the surveillance CCTV had been undertaken to confirm the movement of relevant persons at the DTC stable complex on race morning.

Mr Leech was subsequently found guilty of a breach of AR254(1)(a)(i) with the specifics being:

1. He is a trainer licensed by TRNT and a person bound by the Rules of Racing
2. He was at all relevant times, the trainer of the gelding ENVENOMATE
3. On Saturday 3 February, 2024 the gelding was engaged to run in race 2, the Chinese New Year BM76 Handicap over 1300m on the Darwin Turf Club programme
4. On the day of, and prior to the race, at some time between 7.05am and 1.15pm he injected the gelding without the permission of the Stewards

He further pleaded guilty to a further charge under AR104(1) with the specifics being that he did fail to record in the stable treatment diary that animal remedy products were administered by way of injection to ENVENOMATE on Wednesday 31 January, 2024. For this breach, a fine of \$500 was imposed.

In consideration of a penalty for the breach of AR254, Stewards took into account the following factors:

1. The serious nature of the charge

2. *The negative impact this type of conduct has on the image, interests and integrity of racing in the Northern Territory*
3. *ENVENOMATE was scratched and no prohibited substance were detected in the gelding's samples*
4. *Mr Leech has had a long involvement in the racing industry*
5. *His personal circumstances and previous disciplinary record*
6. *Penalties issued previously in other jurisdictions for the same rule breach*
7. *The penalty must serve as a general and specific deterrent*

Mr Leech was disqualified for a period of 12 months.”

There was also evidence before the Stewards that Senior Steward Robert Hamilton physically examined ENVENOMATE at approximately 7.00 am on 3 February 2024, in the presence of Mr Leech’s stable foreperson Ms Karen Byrnes. Mr Hamilton examined the length of the jugular vein and reported no lump, haematoma or presence of blood at that time.

Hearing

The Racing Appeals Tribunal (the Tribunal) was provided with the full transcript of the hearings before the Stewards on 3 February, and 7 and 15 March 2024, the exhibits and associated technical documentation, and the Stewards report imposing the penalty. The Tribunal was also provided with a precis of the penalties imposed by interstate stewards for three matters involving a breach of Australian Rule of Racing 254(1)(a)(i).

Mr Jim Murdoch KC provided a written submission on behalf of Mr Leech, and Mr David De Silva provided a written submission on behalf of the Stewards. Mr Murdoch KC attended the hearing on 2 April 2024 (via Teams) to represent Mr Leech (who was present at the hearing), and Mr De Silva attended the hearing in person with Mr David Hensler, Chairman of the NT Stewards, and Ms Kayla Congo, graduate clerk.

Both parties made very comprehensive submissions to the Tribunal, and the discussion below is not an exhaustive summary of each matter raised at the hearing.

Additional Evidence

During the course of the hearing, the Tribunal determined, in accordance with section 145Z of the *Racing and Betting Act 1983* (the Act), to allow the following additional evidence for the purposes of the appeal:

1. The CV for veterinarian Dr Ashley Vermeulen;
2. Photographs 1 and 2, and Videos 1 and 2, which are dated 20 March 2024 and depict wires hanging inside the horse compartment of a truck used to transport horse from the stables to the racecourse’s day stalls. The photos and videos were provided by Mr Leech to the Stewards on 20 March 2024 (and also provided to the Tribunal as part of the stay application by Mr Leech);
3. Verbal evidence from Mr Leech’s foreperson, Ms Karen Byrnes, in order to clarify her evidence given at the Stewards’ Inquiry; and
4. Verbal evidence from Chairman of Stewards Mr David Hensler concerning the photographs and videos identified at paragraph 2 above.

Oral reasons for allowing the additional evidence were provided by the Chair on behalf of the Tribunal during the appeal hearing and are not repeated here.

Appellant's Submissions

The submissions of Mr Leech's Counsel emphasised that at all times Mr Leech has strenuously denied having injected ENVENOMATE on 3 February 2024, and that if necessary, Mr Leech is prepared to swear an oath to that effect. These submissions were also supported by Mr Leech's oral statements at the hearing.

The primary thrust of the submissions made on Mr Leech's behalf are that, because the evidence upon which the Stewards relied in finding him guilty was largely circumstantial, the Stewards erred in not considering these three credible alternative explanations for the haematoma and dry blood on the neck of ENVENOMATE:

1. That ENVENOMATE's skin was pierced by one of a number of protruding wire ends which were present in the truck used to transport ENVENOMATE from the stables to the racetrack on 3 February 2024. It was submitted that on a number of occasions during the hearing Mr Leech stated that the hole was large, and that he used language such as "bloody big hole", "number 8 wire hole", and "massive hole" and the like when describing it, and Counsel drew the Tribunal's attention to the relevant extracts of the transcript of the hearing. It was submitted that Mr Leech was forced to utilise a colleague's truck because his was unavailable, and that there were a number of protruding wire ends in that truck which could have caused the injury. It was also submitted that the Stewards failed to inspect the truck when asked to do so by Mr Leech;
2. As explained in the report of 12 March, 2024 by Dr Ashley Vermeulen (which formed part of the evidence before the Stewards), in the hot humid conditions which prevailed on the race day, the scab from a previous intravenous injection may well have dislodged and exposed the blood and haematoma that was identified by the Stewards at 1.15pm on 3 February 2024; or
3. The blood on the skin of the horse may have been a result from a cutaneous capillary supplying the skin for thermoregulation of the horse rather than communication with the jugular vein in order for the horse to dissipate heat and cool itself on a hot humid day.

In respect of the penalty imposed by the Stewards, it was submitted on Mr Leech's behalf that the penalty should be set aside by the Tribunal on the basis that it was incorrectly calculated, having regard to the purpose of civil penalties, namely general and specific deterrence, and that the Stewards failed to appropriately consider and take into account the impact of the penalty, being a disqualification, on Mr Leech's equine swimming pool construction business and stock feed business.

Stewards' Submissions

The Stewards' submissions are outlined below:

1. The Stewards correctly identified the relevant standard of proof and correctly applied the legal considerations underpinning circumstantial evidence;
2. Dr Farebrother was the only veterinarian who inspected the horse on the day and his evidence (page 2 of the transcript) was that "we've got a lump so it's obviously a needle", and that any other evidence on this point is a distraction;
3. The Stewards were "comfortably satisfied" that the evidence supported the guilty finding, and the relevant parts of the evidence that supported the guilty finding were identified;

4. The sentencing discretion was applied properly by the Stewards and all relevant matters were taken into account by them; and
5. The appeal against conviction and penalty ought to be dismissed.

Determination

Finding of Guilt

The Tribunal considers that it is well accepted that the standard of proof in matters such as this one is the Briginshaw standard, namely the civil burden of proof on the balance of probabilities, but with due regard as to the seriousness of the allegations. This is the standard that the Tribunal has applied to its consideration of the evidence and its analysis of the Stewards' hearing.

In respect of the three alternative explanations proffered on behalf of Mr Leech, the Tribunal finds as follows:

1. The Tribunal found that the evidence concerning whether there were protruding wire ends in the truck used by Mr Leech to transport ENVENOMATE to the races on 3 February 2024 is inconclusive. In making this finding, the Tribunal notes that there is conflicting evidence as to whether the photos and videos provided to the Commission depicted the actual wires and position of those wires on the truck, and the photos and videos were therefore of limited assistance to the Tribunal. The Tribunal observes that this issue could have been easily resolved had the Stewards examined the truck after having received repeated requests to do so by Mr Leech. The Tribunal however finds that protruding wire ends in the truck were not the cause of the penetration of the skin of ENVENOMATE on 3 February 2024 because:
 1. The evidence from the veterinarian Dr Farebrother on this issue is much more compelling and is to be preferred over the evidence of Dr Vermeulen on this point because he was the only veterinarian who examined the horse on the day, and his evidence is definitive that an injection had been administered (and he rejected a suggestion that the injury could have been caused by an abrasion);
 2. If ENVENOMATE had been injured by a protruding wire end, it is much more likely that the resulting injury would have included an abrasion, rather than a well-formed single puncture such as is visible in the photographic evidence; and
 3. Dr Farebrother's evidence is that the size of the puncture was more consistent with an injection than an abrasion (in this regard, the Tribunal notes that it would have assisted the Tribunal if the Stewards had included a scale on the photograph of the puncture site).
2. The Tribunal is reasonably satisfied that the penetration of the skin of ENVENOMATE was not caused by either a scab from a previous injection being dislodged, or that the blood was caused by a cutaneous capillary supplying the skin for thermoregulation of the horse rather than communication with the jugular vein because:
 1. The examination of ENVENOMATE by Senior Steward Robert Hamilton at 7 am on race day morning, some five hours prior to the horse being loaded onto the truck, would have detected a lump on the neck of the gelding had either of these circumstances been the cause of the blood and lump;

2. Dr Farebrother's evidence was that an injection had been administered "recently"; and
3. Dr Medd's evidence supported the evidence of Dr Farebrother, and she further stated that she had never seen a case of a horse that had been injected 2 and 3 days prior to a race start bleeding again at the track on race-day.

The Tribunal notes that neither party to the appeal requested the Tribunal to consider whether a person other than Mr Leech may have had access to ENVENOMATE, and whether they may have been able to administer the injection. In this regard, the Tribunal notes that the Stewards have viewed the relevant CCTV footage, and that review found that Mr Leech arrived at the stables at 6.50 am, that Stable Foreperson Ms Karen Bynes left the stables at 7.10 am after the inspection by Senior Steward Robert Hamilton, and that Mr Leech was alone in the stables until Ms Bynes returned at 12.25pm. The Stewards review did not identify any other potential suspect who may have administered the injection. Given that this aspect of the Stewards' findings has not been challenged in this appeal, the Tribunal has not considered this any further.

Penalty

The Tribunal has carefully considered the Stewards' decision, along with the submissions made on behalf of both Mr Leech and the Stewards, and the evidence that was available at the Stewards' hearing. The Tribunal has also considered the penalties imposed in other jurisdictions for breaches of this rule, and in doing so, the Tribunal notes the inherent difficulties in comparing decisions in different jurisdictions, and that the circumstances of the interstate examples were quite different from the facts in this matter.

It is well established that, in determining the penalty, Mr Leech is not to be punished for his not guilty plea, but he is not entitled to any discount to the penalty that he would enjoy had he pleaded guilty before the Stewards.

The Tribunal has carefully considered the following matters:

1. The seriousness of the charge;
2. The negative impact that offences of this nature have on the image and integrity of racing;
3. ENVENOMATE was scratched from the race;
4. No prohibited substances were detected in the samples taken from ENVENOMATE;
5. Mr Leech's long involvement in the racing industry, his personal circumstances, and past disciplinary record; and
6. There is no minimum penalty for a breach of AR 254(a)(1) of the Australian Rules of Racing.

In respect of the submissions proffered on behalf of the Appellant in respect of the impact of a disqualification on the Appellant's business, the Tribunal accepts the submissions on behalf of the Stewards that the Stewards could, at any time during the disqualification period, provide permission to Mr Leech to undertake certain business activities at a licensed racetrack and impose conditions on that permission. The Tribunal therefore considers that this aspect of the Appellant's submissions is capable of being appropriately dealt with by the Stewards.

In all of the circumstances however, the Tribunal considers that the period of disqualification imposed by the Stewards is too severe, and that the appropriate penalty is a disqualification for a period of 6 months, with an approval pursuant to Australian Rule of Racing AR 264 for Mr Leech to attend at licensed racecourses during the period of his disqualification for the sole purpose of his swimming pool construction

business (but not his stock feed business), on the condition that he provides 24 hours prior notice of his attendance to the Stewards.

Therefore, the appeal as to guilt is dismissed. In respect of the penalty, the Tribunal allows the appeal and imposes a disqualification period of 6 months, commencing from 18 March 2024, and provides the approval outlined in the above paragraph.

A handwritten signature in blue ink that reads "Teresa Hall". The signature is written in a cursive, flowing style.

TERESA HALL
CHAIRMAN