RACING APPEAL PANEL OF NEW SOUTH WALES

APPEAL OF LICENSED TRAINER MR PETER MILLS

Appeal Panel:	**Mr R. Beasley SC (Presiding Member); Mrs J. Foley; Mr J. Murphy**
Appearances:	**Racing New South Wales: Mr M Van Gestel, Chairman of Stewards**
	Appellant: Mr M Hanlon, Solicitor
Date of Appeal:	**8 December 2021**
Date of Orders:	**8 December 2021**

REASONS FOR DECISION

The Panel

Introduction

1. On 9 September 2021, Licensed Trainer Mr Peter Mills ("the appellant") pleaded guilty to a breach of AR240(2) relating to the detection of a prohibited substance in a pre-race urine sample taken from his horse "Dreaming for More" prior to that horse running fourth in a race at the meeting held on 22 May 2021 at the Rosehill Racecourse.

2. The prohibited substance was indomethacin, which is a non-steroidal anti-inflammatory. A level of 26 nanograms per ml was detected in the sample. This was considered to be in the "low to medium" range: T10 L462. The substance had been in the horses system for long enough for it to have metabolised, but the experts called at the Stewards' Inquiry (Dr T Koenig (Racing NSW Chief Veterinarian), and Dr A Cawley (the head of the Racing NSW laboratory)) were unable to definitively say when the substance had been ingested (or applied) to the horse. It may have been only an hour or so prior to the taking of the urine sample, but could have been up to 96 hours.

3. Also on 9 September 2021, the appellant pleaded guilty to a breach of LR82C(1)(b) in relation to engaging Dr A Simson to provide veterinary services on 5 occasions when Dr Simson did not have a Racing NSW Veterinary Permit.

4. For the breach of AR240(2), the appellant was fined the sum of $5000. For the breach of LR82C(1)(b), he was fined $1000. He has appealed to the Panel against the severity of these penalties. He was represented on appeal by Mr M Hanlon, solicitor, while the Stewards were represented by the Chairman of Stewards for Racing NSW, Mr M Van Gestel.

Findings of fact

5. There is no evidence upon which the Panel can make a finding as to the cause of the positive urine sample. Mr Mills said he did not give the horse the substance, which is accepted. None was found at his stables. There is no other evidence of deliberate administration. The horse left the appellant's property at Quirindi at 4am, and arrived at Rosehill at 8.30am. It was placed in a box of another trainer. The urine sample was collected at 10am. The horse had a drink of water in the Rosehill stables. Food was brought for the horse from the appellant's property. Somehow, by some unknown means, the horse has ingested the prohibited anti-inflammatory (which is now rarely used). The appellant admitted he did not clean out the box the horse was put in, or check the water provided in the box. However, there is no basis for making a causal link between that and the positive urine sample. Ultimately, we are left with merely observing that through some inadvertent and unintended means, the horse has ingested some indomethacin, at some time likely to be between 96 hours and 1 hour before the urine sample was taken.

6. As to the breach of LR82C(1)(b), neither the appellant nor Dr Simson were aware of this local rule, that was introduced approximately 6 years ago. They should have been. However, in his applications for renewals of his trainer's licence, the appellant has disclosed he has been using Dr Simson as his veterinarian, so this was not the case of a trainer wilfully deciding to breach a rule, or to hide such breach.

Resolution

7. The appellant has been a part time trainer for about 35 years. He has an unblemished record. We accept he is a person of good character. Both breaches of the rule involved no dishonest intent, or improper conduct.

8. Those matters do not alter the fact that a breach of AR240(2) is always an objectively serious breach of the rules. A finding of a prohibited substance in a horse's urine sample is always damaging to racing. Further, the good character and good record of the appellant is not the principal basis for determining an appropriate penalty. Penalties for breaches of the Rules of Racing are primarily imposed to protect and uphold the image and integrity of the sport. Further, while specific deterrence does not loom large in this appeal, some message needs to be sent in the penalty to be imposed that trainers must maintain high standards to ensure that inadvertent breaches of AR240(2) do not occur.

9. The $5000 fine for breach of AR240(2) is in the range of appropriate penalties, and is consistent with precedent penalties. However, given the very long and good record of the appellant, and the relative lack of any aggravating factors, we are of the view that a fine of $2500 is an appropriate penalty.

10. For the breach of LR82C(1)(b), while the ignorance of the rule is no excuse, again the long and good record of the appellant is a matter he should get credit for. We also recognise that the appellant's location limits his options for veterinary services for his horses, and that no aspect of deceit was involved in this breach. While a fine of $1000 is in the range of appropriate penalties, we consider a more appropriate penalty is a fine in the sum of $500.

Orders

11. The Panel makes the following orders:

    1. Appeal against severity of penalty for breach of AR240(2) allowed.
    2. In lieu of a fine in the sum of $5000 for breach of AR240(2), a fine of $2500 is imposed.

3. Appeal against severity of penalty for breach of LR82C(1)(b) allowed.
4. In lieu of a fine in the sum of $1000 for breach of LR82C(1)(b), a fine of $500 is imposed.
5. Appeal deposit to be refunded.