

**NEW SOUTH WALES
HARNESS RACING
APPEAL PANEL**

APPEAL PANEL MEMBERS

P Kite SC

G Kelly

Dr C Suann BVSc MANZVS MAICD

2 FEBRUARY 2024

APPELLANT AARON GOADSBY

RESPONDENT HRNSW

AUSTRALIAN HARNESS RACING RULES

190(1)

DECISION

- 1. The appeal of Mr Aaron Goadsby is dismissed.**
- 2. The decision of the Stewards to disqualify Mr Goadsby for a period of 3 months is confirmed.**

1. On 26 May 2023, the horse Luvareschs, trained by Mr Aaron Goadsby, won race 8 conducted at Newcastle. Subsequently, the Australian Racing Forensic Laboratory reported that phenylbutazone, oxyphenbutazone, and gamma-hydroxyphenylbutazone had been detected in the post-race, urine sample taken from Luvareschs.
2. On 18 December 2023, the Principal Member, Hon W Haylen KC, held that a stay was not warranted in this case. The circumstances leading up to the appeal were succinctly set out in his decision as follows:
 1. *On 6 December 2023, Harness Racing Stewards opened an inquiry into the circumstances in which the horse came to return these test results. After a lengthy hearing, Stewards were satisfied the detection of these prohibited substances in the urine sample taken from Luvareschs had resulted from contamination in the stable environment.*
 2. *The Stewards then charged Mr Goadsby with breaching AHRR 190(1), (2) and (4) namely (the provisions are then set out). The particulars of the charge were that Mr Goadsby, being the licensed trainer of the horse Luvareschs, did present that horse to race at Newcastle on Friday, 26 May 2023, not free of a prohibited substance, namely, phenylbutazone and/or oxyphenbutazone and/or gamma-hydroxyphenylbutazone as reported by the two laboratories approved by Harness Racing New South Wales.*
 3. *Mr Goadsby promptly pleaded guilty to the charges laid by the Stewards. In considering the appropriate penalty, the Stewards stated that they took into account the following matters: it was Mr Goadsby's first prohibited substance matter: this was a Class 3 Prohibited Substance; the circumstances surrounding this matter; Mr Goadsby's personal, financial and professional subjectives; Mr Goadsby's guilty plea, Mr Goadsby's involvement in the harness racing industry as a licensed trainer and sponsor; his harness racing offence record; and, HRNSW Penalty Guidelines. Having regard to these matters, Mr Goadsby was disqualified for a period of three months that was to commence immediately.*
3. The appeal was listed for hearing on 12 January 2024, before the Panel as presently constituted. On the morning of the hearing Harness Racing New South Wales legal representatives forewarned the Panel and Mr Goadsby's legal representatives that, in view of information received by Harness Racing New South Wales late the night before, the respondent would be seeking an adjournment to allow Stewards to investigate that information. The detail of that information was said to be confidential but related to alleged conduct of Mr Goadsby. The appellant opposed the adjournment, in essence on the basis of the lack of disclosure of the information received and therefore its relevance to the appeal. The respondent offered to disclose the information to the Panel to determine whether it should be revealed to the appellant. That course was opposed and the Panel declined to receive the information even for that purpose. The Panel granted the adjournment until 19 January and made directions relating to the respondent informing the Appellant and the Panel, by 17 January, of the progress of its investigation and, if it intended to rely on the information in the appeal, the nature of the information it had received. Costs were reserved. There was no further application for a stay.
4. The directions were complied with and, when the hearing resumed, the respondent made a further adjournment application to allow its investigations to proceed. The information was said to raise questions as to the appellant's compliance with the disqualification conditions. The appellant again opposed the adjournment on the basis that the information could not be admissible on the appeal for lack of relevance. The Panel accepted the appellant's argument that it could not conduct an investigation into the veracity of the information, that being a matter for the Stewards. The respondent did not challenge that proposition but submitted it was seeking to determine expeditiously whether an inquiry should be opened by the Stewards. Its preliminary investigations had, however, been constrained by the Appellant's absence overseas between 12 January and 18 January. The respondent further submitted that if the Stewards did decide to open an inquiry the outcome could be relevant to the appeal. The Panel accepted that the outcome of any inquiry conducted by the Stewards may have been relevant.

5. Notwithstanding its expressed concern as to the lapse of time, having regard to the period of the disqualification, the Panel again agreed to adjourn the appeal until 31 January. Directions were made directed to ensuring the matter would be able to proceed to finality on 31 January. Costs were again reserved. Again there was no application for a stay.
6. A further adjournment application was made on 31 January. It is unnecessary to detail the reasons advanced, other than to say that the Respondent had not been able to finalise its investigations. The Panel refused any further adjournment and the appeal proceeded essentially on the information before the Stewards. There was little or no disagreement about the facts. Indeed in his written submissions dated 18 January Mr Sheales, Counsel for Mr Goadsby submitted:

*In the instant case both as to the offence and the circumstances as to the commission of the offence **there are no facts in issue between the parties**. The appellant is the trainer, the horse returned a positive swab, the appellant pleaded guilty and finally, the respondent held that the detection was as a result of “a contamination within the stable environment.”*

(Emphasis as in original)
7. Mr Goadsby was first licensed as driver/stablehand in 2004/2005. He was issued a C-Grade trainers licence on 1 September 2015 and an A-Grade licence on 25 November 2016. He has no prior prohibited substance offences. He has, what has been described as “state of the art” facilities for stabling and training his horses of which he is justly proud. His season by season performance as a trainer revealed he had started horses more than 100 times in each of the past four years and in Season 23/24 more than 200 times. He was also a sponsor of Harness Racing particularly in the Hunter region.
8. There was in evidence several references giving witness to his: good character, integrity, honesty and reliability; strong work ethic; public spirited activity, which was not confined to Harness Racing; remorse for this incident; commitment to seeking veterinary advice including as to alternative procedures when administering medication in order to avoid contamination; and forward looking attitude. There were also letters of appreciation from Tamworth and Newcastle Harness Racing Clubs expressing appreciation for his sponsorship.
9. Mr Goadsby also gave evidence before the Stewards that: he and his family resided on the same property as the stables; [REDACTED]¹; and he also operated his other business, which appears to be of significant scale, from the same property and disqualification would prevent him from being on that property. In addition to exclusion from the Harness Racing Industry these activities would be severely curtailed.
10. From the outset of the Stewards investigation Mr Goadsby cooperated, allowing ready access to all areas of the stables. He did not attempt to dispute the positive test results and acknowledged that the cause had to be “cross-contamination”. Mr Goadsby had treated four other horses with “Bute” on or about 25 May. There was an entry in his Log Book recording the treatment of the four horses on that date. Some doubt arises however on when the horse Kozaczynski (stable name “Kozzy” or “Kozzie”) was first treated based on an email to Stewards from Mr Goadsby on 25 May which suggests the horse may have been treated on 24 May. The entry in the Log Book for “Kozzy” appears to be in a different pen. Mr Sheales acknowledged there may have been a minor error in the Log Book but submitted it was of little significance in the context of this case. Ms Chua, solicitor for the Respondent, submitted to the contrary that accuracy of the Log Book is important in helping to reveal exactly what happened in a case such as this where the cause of contamination was unknown.
11. Mr Goadsby described the daily process and the potential circumstances in which contamination may have occurred. Horses were brought to the “cross-ties” to be prepared for the day’s routine. If treatment was required they would be treated in the tie ups. They may have been in a cross-tie

¹Redaction has been made at the request of the Applicant.

adjacent to a horse not requiring treatment. Gloves were not worn at that time when treating horses. If spillages of medications occurred, and noticed, the spill would be wiped and/or hosed. The horses are then moved on to whatever their program requires, including swimming, walking, jogging on the “jogger” or in a cart or fast worked. The treated horses would be exercised but not fast worked. After exercise they are moved off to the “hospital”, being a separate stable away from the other horses. Jogging and swimming in particular involved the use of shared facilities such as the jogger and swimming headstalls.

12. Mr Goadsby frankly conceded that contamination could have occurred in the conduct of these activities. Indeed he said that “*there’s a thousand different ways that cross-contamination could have occurred*”. He also said that despite months of research he still did not know how contamination occurred.
13. Since the incident, practices have changed e.g. gloves are always worn and horses are treated in a separate location in order to avoid as much as possible the risk of contamination.
14. Dr Wainscott, Regulatory Veterinarian HRNSW, gave evidence before the Stewards confirming the prohibited substances detected were Class 3. He also agreed that there were a number of plausible points of contact for the horse to have received phenylbutazone from the contamination sources.
15. These various husbandry issues resulted in both parties agreeing that it could not be said that Mr Goadsby was “blameless”.
16. One point of significant disagreement between the parties was the use to be made of the Penalty Guidelines. Mr Sheales argued they should not be the starting point. Rather the objective seriousness of the offence should be the first consideration. Both parties agreed the offence charged is one of absolute liability. Mr Sheales contended that Mr Goadsby’s offence was at the lowest end of the range of objective seriousness. Ms Chua submitted the fact that Mr Goadsby could not be said to be blameless distinguished the case from *Turnbull*, (Racing Appeals Tribunal 30 September 2022) which is an example of a case at the lowest end. No other case, she submitted, had resulted in a penalty other than disqualification. Mr Sheales on the other hand submitted that most of the other cases had been decided prior to the amendment of the Penalty Guidelines.
17. The Guidelines state that a first offence of presenting a horse with a Class 3 prohibited substance is to be penalised by no less than 12 months disqualification. That is to be read in conjunction with the Introduction to the Guidelines and the various aggravating and mitigating factors that may be considered. Mr Sheales also pointed to the provision in the Guidelines providing for consideration of a fine for a presentation first offence if certain conditions were met. In doing so he argued that as Guidelines they should not be read so as to require, necessarily, that all conditions had to be met. That is at odds with the language requiring that the Trainer to satisfy “*each of the .. requirements*”.
18. We do not find it necessary to express a concluded view on this point because the Appellant was not contending for a fine in this case and, more importantly, because the Appellant had not complied with the condition of “*compliance with all relevant notices issued by HRNSW*”. HRNSW had issued a Notice on 6 September 2018 relating to “Stable Contamination”. Two recommendations in that Notice are directly relevant in this case. The first is that wherever possible horses should be treated with prohibited substances in a separate stable reserved for that purpose. The second is that gloves should be always worn when administering medications. Neither of these recommendations were observed.
19. While the Penalty Guidelines are guidelines not tramlines as has been so often observed in decisions of this Panel and the various judicial bodies from which its decisions are taken for review of one form or another, they nonetheless have an important role to play. As was said by the Racing Appeals Panel in the matter of *Simiana at [20]* The Guidelines are to be “*treated as guidelines and not tramlines, but, as so often stated, they must be considered to ensure that the regulators and the stewards and licensed persons are able to understand the likely outcomes from various types of conduct.*”

20. It is appropriate then to begin with the Guidelines. Our conclusion on the level of culpability of the Appellant leaves us to conclude that consideration of a fine, or any other penalty less than disqualification is not appropriate. There are undoubted shortcomings in the husbandry adopted by the Appellant at the time of this offence. Accordingly, we agree with the Stewards that disqualification is the appropriate penalty.
21. In assessing the period of disqualification, the starting point is provided by the Guidelines. Mr Goadsby is entitled to credit for: his prompt guilty plea; his cooperation with the Stewards, including his frank admissions as to fault on his part; his undoubted remorse for his failure; his contributions to the industry as a sponsor as well as his other community contributions; and his adoption of changed practices to avoid repetition of this offence. It is the view of the Panel that the assessment of the factors leads to the conclusion that the period determined by the Stewards is correct. The appeal is therefore dismissed.
22. There remains the question of costs. The parties are granted liberty to apply within 7 days in respect of costs. As agreed at the conclusion of the hearing any question of costs is to be dealt with by written submission.

P M Kite SC – Convenor

Mr G Kelly – Panel Member

Dr C Suan BVSc MANZVS MAICD – Panel Member