In the Training Disputes Tribunal

at Melbourne

Between

John NOBLETT ("the owner")

and

Robert BLACKER ("the trainer")

Before:

D. G. BROOKES SC

Member Training Disputes Tribunal

9 July 2024

FURTHER DECISION

1. Pursuant to Liberty to Apply granted in this matter in the Decision dated 25 June 2024, further submissions were entertained by the Tribunal on 5 July, 2024.
2. Liberty to Apply was reserved by paragraph 15 therein to wit, "in case there are arithmetical or other errors."
3. The owner chose not to be heard on 5 July, but has contended in an email dated 26 June, 2024 that "at no stage have the outstanding agistment fees incurred by RBR (the trainer) for agisting there(sic) horse's at John Noblett's property (the owner) for November & December 2023, & January 2024, been credited or off-set against the amounts owing by (the owner). Such fees being, November 2023, $2,914.15, not disputed, December 2023, $1,627.33, not disputed, and January 2024, $1,235.50, not disputed up to January 2024, (plus) 4 horses 22 January to 6 February 2024, all totalling $6,376.98.
4. The trainer, at the Hearing on 5 July2024 contended that the agistment fees had been deducted in statements dated 24 January, 31 January (two), and 29 February 2024.
5. The trainer further contended that his 4 horses had been illegally detained by the owner after 22 January, and therefore no agistment fees are payable thereafter. Those horses have recently been returned to the trainer.

The Agreement

6. In order to place these submissions into the context of the overall agreement, it has been difficult to reconcile all of the claims and counterclaims during an often rowdy hearing over a number of days.
7. In any event, there is common ground flat from at least November 2023, until, at least on or about 22 January, there was arrangement that had the following terms. First, the owner would pay the trainer the invoiced training fees for initially 5 horses and latterly 2 horses. Second, the trainer would pay agistment fees at an agreed rate on the owner's property for a number of designated horses. Third, the trainer would provide a monthly account to the owner setting out the training and allied fees, from which would be deducted the agistment fees.
8. This all sound simple enough except that there grew dissatisfaction with the arrangement on both parts. This led, amongst other things to the formal complaints made to Racing Australia and Racing Victoria as set out in my first Decision.
9. It would appear that the agistment agreement "was a verbal one which saw us feeding and managing all the horses on the property for a heavily discounted agistment rate." (the trainer email 4/7/24). The trainer also alleges that the owner "prefers to make all his arrangements verbally and our experience has been that he's not good at keeping or remembering them or these arrangements, when it doesn't suit him. This is the reason why Crystal and I decided to cease our previous arrangements with (the owner)……. For this reason, we have not brought up the removal of our 4 horses from 278 Bungower Road, once we were denied access, as we were hoping that he would pay his outstanding account with us, and we did not want to "poke the bear." (ibid). 278 Bungower Road (the owner's property), is a safe property and there is plenty of feed in the paddocks, which is why we have "waited" with the matter, despite having no knowledge of who is feeding and caring for our horses, that are still there." (ibid)…… "As he is in significant debt to us, he has no legal rights to retain them, which he has been informed of."
10. The owner, on the other hand, submits that the main issue with respect to the agistment dispute is that the trainer either refused, or neglected to bring the agistment fees into the monthly accounts and this was one of the main issues he wanted to discuss in January. He claims that the trainer's wife insisted he pay the outstanding training fees without accounting for the agistment fees. It was on this basis he refused to hand over the 4 agisted horses until the overall agreement was met.
11. The trainer made a demand for the return of his horses on or about 22 January and this was refused.

12. In the hearing before me there were no documents acknowledging the agistment fees owing in the “Enforcement Action Application form” issued by the trainer on 1 February 2024, just the 5 invoices for training fees for the 5 horses.
13. The trainer has placed before the Tribunal an undated document, titled "December Agistment Credits” and “January Agistment Credits” totalling some $3,944.87. There is no document referring to the November 2023 Agistment Credit.
14. The “statements” referred to in paragraph 4 are all dated after 22 January, and at times after, the owner refused to hand over the trainer’s 4 agisted horses.
15. The trainer, for his part has refused to hand over the owner’s 2 horses and had purported to sell one of them whilst this whole matter was before the tribunal.
16. Accordingly, as at 22 January, I find that the trainer was in breach of the agreement with respect to the owner’s agistment charges, and as a result, the owner was entitled to retain a lien on them pending a proper accounting. I find therefore that the owner is entitled to a deduction from the training fees for the agistment fees for the period 1 November 2023 until 6 February 2024.
17. The owner’s contention of the amount owing is at variance with the trainer’s document for the December and January agistment credits, with no documents to support the contention.
18. In all the circumstances I will allow both parties to make a written submission as to how I should calculate the November, December, January and February agistment credits.
19. These written submissions will need to be returned to me by email, by close of business, Wednesday 17 July 2024.

Dated 9 July 2024

Member – Training Disputes Tribunal

D.G. BROOKES SC