



DECISION ON PENALTY

RACING VICTORIA STEWARDS

and

MATTHEW LEEK

Date of Hearing 16 May 2018

Date of Decision 4 June 2018

Panel Judge Bowman (Chair), Joshua Bornstein, Jeremy Rosenthal.

Appearances Jack Rush QC, instructed by Daniel Bolkunowicz, appeared on behalf of the stewards.

Damian Sheales of counsel appeared on behalf of Mr Leek.

Charge 1 AR 178AB(1)(a)

A person must not, without the permission of the Stewards, inject a horse, cause a horse to be injected or attempt to inject a horse, which is engaged to run in any race:

- (a) at any time on the day of the scheduled race, prior to the start of such event; and*
- (b) at any time during the One Clear Day prior to 12.01am on the day of the scheduled race.*

Summary The stewards alleged that on 8 August 2017 during a race day stable inspection, Mr Leek was in possession of one 30 millilitre syringe containing a substance, an uncapped needle and one 100ml bottle each of L-Carnitine and Mitochondral which he intended to administer to the horses *High Valley* and/or *Cash Sale* prior to them racing at Pakenham that day, in breach of AR 178AB(1)(a).

Charge 2 AR 175(q)

The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise:

- (q) Any person who in their opinion is guilty of any misconduct, improper conduct or unseemly behaviour.*

Summary The stewards alleged that during a race day stable inspection on 8 August 2017, Mr Leek deliberately disposed of liquid in a syringe which had the effect of destroying evidence relevant to a stewards' investigation, constituting misconduct and/or improper conduct.

Charge 3

AR 178F

(1) A trainer must record treatment and medication administered to each horse in his or her care by midnight on the day on which the administration was given, and each record must include the following information:

- (a) the name of the horse;*
- (b) the date and time of administration of the treatment or medication;*
- (c) the name of the treatment or medication administered (brand name or active constituent);*
- (d) the route of administration including by injection, stomach tube, paste, topical application or inhalation);*
- (e) the amount of medication given (if applicable);*
- (f) the duration of a treatment (if applicable);*
- (g) the name and signature of person or persons administering and/or authorizing the administration of the treatment or medication.*

Summary

The stewards alleged that Mr Leek failed to record the treatment and medication of L-Carnitine and Mitochondral to horses in his care.

Plea

Charge 1 - not guilty.
Charge 2 - not guilty.
Charge 3 - not guilty

Decision

Charge 1 - the Board finds the charge proved.
Charge 2 - the Board finds the charge proved.
Charge 3 - the Board does not find this charged proved. The charge is therefore dismissed.

Penalty

Charge 1 - Mr Leek is convicted and disqualified for a period of six months.

Charge 2 - Mr Leek is convicted and disqualified for a period of six months.

The periods of disqualification are to be served cumulatively - a total period of disqualification of 12 months.

The Board orders that the commencement of the period of disqualification be deferred until 12.01am Tuesday 12 June 2018, it being the maximum period that the disqualification may be deferred, pursuant to the rules: see AR 196(6).

Pursuant to AR 196(6)(b), Mr Leek must not start a horse in any race from the date of the Board's decision, 4 June 2018, until the expiration of the period of disqualification.

**RACING APPEALS AND DISCIPLINARY BOARD
(Original Jurisdiction)**

Racing Victoria Stewards

v

Matthew Leek

RULING AS TO PENALTY

Judge Bowman	Chair
Mr J Bornstein	Deputy Chair
Mr J Rosenthal	Member

Appearances

For the stewards
For Mr M Leek

Mr J Rush QC
Mr D Sheales

Mr Matthew Leek, we have found you guilty of breaches AR 175AB(1)(a), relating to attempted race day administration to two horses. We have also found you guilty of a breach of AR 175(q) in relation to what could be described as the destruction of evidence, this constituting improper conduct and the like, we would refer to our earlier Ruling.

We have received written submissions as to penalty from the stewards and from Mr Damian Sheales of counsel on your behalf. Each set of submissions is extensive. It is apparent that considerable time and effort has been put into each. We are grateful for this assistance.

The bottom line is this. Effectively we accept the bulk of the submissions made on behalf of the stewards. For the breach of AR 175AB(1)(a) – attempted race day administration – there is no fixed penalty. Actual administration attracts a mandatory minimum penalty of six months’ disqualification unless there are special circumstances – see AR 173 and AR 196(5). In the present case, there are no special circumstances. We agree that in your case the penalty which attaches to actual administration should apply to an attempted administration such as this. We would

also point out that in your case the attempted administration was to two horses. However, we are treating it as the one charge that it is. You are disqualified for a period of six months. We consider that to be an appropriate penalty in all the circumstances of the case.

Turning to the breach of AR 175(q), this is a serious offence as defined in AR 1. Your particular offence involves a blatant and brazen attempt to tamper with, conceal or destroy evidence whilst what was at least a preliminary inquiry was taking place. It deserves the strongest condemnation.

We are of the view that a period of disqualification of six months is appropriate.

There is then the issue of whether these penalties should be cumulative, in full or in part, or concurrent. In our view, they should be fully cumulative. A clear message must be sent and the public would expect nothing less. To attempt to administer personally a substance to two horses on race day, to then attempt to conceal or destroy a central part of the evidence and to fail to co-operate or assist in the slightest with the stewards' investigation are factors which we believe warrant the full cumulation of the penalties.

You are disqualified for a total period of twelve months.

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