

STEWARDS DECISION

OFFICE OF RACING INTEGRITY

and

DANIEL MALONE

Date of hearing:	9 th August 2022
Stewards Panel:	R. Brown (Chairman) J Gleeson and T Canham
Respondent:	Mr Daniel Malone
Rule:	Australian Rules of Harness Racing (AHRR)190(1) <i>`A horse shall be presented for a race free of a prohibited substance`.</i>
Charge:	Mr Daniel Malone, the trainer of SPOOKY GIRL presented that horse to compete in Race 2 at the Tasmanian Trotting Club on 12 th June 2022. A post-race urine sample was taken from SPOOKY GIRL and upon analysis was found to have Arsenic in excess of the prescribed threshold.
Prohibited Substance:	ARSENIC
Plea:	Admitted
Inquiry Decision:	\$2000 fine, with \$1000 wholly suspended for a period of two years.

1. Background

- (a) The Respondent, Mr Daniel Malone is a licensed B Grade Trainer under the Australian Rules of Harness Racing.
- (b) He is 65 years old and has held a trainer's licence for more than three decades.
- (c) SPOOKY GIRL is a 5YO mare (Safe and Sound –Mint Tan) trained by Mr Malone.
- (d) SPOOKY GIRL was correctly entered for and presented to race in Race 2 (Tasmanian Horse Transport Pace) at the Tasmanian Trotting Club meeting at Elwick Racecourse on Sunday 12th June 2022.
- (e) SPOOKY GIRL was driven by Mr Mark Yole and won Race 2, earning a stake of \$5,850.00
- (f) SPOOKY GIRL was selected for a post-race swab which was undertaken by Office of Racing Integrity Steward Miss Elizabeth Campbell. Mr Malone attended to SPOOKY GIRL throughout the swabbing process. The swabbing process was not contested.
- (g) The collection of the sample was concluded at 6:15pm with the sample being allocated the unique number V764713.
- (h) On 6th July 2022 Racing Analytical Services Limited issued a Certificate of Analysis reporting that Arsenic above the permitted threshold, was detected in the sample. The level reported was 0.40ug/mL. The threshold for Arsenic in urine is 0.30ug/mL. The control sample was clear.
- (i) The reserve portion of the sample was sent to the Racing Chemistry Laboratory in Perth.
- (j) On 3rd August 2022 the Racing Chemistry Laboratory confirmed Arsenic at a level of 0.36 ug/mL in sample V764713.
- (k) On 6th July 2022 Office of Racing Integrity Stewards visited Mr Malone's property to advise of the sample irregularity.
- (l) During this visit the Stewards noted that several wooden posts on the property had been severely chewed by the horses domiciled at the location.
- (m) Mr Malone has not previously breached the prohibited substance rules.

Mr Malone admitted the breach.

2. Penalty Approach

2.1 Sentencing Principles –

- (i) Penalties are designed to punish the offender for his/her wrongdoing. They are not meant to be retributive in the sense that the punishment is disproportionate to the offence, but the offender must be met with a punishment.
- (ii) In a racing context it is very important that a penalty has the effect of deterring others from committing similar offences through the consideration of both general and specific deterrence.
- (iii) Penalties imposed upon those offending the prohibited substance rules should reflect the industry's disapproval of drugs being detected in racehorses.

2.2 Stewards Approach

- 2.2.1 The Stewards have resolved to approach the matter of penalty from the perspective of the desirability of consistency with previous penalties in dealing with similar offenders committing similar offences in similar circumstances.
- 2.2.2 Unfortunately, Arsenic offending in Tasmania has not dissipated and this has resulted in too many charges being raised across participants in all codes, and while the continued incidence is disappointing the established penalties imposed nonetheless provides good precedent when dealing with similar and like offending.
- 2.2.3 To this end the Stewards are guided by a number Tasmanian offences, and in particular.
 - 1. *ORI verses Poke [2019]*– This was a thoroughbred overage where Mr Poke, being a long-time participant (not unlike Mr Malone) was fined \$2,000 with \$1,000 suspended for 12 months pending no further offending.
- 2.2.4 This matter traversed the Tasmanian Racing Appeals Tribunal and has been relied upon in Arsenic overages since that time.

3. Penalty Discussion:

- 3.1 Mr Malone has admitted a charge of presenting SPOOKY GIRL, to race when not free of prohibited substances- namely Arsenic above the permitted threshold.
- 3.2 He has demonstrated genuine remorse with respect to the matter, and we are sure he will take learnings from this episode and move forward positives and continue to be a valued contributor to harness racing in the state.
- 3.3 However, every time a harness racing horse is presented to race with a prohibitive substance in its metabolism then the integrity of not only harness racing but racing in general is compromised.
- 3.4 Rigorous attention to detail is required in the management, treatment, and care of horses when they are being presented to race to ensure that the fundamental expectation of horses competing on a level playing field is maintained.

4. Factors in consideration of penalty.

After hearing submissions on penalty, Stewards took the following things into consideration:

- Mr Malone's guilty plea;
- Mr Malone's conduct and honesty throughout the inquiry;
- Mr Malone's prior record which showed no breaches of the prohibited substance rules;
- Mr Malone's time involved within the industry;
- Mr Malone's culpability in this incident, which Stewards classified as unintentional
- That the likelihood of the overage resulted from SPOOKY GIRL eating fence posts located at his training complex;
- The need for any penalty to act as a deterrent, both specific and general;
- The importance of maintaining a drug free environment;
- Precedents of breaches of the prohibited substances rules and penalties that have been issued in previous cases within Tasmania.

5. Outcome

- 5.1 Having regards to all circumstances the Stewards believe that a fine of \$2,000 will satisfy the accepted principles of sentencing. This being to hold Mr Malone accountable, to encourage in him a sense of

responsibility for his actions, and to deter him and others from committing the same or similar offences.

- 5.2 We are however mindful of recent Tasmanian decisions with respect to Arsenic where 50% of the penalty has been stayed for a period. This having the added incentive for those trainers who have been subject to an Arsenic irregularity, to make changes in their husbandry and stock management practices to ensure no reoccurrence.
- 5.3 Mr Malone is fined \$2,000 with \$1,000 suspended for two years pending no further breaches of the prohibited substance rules.

6. Disqualification Of Horse

- 6.1 It is mandatory that if a horse competes in a race and is found to have competed with a Prohibited Substance in its system it must be disqualified from that race (AHRR 195).
- 6.2 Accordingly, "SPOOKY GIRL" is disqualified from first place in the Tasmanian Horse Transport Pace at the Tasmanian Trotting Club meeting at Elwick Racecourse on Sunday 12th June 2022, with the placings are to be adjusted, and prize money redistributed, to reflect the disqualification of SPOOKY GIRL.

Decision Date: 9th August 2022