

# STEWARDS DECISION

## OFFICE OF RACING INTEGRITY

and

### Mr MARK REGGETT

<b>Date of hearing:</b>	11 <sup>th</sup> August 2022
<b>Stewards Panel:</b>	Ross Neal (Chair); Roger Brown and Carolyn Ellson
<b>Present:</b>	Mr Mark Reggett (Respondent)
<b>Rule:</b>	Australian Rules of Harness Racing (AHRR) 190 (1) <i>'A horse shall be presented for a race free of a prohibited substance'</i> .
<b>Charge:</b>	That you; Mark Reggett, as the trainer of BUSTER BYRON presented that runner for the purposes of participating in Race 3 at the Tasmanian Trotting Club meeting on Sunday 26 <sup>th</sup> June 2022 when a pre-race blood sample taken from the gelding revealed a TC02 level above the permitted threshold.
<b>Plea:</b>	Admitted

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## 1. Background

- (a) The Respondent, Mark Reggett is a Grade A licensed trainer pursuant to the Australian Rules of Harness Racing.
- (b) Mr Reggett has held a trainer's licence since May 2016.
- (c) Mr Reggett is the registered trainer of BUSTER BYRON.

- (d) BUSTER BYRON is a 4YO gelding (Devilish Smile –Chrissy Lee Rose) trained by Mr Reggett and owned by PA Woods; CJ Woods; CP Woods; EK Woods; LA Howorka and SE Howorka.
- (e) BUSTER BYRON was correctly entered for and presented to Race in Race 3, the Great Northern Pace, at the Tasmanian Trotting Club at Elwick Racecourse on Sunday 26<sup>th</sup> June 2022.
- (f) BUSTER BYRON was selected for a pre-race blood test which was undertaken by Office of Racing Integrity Steward Ms E Dunbabin. Mr Mark Yole represented Mr Reggett throughout the sampling process. The sampling process was not contested.
- (g) The collection of the pre-race blood sample was concluded at 5.15pm with the sample being allocated the unique number V607767.
- (h) BUSTER BYRON was driven by Mr Mark Yole and won Race 3, earning a stake of \$5,850.00
- (i) On 28<sup>th</sup> June 2022 Racing Analytical Services Limited (RASL) issued a Certificate of Analysis reporting that TC02 above the permitted threshold had been detected in sample V607767 taken from BUSTER BYRON on 26<sup>th</sup> June 2022. The level reported was 38.8 mmol/L. The control sample was clear.
- (j) RASL also advised that the reserve portion of the sample had been forwarded to the Australian Racing Forensic Laboratory (ARFL) in NSW for referee analysis.
- (k) The outcome of the reserve sample was provided by ARFL on 29<sup>th</sup> June 2022, who reported a TC02 level of 39mmol/L.
- (l) On the 1<sup>st</sup> July 2022, Office of Racing Integrity Stewards called on Mr Reggett at his property at Brighton. Mr Reggett was advised of the irregularity, and an inspection of his property was undertaken. During the inspection Stewards observed tubing paraphernalia in Mr Reggett's gear shed.
- (m) The Stewards also collected a resting blood sample from BUSTER BYRON. This was forwarded to RASL for analysis. The outcome being that the sample collected returned a reading of 30.8mmol/L.

## **2. Submissions of the Respondent**

- 2.1 When asked to explain the irregularity Mr Reggett has stated that he is unable to explain the reasons as to why BUSTER BYRON returned an adverse result.
- 2.2 While Mr Reggett has acknowledged that he does possess drenching paraphernalia (tube and funnel), he nonetheless advises that he uses this equipment within the confines of the rules. Mr Reggett has expanded with respect the drenching equipment by saying that if his horses are racing on Sunday then Thursday is his last day for treating his horses.

### **3. Penalty Approach**

3.1 Turning to the matter of penalty the Stewards are cognisant of the following Sentencing Principles –

- (i) That 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) That 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) That penalties imposed upon those offending the prohibited substance rules should reflect the industry's disapproval of drugs being detected in racehorses.

### **4. Respondents Penalty Submissions**

4.1 When addressing the Panel on penalty Mr Reggett referred to the matters of Benson where a fine was imposed, and Ashwood where a 3 month disqualification was imposed. Mr Reggett contending that this approach should be adopted with respect to this matter.

### **5. Penalty Considerations:**

5.1 The Stewards do not view the decisions referred to by Mr Reggett as being of particular relevance as they occurred essentially a decade ago and the industry's approach to TC02 positives has changed in the ensuing period.

5.2 Moreover, in recent times, penalties imposed for breaching the provisions of prohibited substance rules relating to TC02, both in Tasmania and Interstate, have consistently resulted in a period of disqualification for the offender. Such is the industry's concerns with respect to TC02.

This standard is reflected in the following decisions:

- a. *Office of Racing Integrity verses Ford (D)* - AHRR 190 (1) - disqualified 18-months. [2018]
- b. *Racing and Wagering WA verses Cockell* - AR 240 -disqualified 6-months. [2022]
- c. *Queensland Racing Integrity Commission verses Warland* – AHRR 190(1) – disqualified 6 months. [2020]
- d. *Queensland Racing Integrity Commission verses Crosby* – AHRR 190(1) – disqualified 6 months. [2020]
- e. *Queensland Racing Integrity Commission verses Gordon* – AHRR 190(1) – disqualified 6 months [2020]

- f. *Harness Racing Victoria verses Holmes* - AHRR 190(1) – suspended 18- months (6 months suspended) [2021]
- 5.3 We note that with respect to *Holmes*, he avoided a disqualification because of his employment being racing related, and the additional hardship which would adversely affect his ability to earn a living should be disqualified.
- 5.4 With respect to this matter the Stewards have determined that a period of disqualification is appropriate, and we have adopted a starting point of 9 months. In assessing this starting point we have recognised the following factors:
- i. The penalties imposed in Tasmania and other Australian jurisdictions. We have taken cognisance of the interstate penalties because they best reflect the contemporary approach to TCO<sub>2</sub> irregularities. We assess this at 6 months.
  - ii. That this is Mr Reggett's second breach of the prohibited substance rules. The previous being in 2018 and relating to an Arsenic overage where Mr Reggett was fined \$3,000
  - iii. We have assessed this second offence of the prohibited substance rules, given Mr Reggett's relatively brief tenure as a trainer should attract an uplift of three months.
  - iv. The elevated level of 38.8 mmol/L is high range.

## 6. Discussion

- 6.1 The Prohibited Substance Rules impose an absolute obligation on trainers to ensure that they presented their runners free of prohibited substances.
- 6.2 In consequence, trainers must take all reasonable steps, and must take proper care, always, to avoid presenting a horse which could give rise to an adverse test result.
- 6.3 Resultantly, where there is a breach of the drug negligence rules trainers must expect substantial penalties, because 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.
- 6.4 In this matter we approach the imposition of penalty on the basis that the cause of the elevated TCO<sub>2</sub> level is not known. The onus under AHRR 190 (1) however, is on the trainer to present a horse free of any prohibited substance. Hence the respondents' admission of the breach.
- 6.5 In fixing penalty, we have regard to the need to uphold the integrity of racing, not only in harness racing, but in all racing, codes have long been at the forefront of disciplinary decision-making. It is wrong to suggest otherwise. Accordingly, the penalty that is imposed upon the respondent must be at a level that protects the public by ensuring appropriate standards of professional behaviour.
- 6.5.1.1

6.6 When considering this matter, the substance detected in the sample taken from BUSTER BYRON on the 26<sup>th</sup> June 2022 was TC02 at the very high level. TC02 being a substance with no legitimate use in harness racing

## **7. Factors in Mitigation**

7.1 In determining the appropriate penalty, the Stewards recognise the following factors in mitigation, and which are relevant to penalty discussions. These being -

- (a) Mr Reggett has been fully cooperative throughout the ORI investigation.
- (b) Mr Reggett's admission of the breach.
- (c) That upon notification of the adverse result Mr Reggett scaled down his operation, and for the past month has been inactive with respect to training and racing horses.

7.2 The Stewards assess that a discount of two months should be applied to reflect the factors in mitigation.

## **8. Outcome**

8.1 Having regards to all circumstances the Stewards make the following orders.

- (a) Mr Reggett is disqualified for a period of seven months pursuant to the Australian Rules of Harness Racing. That period of disqualification to commence at midnight on Sunday 14<sup>th</sup> August 2022 to allow him to make arrangements for his horses. This being to hold Mr Reggett 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.

## **9. Disqualification Of Horse**

Pursuant to AHRR 195 BUSTER BYRON is disqualified from Race 3, the Great Northern Pace, at the Tasmanian Trotting Club meeting on Sunday 26<sup>th</sup> June 2022, with the placing to be adjusted accordingly, and the prize money to be redistributed to reflect the disqualification of BUSTER BYRON.

**Decision Date:** 11<sup>th</sup> day of August 2022