

STEWARDS DECISION

OFFICE OF RACING INTEGRITY

and

YASSY NISHITANI

- Date of hearing:** 19th June 2022
- Stewards Panel:** Mr B Free (Chair), Mr D Tyson and Mr G Griffin.
- Present:** Mr Yassy Nishitani (Respondent)
- Rule:** Australian Rule of Racing AR240(2)
- Australian Rule (AR) 240 - Prohibited substance in sample taken from horse at race meeting
- (2) Subject to subrule (3), if a horse is brought to a racecourse for the purpose of participating in a race and a prohibited substance on Prohibited List A and/or Prohibited List B is detected in a sample taken from the horse prior to or following its running in any race, the trainer and any other person who was in charge of the horse at any relevant time breaches these Australian Rules.
- Charge:** That charge being pursuant to AR240 (2) which reads:
- Yassy Nishitani, the trainer of Kay Oh Ell (NZ), presented that horse to compete in Race 1 at the Tasmanian Turf Club meeting on the 8th December 2021, where the horse finished 1st and upon a post-race urine sample being analysed was found to contain arsenic, a prohibited substance which was found to be above the threshold permitted.
- Plea:** Admitted

1. Background

- (a) The respondent, Yassy Nishitani, is a licensed Public Trainer under the Australian Rules of Racing.
- (b) Mr Nishitani is 41 years of age and has held a trainer's licence for a period of 5 years and has been a licenced jockey since 2007.
- (c) Kay Oh Ell (NZ) was correctly entered for and presented to race in Race 1 at the Tasmanian Turf Club meeting on the 8th December 2021.
- (d) Kay Oh Ell (NZ) placed 1st in the event.
- (e) Kay Oh Ell (NZ) was a favoured runner in the betting market, closing at \$5.50.
- (f) A post-race urine swab was taken from Kay Oh Ell (NZ), which was undertaken by Office of Racing Integrity Steward Ms Allison Norgrove. Ms Brooke Douglas represented Mr Nishitani throughout the swabbing process. The swabbing process was not contested.
- (g) The collection of the sample was concluded at 5:55 pm with the sample being allocated the unique number V736796.
- (h) On 5th January 2022 Racing Analytical Services Limited issued a Certificate of Analysis reporting that Arsenic was detected in the sample at a measure of >0.60 mg/L. The control sample was clear.
- (i) The urinary threshold for Arsenic under the rules is 0.30 mg/L.
- (j) Mr Nishitani has not previously breached the prohibited substance rules.

Mr Nishitani admitted the breach.

2. Submissions of the Respondent

- 2.1 Mr Nishitani had submitted that the only source he believed from where the arsenic had been digested was from fence posts.

3. Penalty Approach

3.1 Sentencing Principles –

- (i) Penalties are designed to punish the offender for their 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 thoroughbred race horses.

3.2 Stewards Approach

- 3.2.1 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.
- 3.2.2 We are guided in our approach by to penalty by those imposed, not only in Tasmania, but also within other Australian jurisdictions.
- 3.2.3 The Stewards are particularly guided by the Tasmanian Racing Appeals Board decision with respect to `Poke' where the finding on appeal was a fine with 50% suspended subject to no further beaches within twelve months.

4. Respondents Penalty Submissions

- 4.1 Mr Nishitani submitted that his record be considered, having no positive swabs recorded prior to Kay Oh Ell (NZ) at the Tasmanian Turf Club meeting on the 8th of December 2021.
- 4.2 Mr Nishitani further submitted that the increased level of Arsenic was most likely due to Kay Oh Ell (NZ) ingesting Arsenic from treated fence posts used on the property.

5. Penalty Discussion:

- 5.1 Mr Nishitani has admitted a charge of presenting Kay Oh Ell (NZ) to race when not free of prohibited substances, namely Arsenic.
- 5.2 Stewards believe Mr Nishitani has not intentionally presented Kay Oh Ell (NZ) to race with elevated Arsenic levels and accept that the elevated level was most likely from the horse ingesting Arsenic from treated fence posts used on the property.

5.3 However, every time a horse is presented to race with a prohibitive substance in its metabolism then the integrity of not only horse racing but racing in general is compromised.

6. Factors in consideration of penalty.

6.1 The Stewards have identified no aggravating factors which would necessitate an uplift from the starting point.

6.2 However, Stewards recognise the following factors in mitigation, and which are relevant to penalty discussions. These being;

- (a) Mr Nishitani's cooperation throughout the investigation.
- (b) Mr Nishitani's guilty plea.
- (c) Mr Nishitani's record since being licenced as a trainer. During this time, Mr Nishitani has recorded no offences of presenting a horse to race while not free of prohibited substances.
- (d) That Mr Nishitani has commenced work on removing in the treated posts from his property.

Stewards also considered Mr Nishitani's personal circumstances and accept that elevated Arsenic level was not intentional, being that it most probably resulted from Kay Oh Ell (NZ) ingesting Arsenic from treated fence posts used on the property.

7. Outcome

7.1 Having considered all circumstances, Stewards issued Mr Nishitani a \$2,000 fine, with \$1,000 wholly suspended for a period of 12 (twelve) months. This being to hold Mr Nishitani accountable for his actions and to others from committing the same or similar offences.

8. Disqualification Of Horse

8.1 It is mandatory that if a horse competes in a race and is found to have competed with a prohibited substance in its system that it must be disqualified from that race – AR 240 (1). Accordingly, Kay Oh Ell (NZ) was disqualified from Race 1 at the Tasmanian Turf Club meeting on the 8th December 2021.

The placings are to be adjusted to reflect the disqualification of Kay Oh Ell (NZ)

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