

## TASMANIAN RACING APPEAL BOARD

### Appeal No 02 of 2023-24

<b>Panel:</b>	<b>Patrick O'Halloran (Chair) Suzanne Martin (Member) Wendy Kennedy (Member)</b>	<b>Appellant:</b>	<b>Peter Dornuaf</b>
<b>Appearances:</b>	<b>Neil Finnigan (on behalf of the Stewards)</b>	<b>Rules:</b>	<b>AHRR 190(1)</b>
<b>Heard at:</b>	<b>Conference Room 1 Prospect Government Offices 171 Westbury Road Prospect TAS</b>	<b>Penalty:</b>	<b>\$4000 fine with \$2000 wholly suspended for 2 years pending no further breach under Part 12 of the AHRR</b>
<b>Date:</b>	<b>16 August 2023</b>	<b>Result:</b>	<b>Varied to a \$2000 fine with \$1500 wholly suspended for 2 years pending no further breach under Part 12 of the AHRR</b>

### REASONS FOR DECISION

1. The appellant, Mr Peter Dornuaf, is the trainer of a harness racing horse PACIFIC ROCK. This appeal concerns a penalty imposed following the detection of a prohibited substance in a post-race sample taken from PACIFIC ROCK when he was presented to race and won Race 3 held by the Launceston Pacing Club on 26 March 2023. The initial analysis of the sample by Racing Analytical Services Limited (RASL) detected the prohibited substance Dibucaine. Confirmatory testing conducted by the Australian Racing Forensic Laboratory (ARFL) confirmed the presence of Dibucaine in the reserve sample.
2. An inquiry was conducted by Stewards on 12 July 2023. During the course of the inquiry, Stewards issued a charge on the appellant pursuant to AHRR 190(1) which relevantly provides as follows:
  - (1) *A horse shall be presented for a race free of prohibited substances*
  - (2) *If a horse is presented for a race otherwise than in accordance with sub-rule (1) the trainer of the horse is guilty of an offence*
3. The particulars of the charge provided to the appellant were as follows:

*'you've failed to present PACIFIC ROCK to race and win on the Sunday 26<sup>th</sup> March at Launceston Paceway free of a prohibited substance, namely Dibucaine, which was detected in analysis from the Victorian Racing Analytical Service Laboratory and confirmed by the Australian Racing Forensics Laboratory of New South Wales'*
4. The appellant pleaded guilty to the charge.

5. Within the Stewards Decision published on 26 July 2023 – after outlining the relevant timeline of their investigation and charging process - the Stewards relevantly provided:

### **1. Background**

*(k) Mr Dornauf was notified in person of the discrepancy by Office of Racing Integrity Stewards Mr Neil Finnigan and Mr Gavin Griffin at his stables, where he was supplied with copies of the relevant correspondence, which included a list of products containing DIBUCAINE. A stable inspection was carried out at the time where haemorrhoid cream was found. On questioning, Mr Dornauf acknowledged use of the haemorrhoid cream on PACIFIC ROCK for a greasy heel complaint.*

### **2. Penalty Approach**

2.1 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) In a harness 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 prohibited substances being detected in those performing duties which put at risk, both the health and wellbeing of other licence holders and standardbreds.*
- (iv) In determining what, if any penalty, that is to be imposed, the Stewards endeavour to reach a proportionate balance between: the public interest; the interests of the offender; the interests of the industry as a whole; the seriousness of the offending; and any aggravating/mitigating factors.*

### **3. Respondents Penalty Submissions**

3.1 Mr Dornauf submitted that he had treated PACIFIC ROCK for a “greasy heel” complaint.

3.2 Mr Dornauf submitted that he had treated the complaint with haemorrhoid cream, which had produced a good result.

3.3 Mr Dornauf submitted he was advised by an unnamed person to use the cream.

3.4 Mr Dornauf acknowledged he had not researched the haemorrhoid cream for contents/substance make-up of such cream.

### **4. Penalty Discussion:**

4.1 In approaching the matter of penalty, if any, to be imposed, the Panel have reflected on previous penalties imposed for breaches of the prohibited substance rules. These being both Tasmanian and Interstate decisions.

4.2 We are guided by previous swab discrepancies, of particular note being that of Harness Racing trainer Ivan Belbin who was penalised \$4000 with \$2000 wholly suspended for 2 years pending no further breaches of Part 12 of the Australian Harness Racing Rules for presenting his horse not free of a prohibited substance, that being an analgesic.

4.3 Having regard to all circumstances, we believe there is no reason to depart from the aforementioned determination in this matter. This being a fine of \$4000 with \$2000 wholly suspended for 2 years pending no further breaches of Part 12 of the Australian Harness Racing Rules, which deals with prohibited substances.

4.4 In this case there is a reasonable degree of probability that the adverse result came about because of the application of the haemorrhoid cream to the heels of PACIFIC ROCK.

4.5 Through his own indication Mr Dornauf has failed to ascertain whether the haemorrhoid cream presented a risk that could give rise to an adverse sample result, and to this end we find Mr Dornauf negligent, in failing to assess the risk with the use of the haemorrhoid cream and therefore the risk of potential breach of the presentation rule in harness racing.

## 5. Factors in Mitigation

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

(a) Mr Dornauf has been fully cooperative throughout the ORI investigation.

(b) Mr Dornauf's admission of the breach.

(c) Mr Dornauf's previously clear record over a substantial period.

(d) Mr Dornauf's personal circumstances.

6. The board considers that the original penalty imposed was excessive in the circumstances. The reasons for decision of *Belbin–Appeal No. 1 of 2022-23* at [24] to [25], [31] and more predominantly [33] remain apposite.
7. As can be gleaned from the comprehensive and considered published reasons contained within the Stewards Report - of the multitude of factors considered - Stewards placed significant weight on the penalty imposed (at first instance) upon Ivan Belbin.
8. As a matter of principle it was entirely proper that Stewards sought to achieve consistency of punishment by considering other recent cases which had dealt with the same rule and sentencing considerations.
9. However as was submitted by the Appellant – and as was graciously conceded by the Stewards within the appeal - within their July 2023 inquiry Stewards were not aware that that penalty imposed upon Ivan Belbin had been reviewed and varied within TRAB decision of Appeal No 01 of 2022-23.
10. Whilst it is trite to observe that in determining penalty every case turns on its own (myriad of) facts due to the emphasis that Stewards appeared to have placed on the (first instance) decision of Ivan Belbin the Appellant is able to demonstrate an error in the Steward's determined penalty.
11. To further particularise some aspect of the submissions made within the Steward inquiry and relied upon by the appellant to the Board – relevant to a determination of penalty:
  - a. The appellant for a long period of time had used (without incident) the haemorrhoid cream Anusol but then used Rectinol and 'only used it for a week or two - prior to that 'with Anusol I checked everything and that but when the other one come I thought it was just the same stuff, its my fault, I know I should have looked it up'
  - b. The appellant had had a licence for 52 years and had 'never ever presented (a horse) with anything in it whatsoever'

- c. In regard to the nature of the substance and its purported benefits the appellant was advised within the hearing that the substance was an analgesic *'its something that can, is designed to, be as painkiller to aid a horse in that way. The evidence that's been put forward today suggests different. It would suggest that your looking after the welfare of the horse and it may be that due diligence was or was not done to the standard what we need to prevent this from occurring you know'...* *'yes there are categories and this would be on the lower level without a doubt. But its still a prohibited substance'*
12. The origin of the product which contained the prohibited substance, the long involvement in the industry in excess of five decades without a prior breach of the rules of racing together with the appellant's plea of guilty and cooperation were matters that also need to be reflected appropriately in the penalty. In our view while a fine was the appropriate penalty, the level of the fine was excessive. In our view an appropriate fine in the circumstances is one of \$2000 with payment of \$1500 of that fine suspended for a period of two years, on condition that the appellant not commit a further offence contrary to the prohibited substance provisions of the *Australian Harness Racing Rules*. The order of Stewards of 12 July 2023 is varied accordingly
13. As the decision of Stewards has been varied, the Board orders that the appellant forfeit twenty five percent of his prescribed deposit to the Secretary of the Department pursuant to s.34(1A) and (2)(d). Further, the Board orders that the appellant pay twenty five percent of the cost incurred in preparing the transcript of the inquiry pursuant to s.34(4A) and (4B)(c).

**DATED: 6 MARCH 2024**