TASMANIAN RACING APPEAL BOARD

Appeal No 02 of 2024-25

Panel:	**Mr Patrick O'Halloran (Chair) Ms Amber Cohen (Deputy Chair) Dr Suzanne Martin (Member)**	**Appellant:**	**Ms Tammy Langley**
Adviser:	**N/A**	**Rules:**	**AHRR 190(1) A horse shall be presented for a race free of prohibited substances (4 charges)**
Appearances:	**Mr Neil Finnigan on behalf of the Stewards Mr Adrian Hall on behalf of the appellant**		
Heard at:	**Conference Room Office of Racing Integrity Prospect Government Offices 171 Westbury Road Prospect TAS**	**Penalty:**	**Charge 1 - $2500, charge 2 - $2500, charge 3 - $4000 and charge 4 - $4000 (Fines totalling $13000)**
Date:	**18 November 2024**	**Result:**	**Dismissed**

REASONS FOR DECISION

Stewards Penalty

In a Penalty Notice dated 26 June 2024 Stewards fined the Appellant an aggregate amount of $13,000 for four breaches of rule 190(1) *Australian Harness Rules of Racing* ('AHRR').

AHRR 190 relevantly provides that:

> (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 a horse is guilty of an offence.*

On that same date the Stewards also published a 9-page document titled 'Stewards Decision' which articulated their reasons for those penalties and addressed the Submissions of the Respondent, Penalty Approach, Sentencing Principles, Stewards approach, Respondents Penalty Submissions, Penalty discussion and Factors in consideration of Penalty.

Those documents are annexed to the decisions of this Board. (Annexure A – Penalty Notice) (Annexure B - Stewards Decision)

The Appeal

Within the Notice and Grounds of Appeal filed 9 July 2024 appealing against the penalties imposed for the breaches of AHRR 190(1) the sole ground of appeal was stated as 'excessive penalty'.

Before this Board this was clarified as a submission that the penalty imposed was manifestly excessive in all the circumstances.

In short summary penalties were imposed in regard to four separate occasions in which the prohibited substance aminorex was detected in four different horses:

Charge 1 - occurred on 27 October 2023 – a fine of $2500

Charge 2 - occurred on 17 December 2023 – a fine of $2500

Charge 3 - occurred on 28 January 2024 – a fine of $4000

Charge 4 - occurred on 2 February 2024 – a fine of $4000

Before this Board no submissions were made challenging the Steward's findings relating to the factual bases regarding the date on which each breach occurred, the timeline of the investigation and/or notification(s), nor how the substance was thought or found to be present on each occasion.

In regard to that last aspect at [6.3] of the Steward's Decision *'(Stewards accepted) that the findings were most likely brought about by the ingesting of toxic weeds which were proven to be found on the property, this is supported by the RASL findings*' (ie a plant based as opposed to synthetic source of aminorex).

Accepted by the parties, and assuming some prominence in the instant appeal was that on 28 June 2021 the Appellant had been fined a total of $2500 with $1500 of that being suspended as a penalty for breaching AHRR 190(1).

Relevantly in regard to the subject matter of this appeal it was not disputed that prior to the commencement of the period of offending the Office of Racing Integrity had circulated and published on their website a document titled ' *Information to Harness and Thoroughbred Trainers: Resesda Luteola as a source of Aminorex'* which in its opening line provided that '*Trainers are advised to be extremely cautious allowing horses to access plants that contain aminorex close to racing as this may inadvertently lead to a detection of the prohibited substance in samples'*.

Manifestly Excessive

In submissions to this Board the Appellant sought to identify a number of specific errors within the Stewards reason for decision which, on their submission, demonstrated instances of the Stewards giving improper weight or consideration in determining both:

(i) the four individual penalties ('the specific error submissions) and

(ii) the aggregate penalty imposed: (i.e. the cumulative effect arising from each individual financial penalty be paid in full with no partial suspension of any financial penalty) ('the totality' submissions').

Specific errors

Reference to 'a starting point'

The appellant submitted that a specific error was identifiable by the Stewards articulating that 'as a starting point', in the way that phrase was used within the Stewards published decision(s), a fine of $2500 was appropriate for Charge 1.

It was further submitted that having made such an error in determining the penalty for charge 1 that the penalties imposed for the subsequent offending the subject of charges 2 to 4 inclusive were similarly excessive.

In support of that submission the Appellant referred the Board to the use of that phrase in the following documents:

> Within the Penalty Notice: *Stewards believe that the starting point for a breach of this type, that being the analytical findings of the prohibited substance aminorex, to be a fine of $2500, and make the following declarations for each charge.*
>
> Within the Stewards Decision:*The Stewards have identified no aggravating factors which would necessitate an increase from the starting point, charge 1, nor a decrease from the starting point due to Ms Langley' previous breach. A fine of $2500 is imposed.*

Such phrasing, it was submitted, gave the indication that the Stewards had erred by either prejudging an appropriate penalty absent considerations of the matters personal to the Appellant or, as the Board infers, that the Stewards had not properly commenced their consideration of penalty type from a position of imposing no penalty.

To this Board the Appellant did not expressly submit that the penalty type of the imposition of a fine was inappropriate - rather their submissions were more directed to the quantum of the financial penalty on each charge and in totality.

On behalf of Stewards it was submitted that in their consideration of the appropriate penalty for breaches of AHRR 190 that it is a common practice in stewarding across the country that there needed to be some sort of measure or starting point when looking at these situations and the use of the phrasing 'starting point' was used to transparently articulate and reflects the need for consistency and that 'the industry sees it and understands it that way'.

The Board observes that such an approach was entirely consistent with that which was more fully articulated within their reasons in the Steward's Decision under heading '3.2 Stewards Approach'. That is the use of that phrase is properly understood to be a shorthand way of indicating that those within the racing industry were aware that the current penalty imposition practices based on past penalties imposed for breaching AHRR 190 were two-fold - i.e. one a financial penalty and two within the range of $2500.

The submissions made on behalf of the Appellant on this line of argument are rejected and the Board finds no such error is identified. It does not assist the Appellant in establishing that the penalty was manifestly excessive.

The Board observes that the Stewards reasons regarding both penalty type of fine and quantum of fine do not bespeak of any error and are not inconsistent with previous statements made by the Board – ref within appeal decision of *Belbin* at para 24 and *Dornauf* (Appeal No. 01 of 2022-23, Mr Ivan Belbin, Appeal No. 02 of 2023-24, Mr Peter Dornauf).

Relevantly, in consideration of the personal antecedents of the Appellant including that the fine amount imposed for the Appellant's previous breach of this same rule was $2500 (albeit partially suspended), the imposition of that same fine amount for charges 1 and 2 reflects a careful consideration by the Stewards of (i) compliance/ adherence to the principle of consistency in penalty imposition and (ii) the quantum of the fine.

The Board further observes that within any determination of penalty for this rule breach any decision maker would be aware of the line of authority provided within Belbin at [35] (*emphasis **added***)

> *It is against that background and the nature of the rule with which Stewards were dealing on this occasion that their comment that the "offender must be met with punishment" is to be understood.* ***Clearly it is a very rare case where a breach of the prohibited substance rules results in no penalty****.*

Furthermore, when **both** documents published by the Stewards are read in their respective entirety and also in conjunction with each other in their full and proper context the Board observes that the Stewards properly considered a myriad of appropriate and relevant factors when determining penalty. When considered in this manner the use of the phrase 'starting point' can simply be seen to be the shorthand way of considering current penalty imposition practices and the need for consistency of the instant penalty with such practices.

Insufficient weight or consideration given to the Appellant to address causation issues within the offending period.

Within a separate tranche of submissions, the appellant submitted that insufficient weight had been given to the reactionary and/or precautionary efforts (including the timing of such efforts) the Appellant had made *within* the offending period to address the likely source (and manner of ingestion) of the prohibited substance.

They further submitted that whilst the efforts had been acknowledged by Stewards such acknowledgment had not resulted in any mitigation to the penalties particularly for the latter offending.

Support for this position was said to be found with reference to reasons stated for penalty for Charge 4:

> - in the Penalty Notice '*Stewards held the penalty stable as she had clearly made efforts to rectify the problem on her complex. This has been showed by the fact that since the race in question on 2nd February 2024 Ms Langley's horses have had multiple swabs and no issues have come to light'*
>
> And in the Stewards Decision under heading '7 Outcome – Steward make the following findings' ...*Charge 4 – Stewards kept the penalty the same as that for charge 3 as trainer Langley had shown by this stage to seek advice and act upon it'*

The appellant also referred, with specific regard to the Steward's reasons for charge 3 to '*The Stewards increased the penalty from that of Charges 1 and 2, as Ms Langley needed to be more aware of her contamination problem and take available precautions…*'

It was accepted in submission to this Board that by November 2023 the Appellant had identified that it was the weeds that were the source of the issue and as such she 'had started the process of eradicating the weed'.

It was conceded that whilst matters of mitigation were recorded in the Stewards decision it was submitted that the efforts made by the Appellant reflected that once notified of the issue that there was nothing more really the Appellant could have done over and above what she did do.

Before this Board it was confirmed that per her email of 18 June 2024 those efforts included that '*since these positives I have taken tighter measures to try and control I've had my paddocks sprayed by all weed solutions purchased a new ride on lawnmower and have seeked (sic) advise (sic) from head agronomist Mr Rod Hanci. Our daily routine with all our horses was to let them run the paddocks after they worked I've since put restrictions on that they are no longer on them 3 days prior to race dace (sic), tbe (sic) top paddock is a turn out paddock we have made 4 smaller yards for our race ones so we can monitor more careful since making these changes I have not received any more positive swabs…*'

To this Board it was submitted that Stewards ought to have more fully articulated the steps the Appellant did in fact take (as at 28 January 2024), which in the Appellants submission 'were many'.

In response to questioning from the Board regarding the timing of 'the many' precautionary steps the appellant had undertaken during the offending period it was submitted that the Appellant had

taken or commenced steps in late October/ early November'. It was submitted that it was at this time that the Appellant noticed that weeds had started returning to her property and, cognisant of the causation of factors relating to her 2021 breach, in November 2023 she had then started to initiate the efforts or 'started the process' of the tasks that were articulated in her June 2024 email (refer above).

A specific timeline 'from November' of the specific steps taken or matters completed was not made known to the Board nor was there clarity as to when Mr Rob Hanci was first engaged or commenced his relevant assistance.

On behalf of the Stewards it was submitted that, having been notified on 15 December 2023 of the issue, the Appellant needed to ensure that a further breach did not happen again and relevantly the Appellant was aware of the source of the substance the subject of the adverse findings. Stewards acknowledged that the Appellant notified them at a time between December 2023 and January 2024 that she had commenced making some efforts to address the issue.

Stewards submitted that the steps the Appellant took were properly acknowledged within their reasons and that whilst some steps had been taken to address the issue (including protocols relating to moving to different paddocks, treatment, engagement of specialist - although unclear when that occurred) as at January 2024 whilst 'the problem seemed to cease it then unfortunately reoccurred'. It was determined that the subsequent and continuing breaches reflected that while the Appellant had taken 'some steps' more needed to be done.

It was submitted, without objection from the Stewards, that the steps taken by the Appellant from February 2024 must have been successful because as at November 2024 there had been no further adverse finding relating to the requirement to present horses free from prohibited substances.

The Appellant's submission on this contention are not accepted. It cannot be said that the Stewards failed or ignored the efforts taken or gave them improper consideration. They were entitled to give this factor the weight they did. No such error is properly identified.

It is clear as articulated within the comprehensive and considered reasons of the Stewards that at the time of the breach the subject of Charge 4 – the Appellant had by that time point breached the same rule within the immediately preceding three months. It is inferred that the Stewards when considering a penalty for Charge 4 were actively contemplating an increase from the penalty from Charge 3. They did not in fact do so.

An understandable approach in determining the mitigatory value of the work done was the necessary acknowledgment that whilst some work had been done - more needed to be done. And further that there was the inescapable inference that, in consideration of the timeline of breaches and notification, the Appellant did not make all reasonable endeavours to properly address and/or eradicate the source of the substance.

Relevantly -– in light of her past breach of the same rule – the Appellant would have and should have had an understanding of the capacity for this weed to impact her horses, the seriousness of this rule, and how to target the likely process in which the substance came to be present and the likely source of ingestion. Even in the absence of further notifications by Stewards the Appellant, as a trainer held a positive and ongoing obligation to ensure that all horses remained free of substances.

The Board also observes - in consideration of the unchallenged Steward's finding at 6.3 - the weed/plant, even on the Appellant acceptance was (i) the source of the substance and (ii) was not one, in the circumstances of this case, that was hard to observe, detect, treat and/or eliminate. (and clearly observable growing underneath the fence line).

Finally, the Board observes that if there had been any doubt that contamination had occurred, the horses should not have been presented for races.

Charge 3

On a discrete issue the Appellant submitted that the Stewards - in relation to Charge 3 - fell into error by taking the prestige of the Hobart Pacing Cup into consideration and then, having taken it into consideration relied on it to justify an increase in penalty[1]. It was further submitted that it was the presentation of the horse that was 'the absolute penalty' and not the surrounding race circumstances (be they prestigious or other) that were relevant.

Whilst the consideration of that factor in the manner expressed by the Stewards could be seen to bespeak of error - as has been stated within this Boards decision above that factor was one of a myriad of factors considered by Stewards.

In that context notwithstanding such a consideration is not one which would have or could have significantly impacted the ultimate penalty imposed for Charge 3. Or such a factor that the Board sees it appropriate to tinker and/or vary the penalty on Charge 3.

Totality

In regard to 'the cumulative effect' of being required to pay all fines in full the Appellant, within this line of argument, without conceding that each penalty for each charge was appropriate, submitted that the cumulative effect of requiring the Appellant to pay each fine for each charge resulted in a manifestly excessive penalty.

The Appellant also submitted, related to the totality of the fine(s) imposed that the Stewards had erred – by not stating to what extent if any – they had considered the loss of the trainer fees in regard to the (three) horses that had finished first (and were subsequently disqualified) in their respective races. It was submitted that the Stewards ought to have considered the 'pecuniary consequence' of the fact that those horses were disqualified resulting in the appellant suffering the additional consequence of losing the monies relating to her trainer fee. Such loss occurring, it was submitted, for breaches of AHRR 190 that were 'unintentional' (with ref to the findings at 6.3).

Stewards submitted that they did not and do not as a matter of practice consider this and that if any trainer is found guilty such disqualification of that horse 'shall be' (i.e. it is mandated) imposed per AHRR 195. Further that the consequential impact(s) from that disqualification are 'just a flow on effect of the breach'.

The Board rejects the Appellants argument in this point. The Stewards were clearly aware of the disqualification(s) imposed as they were included in the penalty notice and no error is identified in the long-standing approach taken by Stewards. The Board accepts the position put by Stewards that the disqualification and loss of trainers fees are a separate matter, which flows from the fact that the horse may have had an advantage in the race. Stewards are entitled to consider the penalty for the offence imposed upon the trainer as separate to the consequence flowing from the positive test on the outcome of the race.

Stewards submitted that an overarching consideration in determining the total penalty was that AHRR 190 focuses on upholding the (positive) image of the industry.

Indeed as has previously been observed by the Board in regard to this rule, Appeal No. 01 of 2022-23, Mr Ivan Belbin at 33

> *The purpose of the prohibited substance rules and the need to uphold the integrity of the racing industry are critical matters that must guide the imposition of any penalty for breaches of those rules. Those matters have been consistently noted by Stewards and appeal bodies dealing with such breaches.*

[1] Refer Stewards Decision under heading '7 Outcome – Stewards make the following findings'

Further – in consideration of both general and specific deterrence – the Stewards submitted to this Board that from June 2020 to November 2024 of the nine positive samples of this substance identified five of those related to the Appellant.

Whilst it is trite to observe that the Appellant was not to be punished again for her past breach (involving the same substance in June 2021) the Stewards were correct to consider that past matter, particularly in regard to their consideration of specific deterrence, in assessing her overall culpability and determination of penalty.

Quite apart from the specific interaction this Appellant had had with Stewards when the 2021 penalty was imposed there had also previously been issued a Plant Material warning and remained on the relevant Tasmanian Racing websites.

Whilst on one view the cumulative effect of the penalty could be seen as stern or at the upper bounds of available penalties for breaches of this rule, consideration must be borne in mind of:

- the number of breaches of the same rule,
- the timeline of breaching including that the Appellants conduct was not an individual breach but 'a course of conduct' over a number of months
- within the offending period preliminary findings were provided to Appellant

The Board therefore determines that none of the penalties imposed for any of the four charges (considered individually or collectively) fall within the range that could be properly characterised as manifestly excessive.

As the appeal is dismissed in accordance with section 34(1A) and (2)(a) of the *Racing Regulation Act 2004,* fifty percent of the appellant's prescribed deposit is to be forfeited to the Secretary of the Department.

DATED: 7 FEBRUARY 2025