TASMANIAN RACING APPEAL BOARD

Appeal No 19 of 2018/19

Panel:	**Mr Tom Cox (Chair)** **Dr Suzanne Martin (Member)** **Ms Wendy Kennedy (Member)**	**Appellant:**	**Christian Salter**
Appearances:	**Anthony O'Connell (on behalf of the Appellant)** **Steven Shinn (on behalf of the Stewards)**	**Rules:**	**AHRR 218**
Heard at:	**Tasracing** **GLENORCHY** **TASMANIA**	**Penalty:**	**Disqualified for 12 months**
Date:	**30 July 2019**	**Result:**	**Appeal upheld**

REASONS FOR DECISION

1. The appellant appeals against a finding by the Stewards following a Stewards Inquiry held on 15 May, 4 June and 17 June 2019 that he was in breach of Australian Harness Racing Rule (AHRR) 218 which reads "A person having responsibility for the welfare of a horse shall not fail to care for it properly". He further appeals against the severity of the penalty imposed, being 12 months disqualification.

2. The appellant was the trainer of the horse *Madabouthechase* prior to its injury in a track accident on 8 January 2019.

3. At the end of a relatively lengthy inquiry Stewards levied the charge in the following terms:

   > *"…the particulars of the charge are, that as trainer of* MADABOUTTHECHASE *after the gelding was injured in a track accident on January 8th 2019 you failed to provide ongoing veterinary consultations when it would have been proper to do so. This occurred from February the 2nd 2019 until 19th of March 2019. During this time the horse's condition continued to deteriorate until the horse became an emergency veterinary case due to its poor body condition and chronic injuries and was subsequently euthanized."*

4. The appellant pleaded not guilty to the charge.

5. From a review of the transcript of the inquiry there is no discernible decision which was made by the Stewards following the appellant's plea of not guilty. Instead, the Stewards simply proceeded to impose penalty, stating:

> *"Alright Mr Salter, we've considered penalty Stewards believe that animal welfare is of paramount importance to the image and integrity of racing therefore, we believe a significant penalty is required to act as a general and specific deterrent in these matters … And that penalty is a disqualification of your license for a period of 12 months."*

6. A multitude of matters were raised by the appellant at the Inquiry. It is not apparent whether any of these matters were considered by the Stewards in making their decision (which we infer was made before proceedings to penalty). Similarly, it is not apparent whether any of these matters were considered by the Stewards in determining an appropriate penalty. The stewards ought to have articulated the basis upon which they determined the appellant was in breach of the rules and the matters relevant to determining penalty. For this reason, we have conducted a complete rehearing of the matter without regard to the Stewards finding that the appellant was in breach of the Rules or, for that matter, the basis upon which they proceeded to impose penalty. As noted, the reasoning process in those regards was woefully inadequate.

7. The appellant contends, as he did at the Inquiry, that he did care for the horse properly and, further, at the hearing before the Board, he contended that he was technically not in breach of the rule because, at the relevant time, the horse was not being trained. We will deal with this second matter first.

8. The contention is that as at February and March 2019, *Madaboutthechase* had been transferred from the Brighton Training Centre to Mr Salter's residence at Elderslie Road, Brighton. The horse was injured. It was not in training. There was no intention that it return to training, let alone racing. It was, in effect, put out to pasture for rehabilitation. In these circumstances, the appellant contends that he is not subject to AHRR 218 because that rule only pertains to horses that are actively trained by him. Further, he says that the mere fact that the horse remained registered in his name as trainer ought to be disregarded because of these material facts.

9. In our view, the appellant's contention must fail. The question of whether or not a person has responsibility for a horse within the meaning of AHRR 218 does not depend upon whether the horse is being trained. The definition of training in the rules provides:

> *Training includes the preparation, education, exercising a horse to race, but not the mere process of keeping a horse in good health.*

10. The rule concerning the care of horses (AHRR 218) does not include the word "training". Rather, the rule is directed to participants in the industry, such as trainers, who, from time to time, may have horses whether in training or not in their care. This interpretation is also consistent with the notion of "care" within the *Animal Welfare Act* 1993, which provides at s.3A:

Care or charge of animals

(1) For the purposes of this Act, a person is taken to have the care or charge of an animal if the person –

> (a) is the owner of the animal; or
> (b) has control, possession or custody of the animal;

11. We make this observation not to say that every animal in a trainer's care would be subject to AHRR 218. Clearly, there must be some connection between the racing industry and the animal. Every case will turn on its own facts, but in this case the fact that the horse had been racing and was recovering from a racing injury provides sufficient connection, despite the fact that the horse was not likely to train or race in the future.

12. The appellant's principal ground of appeal is that he sufficiently discharged his duty to properly care for the horse, having regard to the following factors:

    (a) the decision to move the horse from the Brighton Training Centre to the appellant's residence was one made with the best of intentions. It was intended that the horse would be provided with the opportunity to rehabilitate through receiving appropriate medication and exercise;

    (b) the appellant had consulted with veterinarian, Dr Buckerfield, who had prescribed Phenylbutazone paste (Bute), an equine anti-inflammatory and analgesic medication, and instructed the appellant and the horse's owner, Mr Leahy, to give the horse an opportunity to be mobile, thereby reducing the swelling in its injured left knee;

    (c) any decision to euthanize the horse was not his. It was noted by Dr Buckerfield "*my understanding is it's really the owner's call to make that decision because they own it and legally I think that they're what I understood would be that that's their decision not anyone else's.*"

    (d) Mr Leahy was emotionally attached to the horse and incapable of making a decision concerning the horse, especially in so far as any decision was to be made about euthanasia;

    (e) it was not the appellant's responsibility to incur veterinary costs on behalf of the horse. It was the owner's responsibility and Mr Leahy had debts in the order of $1,000 with Dr Buckerfield;

    (f) the appellant implemented his feeding and medication regime for the horse in accordance with Dr Buckerfield's advice. That regime was not criticised by the Stewards, either at the Inquiry or on appeal. Indeed, it was common ground that the appellant had done everything that he and his partner could with respect to maintaining an adequate feed and treatment regime for the horse;

    (g) the simple fact of the matter was that the horse was not responding to the treatment. It continued to lose weight, but Mr Leahy would not intervene by providing further veterinary services or by making a decision to euthanize the horse;

    (h) the appellant had an ongoing dialogue with Dr Buckerfield, speaking with him from time to time at the races concerning the medication regime and the horse generally. He continued to care for the horse in accordance with those discussions; and

    (i) he had a continuing dialogue with the owner about his concerns for the horse. Indeed, some 3-4 days before the horse was found by Stewards and

subsequently euthanized, the appellant asked Mr Leahy what he was going to do about the horse. As in the past, Mr Leahy simply did not and could not make a decision concerning euthanizing the horse.

13. The Stewards concede many of the matters raised by the appellant. Indeed, the Stewards conceded that they had great empathy for the appellant's position. The Stewards acknowledged that the appellant was not in a position in which he was entitled to make the decision to euthanize the horse. However, the Stewards say that because Mr Leahy appeared to be incapable of dealing with the horse and its deteriorating condition, the appellant owed a duty to contact Dr Buckerfield or another veterinarian and have either attend upon the horse.

14. In our view, this is casting too high a burden on the appellant. The primary duty for care of the horse fell upon its owner, Mr Leahy. If a veterinarian was to be called, in our view, that duty fell on Mr Leahy alone. The appellant took advice from a veterinarian. He followed that advice. The horse's condition deteriorated, despite that advice. In any event, the evidence from Dr Buckerfield was that the horse was not in substantial pain and if treatment was to continue he would not have changed it in any material respect. Dr Buckerfield's evidence as to this was as follows:

> *"…the horse isn't moving enough, for its muscles to maintain and so they atrophy and if you don't weight bear on the leg the muscles with atrophy, it's just, ... your muscles waste away if you're not using them and that's not necessarily due to pain, it's just through disuse and I guess the horse may not have been moving around enough to maintain his ... muscle tone and there must have been some pain of course, but I knew he was on Bute and there's probably not a lot more than you can do than keep him on the Bute. Bute's not always adequate to relieve pain 100% but to use other things would be a bit prohibitive because they'd be all drugs that would have to be administered by the vet, you know there'd be S8's and stuff like that .... Yeah so Bute is I suppose our stock standard one that we would use but it's not going to mask pain 100% for sure."*

15. We accept that the horse would have been in pain, however, there was evidence that on the day the Stewards attended the property, along with Dr Bukerfield, the horse was capable of weight bearing on the injured leg. The evidence from the appellant was that the horse had had good days and bad, although it must be noted that the horse continued to lose weight and the appellant and Mr Leahy were clearly on notice that the horse must not be subjected to unreasonable and unjustifiable pain and suffering.

16. It is important to note that there is no statutory obligation on an owner of a horse, let alone a trainer of a horse, to euthanize it in any particular circumstance. Indeed, the notion of an entitlement to euthanize an animal is apt to mislead. There is no duty on any person to euthanize a horse. There are, of course, duties under the *Animal Welfare Act 1993* which require any person with custody of a sick or injured animal to provide veterinary and other appropriate treatment. There are also other duties to the effect that a person must not do any act which causes or is likely to cause unreasonable and unjustifiable pain or suffering to an animal.

17. The entitlement to euthanize an animal vests in specified persons under the *Animal Welfare Act 1993*. See s.24, which provides:

Power to kill animals

> (1) An officer or veterinary surgeon may kill an animal if –
>
> > (a) in their opinion the animal is injured or diseased or is otherwise suffering; and
> >
> > (b) they reasonably believe that the injury, disease or other suffering will cause the animal continued and excessive pain and suffering.
>
> (2) If a justice is satisfied that it is necessary to do so, the justice may authorize, in writing, any person to kill a specified animal in the circumstances referred to in subsection (1).

18. There are also regulations relating to livestock and the humane destruction of livestock by persons other than an authorised person under the *Animal Welfare Act 1993*.

19. Despite these provisions, there remains a place in this society for persons to treat injured and sick animals until their death, provided that in doing so they do not subject the animal to unreasonable and unjustifiable pain and suffering. As we noted in *Donaldson* Appeal No 16 of 2014/2015,

> *"The humane treatment, by providing necessary veterinary services, of a greyhound until its natural death is just the other side of the coin to the humane euthanasia of a greyhound by a veterinarian. Any failing on the part of an owner or trainer in either regard will adversely impact the image, welfare and promotion of greyhound racing."*

20. As noted above, no doubt the horse was in some pain, however the evidence does not disclose that it was experiencing pain and suffering that was of such an extent that the appellant's maintenance of the treatment regime was subjecting the horse to unreasonable and unjustifiable pain and suffering. Ultimately, this case involved a horse that was very badly injured in an accident on the track in January 2019, and despite efforts to rehabilitate the horse it simply did not recover. The horse had initial treatment at the Brighton Training Centre before it was put out to pasture on the appellant's property in the hope that it would recover. The hope for its recovery did not involve a hope for it to return to train and race as a horse. It was a hope based merely on the preservation of the horse's life.

21. On all of the evidence, we are not comfortably satisfied that the appellant failed to properly care for the horse contrary to AHRR 218.

22. The appeal is upheld. In accordance with s34(2)(e) of the *Racing Regulation Act 2004*, the whole of the prescribed deposit is to be refunded to the appellant.