



DECISION

RACING VICTORIA STEWARDS and SIMON MORRISH

- Date of Hearing** 15 December 2017, 19 January 2018 & 20 February 2018
- Date of Decision** 20 February 2018
- Panel** Judge Bowman (Chair), Geoff Ellis, Shaun Ryan.
- Appearances** Jack Rush QC, instructed by Daniel Bolkunowicz, appeared on behalf of the stewards.
- Damian Sheales of counsel appeared on behalf of Mr Morrish.
- Charge 1** AR 178E(1)
- Notwithstanding the provisions of AR 178C(2), no person without the permission of the Stewards may administer or cause to be administered any medication to a horse on race day prior to such horse running in a race.*
- The stewards alleged that on 8 July 2017, without the permission of the stewards, Mr Morrish administered or caused to be administered an unknown medication by way of injection to the horse *Show a Star* which was entered to run in Race 2 the *VRC-CRV Cup Tour Trophy* (2000m) at Flemington that day.
- Charge 2** AR 178AB(1) (alternative to Charge 2)
- A person must not, without the permission of the Stewards, inject a horse, cause a horse to be injected or attempt to inject a horse, which is engaged to run in any race:*
- (a) *at any time on the day of the scheduled race, prior to the start of such event; and*
- (b) *at any time during the One Clear Day prior to 12.01am on the day of the scheduled race.*
- The stewards alleged that, without the permission of the stewards, Mr Morrish injected *Show a Star* or caused *Show a Star* to be injected at some time on 8 July 2017, prior to the race, or during the One Clear Day prior to 12.01am on 8 July 2017.

Charge 3

AR 178F(1)

(1) A trainer must record treatment and medication administered to each horse in his or her care by midnight on the day on which the administration was given, and each record must include the following information:

- (a) the name of the horse;*
- (b) the date and time of administration of the treatment or medication;*
- (c) the name of the treatment or medication administered (brand name or active constituent);*
- (d) the route of administration including by injection, stomach tube, paste, topical application or inhalation);*
- (e) the amount of medication given (if applicable);*
- (f) the duration of a treatment (if applicable);*
- (g) the name and signature of person or persons administering and/or authorizing the administration of the treatment or medication.*

The stewards alleged that Mr Morrish failed to record the administration of the medication Meloxicam to *Show a Star* on 4 July 2017.

Plea

Charges 1 and 2 - not guilty.
Charge 3 – guilty.

Decision

Charge 1 – the Board does not find the charge proved. Accordingly, the charge is dismissed.

Charge 2 – the Board finds the charge proved. Mr Morrish is convicted and his licence to train suspended until midnight on 1 June 2018. The Board orders that the commencement of the period of suspension be deferred for 7 clear days from today’s date, it being the maximum period of deferral of the suspension under AR 196(6)(a).

Charge 3 – Mr Morrish is convicted and fined \$500. Payment terms 30 days.

TRANSCRIPT OF PROCEEDINGS

RACING APPEALS AND DISCIPLINARY BOARD

**HIS HONOUR JUDGE J. BOWMAN, Chairman
MR G. ELLIS
MR S. RYAN**

EXTRACT OF PROCEEDINGS

DECISION

RACING VICTORIA STEWARDS

and

SIMON MORRISH

RACING VICTORIA CENTRE, FLEMINGTON

TUESDAY, 20 FEBRUARY 2018

MR J.T. RUSH QC appeared on behalf of the RVL Stewards

MR D.P. SHEALES appeared on behalf of Mr S. Morrish

CHAIRMAN: Mr Simon Morrish, you have been charged with three offences, two of which are alternatives. The first charge can be summarised as being a breach of AR 178E, namely, race-day administration of medication. The medication was to the horse Show a Star which Mr Morrish trained at the relevant time when the horse was entered in race 2 at Flemington on 8 July 2017.

The second and alternative charge is a breach of AR 178AB(1) which involves the same circumstances and could be summarised as the administration of an injection during the one clear day prior to 12.01 am on the day of the scheduled race; in other words, an alleged injection on the day before the race day. The third charge is a breach of AR 178F, a failure to record administration.

Mr Morrish pleaded not guilty to charges 1 and 2 and guilty to charge 3.

Charges 1 and 2 were fully contested with evidence from a number of witnesses, including veterinarians and from Mr Morrish. The essence of the case revolved around a puncture wound and some swelling found on the nearside neck of Show a Star on the morning of Saturday, 8 July. It involved inspections at the stables of Mr Morrish and on-course at Flemington.

Show a Star was ultimately scratched.

We say at the outset we were not impressed by Mr Morrish as being a witness of truth and reliability. When initially questioned by the Stewards, he denied absolutely that Show a Star had any relevant recent treatment and stated that it had had no recent needles. Then he said that he had forgotten that it had had a

meloxicam injection on Tuesday, 4 July, administered by Dr Taylor. How he could have forgotten that, given that such an injection was part of a normal pre-race routine for most of his runners is, to put it mildly, surprising, particularly as his other two runners on the same day had received such an injection.

In any event, this explanation does not help his cause. Dr Taylor's evidence on transcript was clearly to the effect that the injection he administered on 4 July could not possibly be related to what was found on 8 July. The attempt by Mr Morrish belatedly to link what was found on 8 July to an injection by Dr Taylor on 4 July was unsuccessful, futile and damaged his credit. Further, we were generally not impressed by the evidence he gave before us and regard him as an unreliable witness.

The overwhelming bulk of the expert evidence was that the condition in which it was discovered could not be linked to treatment on 4 July. The expert evidence concerning the age of the condition, if I could so describe it, which most impressed us in relation to its fairness and logic, was that of Associate Professor Steele. She made appropriate concessions, she was very well qualified and in her opinion, an injection, a venipuncture, had occurred within 24 hours of the changes seen at 10.40 am and at 12.40 pm at Flemington racecourse on 8 July.

We appreciate that there are strong views propounded that the administration must have been performed on 8 July 2017, that is, in breach of AR 178E.

However, whilst that evidence exists, we must reach that state of comfortable satisfaction required by the test in *Briginshaw v Briginshaw*. We are completely satisfied that the relevant treatment could not have taken place on 4 July, the proposition put by Mr Morrish. Further, we do not accept that, given some of the activities such as brushing, rugging and the like in which the horse was engaged thereafter and of dried blood noticed on its neck at the inspection on 8 July, we could not be satisfied that resulted from the injection on 4 July.

The matter concerning which we have not reached that state of comfortable satisfaction is that the condition of the horse's neck resulted from treatment on race day, that is, 8 July. The evidence of Associate Professor Steele puts the outer limit of the treatment time at 24 hours. As stated, we were impressed by Associate Professor Steele who was called by the Stewards and we accept that the realistic possibility exists that the relevant treatment could have taken place on 7 July and not on race day.

The bottom line is that we are not satisfied that charge 1 has been made out. We are certainly satisfied that charge 2 has been made out. We accept that 24 hours marks the outer limit of the period during which the injection took place. There is no argument but that an injection was carried out at some time. We are quite satisfied that such time was within 24 hours of the morning of race day, 8 July. As stated, we are not satisfied that it has been proved that it took place on 8 July.

Accordingly, charge 1 is dismissed and we find Mr Morrish guilty of charge 2. He has pleaded guilty to charge 3.

We have found Simon Morrish guilty of a breach of AR 174AB(1) and we turn now to the question of penalty. Mr Rush on behalf of the Stewards has asked for a period of suspension in the range of three to six months. Mr Sheales on behalf of Mr Morrish has argued that a substantial fine is the appropriate penalty.

This matter involves a significant offence and a clear breach of the relevant rule which is in itself quite clear. This was a covert injection the day before race day. There has been no indication of remorse. It is not suggested that this injection was part of an ongoing treatment plan. No discount for a plea of guilty is appropriate, nor does Mr Morrish come with a spotless record. He was fined \$1500 on 7 September 2017 for the administration of bute at a jump-out at Burrumbeet. In 2002 he was suspended for four months for giving false evidence in relation to stomach-tubing equipment at Penshurst. In 1983 he was suspended for three months for the administration of bute. In other words, he does not come with the spotless record that was the situation in the case of Mr Clive Balfour, to which considerable reference has been made.

Mr Balfour had a 47-year unblemished record as a trainer. We would also point out that Mr Balfour received a six-month suspension from this Board for attempted race-day administration to three horses. He was aged 73 years, in ill health, and produced some powerful character references. We would also

point out that Mr Balfour's offence was an attempted administration, whilst acknowledging that it involved three horses. We would also say that, as pointed out in Mr Balfour's case, trainers Gelagotis, McCarthy, Green and Dyer had each received a three-month suspension for one count of actual administration.

We appreciate that the present charge for which Mr Morrish has been convicted is not one of race-day administration and is not one of the offences which attracts an automatic fixed penalty unless special circumstances exist. However, the administration of an injection the day before a race meeting and, as stated, it is not suggested that it was part of an ongoing treatment regime, is a significant offence and one of the type that has the potential to damage the image of racing and spread rumours of undesirable practices.

We are of the view that a period of suspension is appropriate. Indeed, it is an offence that comes close to warranting a period of disqualification which was the original penalty in Mr Balfour's case. We are not of the view that a fine represents an adequate penalty. Mr Morrish's licence as a trainer is suspended until midnight on 1 June next, a period of suspension of a little over three months. In relation to the breach of AR 178F, a failure to keep adequate records, this Board has said many times that the failure to keep records hinders the Stewards in their work, adds to public suspicion as to what is occurring in racing, and such a failure is to be strongly discouraged. We consider a fine of \$500 to be an appropriate penalty.
