

Racing Appeals & Disciplinary Board

22 January 2018

HRV RAD Board Hearing – Darren Cole

On 19 January 2018, the Harness Racing Victoria (HRV) Racing Appeals and Disciplinary (RAD) Board considered charges issued against licensed trainer-driver Darren Cole under Australian Harness Racing Rules (AHRR) 190(1) and 190B(1).

Charge 1 – AHRR 190(1) reads as follows:

A horse shall be presented for a race free of prohibited substances

This charge related to a pre-race urine sample collected from the horse “Exciteusrubycee” at Maryborough on 13 April 2017. “Exciteusrubycee” finished fifth in Race 4, the “Central Goldfields Shire 3YO Pace”. Racing Analytical Services Limited (RASL) reported that analysis of the urine sample revealed the sample to contain a prohibited substance, namely cobalt, at a level of 184 micrograms per litre (µg/L), which is above the allowable threshold of 100 µg/L in urine.

Charge 2 - AHRR 190B(1) reads as follows:

(1) A trainer shall at all times keep and maintain a log book: -

(a) listing all therapeutic substances in his or her possession;

(b) recording all details of treatment administered to any horse in his or her care and including as a minimum requirement:

(i) the name of the horse

(ii) the date of administration of the treatment

(iii) the name of the treatment (brand name of active constituent)

- (iv) *the route of administration*
- (v) *the amount given*
- (vi) *the name and signature of the person or persons administering and/or authorising treatment.*

The particulars of this charge related to the stable inspection conducted on 17 May 2017 by HRV Stewards, when Mr Cole was unable to produce a logbook.

Mr Cole was represented by Mr Sheales (of counsel) and pleaded guilty to both charges. Mr Conder appeared for the HRV Stewards. Mr Cole gave evidence and was cross-examined.

The HRV RAD Board heard submissions as to penalty from Mr Sheales and Mr Conder.

Mr Conder referred to the material in the brief of evidence, which was tendered. He conceded that cobalt was not performance enhancing but that it was a prohibited substance. He took the Board to recent HRV RAD Board and VCAT decisions in relation to cobalt. He submitted that it was a serious offence, that the rules in relation to prohibited substances are to ensure that the integrity of harness racing is protected and that racing is conducted safely and fairly. He submitted that an appropriate penalty for the breach of rule 190(1) was a 12-month disqualification.

Mr Sheales submitted that the Board should take a different approach to that which had been taken in determining penalties for cobalt offences in the past because cobalt is not performance enhancing or harmful to horses. He submitted that views as to the effect of cobalt had changed since it was first detected and that the Board should take into account the comments of Justice Hampel in *Demmler v Harness Racing Victoria Racing Appeals and Disciplinary Board* VCAT 600 (5 May 2017) where she acknowledged (at paragraph 44) that previously “what little information there was in the published literature suggested cobalt administered in high doses could be performance enhancing and could have a deleterious effect on horses”.

Mr Cole gave evidence that he had been training for 27 years and that his livelihood was in harness racing. He is the licensee of a hotel in Terang but does not work there often.

The Racing Appeals & Disciplinary Board (RADB) is established under section 50B of the Racing Act (1958). The RADB is an independent Board established to hear and determine appeals in relation to decisions made under the rules to impose penalties on persons and to hear and determine charges made against persons for serious offences.

In determining penalty, the HRV RAD Board considered Mr Cole's long involvement in the industry, his record (which included one race day administration offence), the impact of any penalty on Mr Cole, specific and general deterrence and consistency of penalties in relation to cobalt cases.

Taking all of these matters into account, the HRV RAD Board imposed a 12-month suspension of Mr Cole's trainers and drivers licences. The HRV RAD Board ordered the suspension to commence at midnight on Monday 22 January 2018. On the second charge (relating to the log book) the HRV RAD Board imposed a \$250 fine.

The HRV RAD Board also ordered that "Exciteusrubycee" be disqualified from Race 4 at Maryborough on 13 April 2017 and that the placings be amended accordingly.

HRV RAD Board Panel: Alanna Duffy (Chair), John Doherty, Hugh Millar