

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

REVIEW AND REGULATION LIST

VCAT REFERENCE NO. Z848/2016

CATCHWORDS

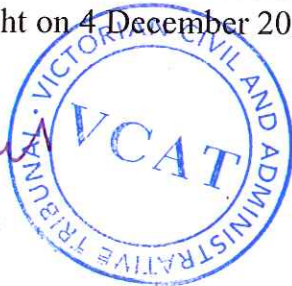
Harness racing – disqualified person – breach of conditions of disqualification – repeat offender – general and specific deterrence – protection of integrity of harness racing industry – punishing non-compliance with Rules of Racing – Rule 259(1) – disqualification.

APPLICANT	Harness Racing Victoria Stewards
FIRST RESPONDENT	Harness Racing Victoria Racing Appeals and Disciplinary Board
SECOND RESPONDENT	Mr Andrew Vozlic
WHERE HELD	Melbourne
BEFORE	Vice President Judge Hampel
HEARING TYPE	Hearing
DATE OF HEARING	23 March 2017
DATE OF ORDER	23 March 2017
DATE OF REASONS	12 April 2017
CITATION	Harness Racing Victoria Stewards v Harness Racing Victoria Racing Appeals and Disciplinary Board and Vozlic (Review and Regulation) [2017] VCAT 485

ORDER

On charges 1 and 2, I impose an aggregate penalty of disqualification for a period of 12 months, commencing immediately upon the expiration of the current periods of disqualification. That term will commence on 5 December 2017 and expire at midnight on 4 December 2018

Judge Hampel
Vice President



APPEARANCES:

For Applicant

Mr A Anderson of Counsel

For Respondent

Mr A Jardine (Advocate)

REASONS

- 1 On 23 March 2017, I heard an appeal from a decision of the Harness Racing Victoria Racing Appeals and Disciplinary Board (HRV RAD Board). At the conclusion of the hearing, having been satisfied Mr Vozlic had committed the two breaches of Rule 259(1)(a) of the *Australian Harness Racing Rules* alleged, I imposed a penalty of 12 months disqualification, commencing immediately upon the expiration of the other periods of disqualification he is currently serving. The effect of that is to extend the period of disqualification to 4 December 2018. I now publish my reasons.
- 2 Mr Vozlic had, by July 2004, been involved in harness racing in Victoria for 20 years and had been a licensed A-grade trainer of harness racing horses under the then applicable Australian Rules of Racing for many years.
- 3 On 27 October 2004, her Honour Judge Curtain sitting as the Racing Appeals Tribunal disqualified Mr Vozlic for a total period of 21 months. He had been found guilty by the stewards of three breaches of Rules 190(1) and (2) of the Australian Rules of Racing relating to the administration of a prohibited substance, TCO2, and pleaded guilty before them to one breach relating to the administration of the prohibited substance Propantheline (commonly known as Blue Magic). The stewards disqualified him for a period of two years, and although unsuccessful in overturning the convictions, his period of disqualification was reduced to 21 months.
- 4 Mr Vozlic had acknowledged to the stewards that he administered the Blue Magic knowing it had an almost immediate effect upon a horse, that he believed it was performance enhancing, and that he had won on four or five previous occasions after administering Blue Magic. He admitted possession of 30 vials of Blue Magic. He also had decoy vials for production to the stewards in order to cover his tracks. He admitted purchasing the Blue Magic on the black market. He also admitted betting and winning on the particular horse, the subject of the charge, after he had administered the Blue Magic. He acknowledged there were other people involved in, and who stood to profit from, betting on horses to whom he administered Blue Magic.
- 5 So far as the TCO2 was concerned, her Honour found that administering TCO2 had been a matter of controversy within the harness racing industry for some years, that it was believed to be performance enhancing, and that Mr Vozlic was on notice that horses trained by him had revealed elevated TCO2 levels on testing. Yet he did nothing to change his practices, despite six separate warnings from the stewards his horses were registering elevated levels of the substance.
- 6 As her Honour made clear, this offending involved multiple offences over a period of some months. She characterised the breach in respect of the Blue Magic as premeditated, wilful and for the purpose of gaining an advantage. As she said in her reasons “*it is difficult to imagine a more serious case of administering a prohibited substance.*” So far as the TCO2 was concerned she noted it involved two separate horses on three occasions, occurring in

circumstances where Mr Vozlic had displayed what she described as a flippant attitude towards the six letters of warning that had been sent him by the stewards about elevated TCO2 levels.

- 7 Her Honour found that having regard to circumstances as I have outlined them, that considerations of general deterrence, the integrity of the industry, specific deterrence and the need to impose a penalty which would act as a denunciation of Mr Vozlic's conduct, the imposition of a substantial period of disqualification was warranted.
- 8 Mr Vozlic served out that period of disqualification. However, by 29 June 2007, he was again caught racing a horse which presented with a level of TCO2 in excess of the prescribed level.
- 9 He again appealed the initial penalty imposed by the stewards and his Honour Judge Nixon sitting as the Racing Appeals Tribunal, imposed a term of 18 months disqualification. His Honour took into account the fact this was Mr Vozlic's fourth TCO2 offence. He too identified general and specific deterrence as significant factors in imposing the penalty he did. That disqualification commenced on 17 September 2007.
- 10 By 13 January 2012, Mr Vozlic was again facing charges relating to the presence of a prohibited substance in a harness racing horse on race day. By then the RAD Board had the responsibility to hear and determine serious offences. Presentation charges are serious offences. Again, this charge related to the presence of bicarbonate in excess of the prescribed level. On this occasion he was disqualified for a period of five years.
- 11 In imposing the penalty it did on Mr Vozlic, the RAD Board held that the purposes of the rules with respect to prohibited substances were to ensure, as far as possible, that:
 - (i) the integrity of racing is protected;
 - (ii) racing is conducted on a level playing field;
 - (iii) horses race without the assistance of drugs;
 - (iv) racing is conducted safely, with respect to the horse itself and also for other drivers and horses involved;
 - (v) racing is conducted fairly from the perspective of the betting public so that a horse's performance will not vary from start to start depending on whether or not a particular substance/medication has been administered to it.
- 12 Mr Vozlic appealed that decision. On 15 June 2012, the Tribunal dismissed the appeal. Taking into account the period of disqualification that had already been served, the disqualification ran to 4 June 2017.
- 13 The consequences of disqualification are severe and wide-ranging. By Rule 259(1):

A disqualified person ... cannot do any of the following –

- (a) associate with persons connected with the harness racing industry for purposes relating to that industry;
- (b) be a member or employee of the Controlling body;
- (c) be an office holder, official, member or employee of a club;
- (d) enter a racecourse or any place under the control of a club or Controlling body;
- (e) race, lease, train, drive or nominate a horse;
- (f) conduct breeding activities;
- (g) enter any premises used for the purposes of the harness racing industry;
- (h) participate in any manner in the harness racing industry;
- (i) permit or authorise any person to conduct any activity associated with the harness racing industry at his/her registered training establishments;
- (j) place, or have placed on their behalf, or have any other interest in, a bet on any Australian harness racing race.

- 14 In his submissions on penalty, Mr Vozlic had referred specifically to the hardship he would suffer due to his inability to work as a farrier in the harness racing industry during his period of disqualification. It is clear that shoeing harness racing horses for trainers would constitute association with persons connected with the harness racing industry for purposes relating to that industry, something a disqualified person is prohibited from doing under Rule 259(1)(a). It is clear Mr Vozlic was at all times aware of that.
- 15 In its reasons, the RAD Board expressly took into account the impact of disqualification, and referred specifically to the consequences, including Mr Vozlic's inability to work as a farrier in the harness racing industry during the period of disqualification.
- 16 Although the RAD Board is responsible for determining serious charges, and imposing a penalty if the charges are proved, if it disqualifies a person, it cannot limit the conditions of disqualification which are set out in Rule 259(1). In other words, the RAD Board did not have the power to limit the conditions of disqualification set out in Rule 295(1) to permit Mr Vozlic to provide farrier services to the harness racing industry during his period of disqualification.
- 17 However, by Rule 259(4), the stewards are given express power to remove one or more of the prohibitions set out in Rule 259(1), either permanently or for a time, if during a period of disqualification they form the opinion the circumstances relating to the disqualified person have materially changed.
- 18 Less than a month after he was disqualified, on 10 July 2012, Mr Vozlic applied under Rule 259(4) to the stewards for a variation of the conditions which, by Rule 259(1), apply to a disqualified person.

- 19 He asked the stewards to remove the prohibition on association with persons involved in harness racing, for the limited purpose of permitting him to ply his trade as a farrier. His application was refused.
- 20 He applied to the Tribunal for a stay of his disqualification, and a review of the decision refusing permission to shoe harness racing horses. The stay was refused, and ultimately, on 17 December 2012, the application for review of the refusal was struck out. The Tribunal does not have jurisdiction to review a decision of the stewards under Rule 259(4).
- 21 Just seven months later, on 16 July 2013, stewards saw Mr Vozlic at the registered training property of licensed trainer, Malcolm Retallick. It became clear he had been attending the property and shoeing horses. He was charged with breaching Rule 259(1)(a) by being a disqualified person, associating with a person connected with harness racing (namely, a licensed trainer) for a purpose related to harness racing (namely, providing farrier services to harness racing horses trained by Mr Retallick). He pleaded guilty, and was disqualified for a further six months. That extended the period before his disqualifications expired to 4 December 2017.
- 22 Mr Retallick was charged under Rule 230 of the Australian Rules of Harness Racing, which states that:
- ‘... except with the consent of the Controlling Body, a person shall not associate for purposes relating to the harness racing industry with a disqualified person whose name appears in the current list of disqualifications published or adopted by a recognised harness racing authority’ (i.e. associating with a disqualified person).
- He was fined \$5,000.
- 23 Mr Vozlic appealed the disqualification, but in December 2014 his appeal was struck out. The further disqualification remained in force.
- 24 Again, detection, charge and further disqualification did not deter Mr Vozlic from breaching the Rules of Racing, and specifically, acting contrary to the conditions attaching, by reason of Rule 259(1) to disqualification. Only 18 months after the striking out of his appeal against the 6 month disqualification for shoeing Mr Retallick’s horses, he was again detected providing farrier services to licensed trainers. This time there were two trainers to whom he was providing services. One was, again, Mr Retallick. The other was Mr Murray Jardine.
- 25 Mr Vozlic pleaded guilty before the RAD Board to two charges of providing farrier services to HRV registered trainers, in breach of Rule 259(1)(a).
- 26 Charge 1 is the provision of farrier services, again, to registered trainer Malcolm Retallick. This charge spans the period August 2015 to April 2016, and concerns two horses, Lauper and Primo Tapia.
- 27 Charge 2 is the provision of farrier services, to registered trainer Murray Jardine. This charge spans the period December 2015 to April 2016, and concerns four horses, Boneshaka, Carload, Alessa and Yes It Was.

- 28 Trainers Retallick and Jardine were charged with breaching Rule 230, that is, associating with a disqualified person. Mr Retallick, for whom this was a second offence, was fined \$7,000. Mr Jardine was fined \$5,000.
- 29 Mr Vozlic pleaded guilty to these charges before the RAD Board. At that hearing, he was represented by Mr Alex Jardine, the brother of Mr Murray Jardine. Mr Alex Jardine is not a legal practitioner, but has a longstanding association with harness racing, and was an eloquent advocate for Mr Vozlic.
- 30 The RAD Board, having considered the circumstances and the matters put by Mr Jardine on Mr Vozlic's behalf, initially pronounced a penalty of a further two years' disqualification, which they suspended for a period of two years.
- 31 When Mr Conder, on behalf of HRV, advised the RAD Board the Rules of Racing did not permit the suspension of a disqualification, the RAD Board substituted a penalty of an aggregate fine of \$2,000.
- 32 HRV has sought a review of that decision, under s 83OH of the *Racing Act 1958* (Vic).
- 33 It provides:
- (1) A person whose interests are affected by a decision made by a Racing Appeals and Disciplinary Board may apply to VCAT for review of that decision.
 - (2) A Steward may apply to VCAT for review of a decision made by a Racing Appeals and Disciplinary Board.
- 34 At the hearing before the RAD Board, Mr Vozlic was fined for other, less serious, breaches of the Rules of Racing. Although the original application for review by HRV was in respect of the penalties imposed on all charges, Mr Anderson, who appeared for the HRV stewards, confirmed at the beginning of the hearing the review was in respect of the penalty imposed on charges 1 and 2 only.
- 35 Mr Anderson submitted the following matters were relevant to the assessment of the seriousness of the breaches, and the appropriate penalty.
- 36 First, the fundamental importance of protecting the integrity of the racing industry, by ensuring its rules were obeyed, and that breaches were appropriately punished. Disqualification is the most severe penalty that can be imposed, and it is reserved for the most serious breaches. Rule 259(1), which sets out the prohibitions following upon disqualification, has both a punitive and protective purpose. It is designed to protect racing from people whose conduct threatens its integrity. Breaches of the conditions of disqualification must, therefore, be subject to penalties which appropriately reflect these protective and punitive purposes.
- 37 Secondly, that the seriousness of the conduct reflected in the charges was compounded by the background of Mr Vozlic's long history of serious and deliberate breaches of the Rules of Racing.

- 38 Thirdly, that this was deliberate, calculated conduct. The gravity, he submitted, was compounded, in the case of Mr Retallick's horses, by the fact his horses were trucked off-site to be worked on, so as to lessen the prospect of detection.
- 39 Fourthly, this was repeat offending, which showed a continuing flagrant disregard for the Rules of Racing.
- 40 And finally, that the weight to be given to Mr Vozlic's evidence of good character was limited, given that history of repeated flagrant disregard for the Rules of Racing.
- 41 I accept Mr Anderson's submissions. They were soundly based, and measured.
- 42 Mr Alex Jardine again appeared on Mr Vozlic's behalf. Acknowledging the force in Mr Anderson's submissions, having regard to Mr Vozlic's history of doping and breaching the conditions of disqualification, he submitted there were nonetheless significant mitigating features.
- 43 First, he said it was at his instigation that Mr Vozlic was encouraged to consider offering farrier services again in the harness racing industry. Next, and connected with his first point, that there was, at the time, an acute shortage of competent farriers in the Mildura area, which was causing hardship to trainers. He said Mr Vozlic was known to be competent, and was only doing work on horses which were difficult to shoe, or at risk of injury, and which no-one else local could properly service. He pointed to the need, in times when animal welfare was a prominent issue, of ensuring horses were not subjected to unnecessary risk of injury from incompetent shoeing.
- 44 No matter how acute the shortage of farriers, or competent farriers, was in the Mildura area, it is no justification for Mr Vozlic acting as he did. No matter how encouraging Mr Jardine was, or how optimistic he was that the representations he had made on Mr Vozlic's behalf with the stewards would secure him an exemption, it is clear that Mr Vozlic (and Mr Jardine) knew he was not permitted to shoe harness racing horses, and he made a conscious choice to break the rule. Mr Jardine's optimism he would secure Mr Vozlic an exemption is no mitigator. If anything, it aggravates the seriousness, as it suggests that with a little patience, he would have secured the permission he needed. And, it reinforces the obvious point: that Mr Vozlic knew that, without an exemption, he was not permitted to shoe horses for the harness racing industry.
- 45 Mr Jardine suggested the temptation for Mr Vozlic to provide farrier services to the local harness racing industry could have been avoided had HRV have provided more assistance to trainers in securing the services of competent farriers to trainers in the Mildura area. Whether that is so or whether it was incumbent on the trainers to take such steps is not to the point. Mr Vozlic was disqualified. He knew he was, Mr Jardine knew he was, Mr Retallick knew he was, Mr Murray Jardine knew he was, and no doubt other trainers

knew that too. That other farriers have now stepped into the breach, following news of Mr Vozlic's latest charges, only demonstrates how easy it was to secure other services. This does not justify resorting to breaking the rules of harness racing, or mitigate the seriousness.

- 46 Mr Jardine described the severity of the previous penalties as not properly reflecting the current times. So far as providing farrier services, that was due to what he characterised as the extenuating circumstances of the scarcity of competent farriers in Mildura. So far as the doping offences, because the substances which Mr Vozlic administered are no longer banned, or considered to be performance enhancing. I disagree with his characterisations. The more important fact in each case is that Mr Vozlic deliberately broke a Rule of Racing, and the penalties imposed were, in the context of the times, commensurate with the gravity of the breach.
- 47 Next, Mr Jardine pointed to the lesser penalties, fines, imposed on Mr Retallick and Mr Murray Jardine, and to the fact Mr Retallick, like Mr Vozlic, was caught twice. Whilst consistency in penalty is an important part of any disciplinary or regulatory regime, the cases are very different here. Neither Mr Retallick nor Mr Murray Jardine were disqualified. Neither of them had faced successive periods of disqualification for doping, before breaching the prohibitions applying to disqualified persons. Mr Retallick's fine was greater than that imposed for his first offence, and greater than that imposed on Mr Murray Jardine. The fine imposed on Mr Murray Jardine was the same as the fine imposed on Mr Retallick for his first offence.
- 48 Mr Jardine next submitted that a further disqualification would be the end of Mr Vozlic's involvement in harness racing. Mr Jardine told me he had polled the local harness racing community, and all had assured him they would use Mr Vozlic's services if he were able to resume work in December this year when his current disqualifications expire. However, he submitted that any further period of disqualification, for a man already over 50, was in effect a life ban.
- 49 Even if that were the case, I am not persuaded that is a matter Mr Vozlic can call in aid. He is the author of his own misfortune. He could have maximised his prospects of returning to work as a farrier to the harness racing industry at the end of 2017 by adhering to the conditions of his disqualification, and not shoeing horses for licensed trainers.
- 50 In the course of the hearing, both Mr Anderson and Mr Jardine had made reference to Rule 259A. It is a new rule, which provides even stricter penalties for disqualified persons who breach the conditions of disqualification. Under Rule 259A the original period of disqualification automatically recommences once a breach of the prohibitions consequent upon disqualification is proved, unless the stewards order otherwise. Mr Jardine submitted that was adequate deterrent for Mr Vozlic, knowing he would face a recommencement of the current disqualification were he again to provide farrier services. I am not so optimistic any prospect of

disqualification would deter Mr Vozlic. He has shown himself utterly undeterred by the prospect of disqualification, or further disqualification in the past.

- 51 I am satisfied no penalty other than one of a further period of disqualification is appropriate to mark the seriousness of the conduct. These were deliberate, persistent, flagrant breaches by a person who was well aware he was not able to provide farrier services for registered trainers.
- 52 The gravity of the offending is compounded by the history. Mr Vozlic has been disqualified on three separate occasions for doping offences. After his last, and understandably lengthy period of disqualification, knowing he could not shoe horses without permission, he sought, and was refused permission. Yet he went ahead and did so anyway. Even after being detected, and subjected to a further period of disqualification, he did so again. He shows a complete disregard for, and lack of respect for, the Rules of Racing.
- 53 He then secured the offices of Mr Alex Jardine to make representations to HRV to give him an exemption from the strict terms of the disqualifications, so as to enable him to shoe horses.
- 54 At the very time Mr Jardine was negotiating with HRV on his behalf, and optimistic about the outcome, he was breaching the rule yet again, shoeing registered trainers' horses without permission. One of the trainers to whom he provided farrier services in the charges before me was the very trainer he had already been found to have provided farrier services to, in breach of the terms of disqualification. The other was Mr Jardine's brother.
- 55 And, in respect of Mr Retallick's horses, the horses were trucked off-site, to another property, for the work to be done, in order to reduce the prospect of detection. Mr Vozlic took active steps to conceal what he was doing and avoid the risk of being seen doing the prohibited work at that trainer's stables.
- 56 It is abundantly clear that the penalty must reflect the gravity of this conduct. Confidence in the integrity of harness racing, and of those who participate in it is essential. Participants and the public must be assured the rules are enforced, and those who flout them will be dealt with appropriately. The punishment must be proportionate to the wrongdoing, and serve as a deterrent, not only to the individual miscreant, but to others who are tempted to offend in a similar manner. What is proportionate will vary, depending on the circumstances of the individual transgressor. Generally, a more severe penalty is appropriate for repeat offenders. Clearly, the extension of the 5 year period of disqualification for the last doping offences by six months for the first offence of providing farrier services to a registered trainer in contravention of the prohibitions consequent on disqualification was insufficient to deter Mr Vozlic. Not only did he provide farrier services again, he did so on the second occasion for two trainers, not one.
- 57 He took a gamble, and a poor one. I was told he was paid \$100 per horse, and only shod horses where particular skill or expertise was required. For

what may have been a modest return, he now faces a further disqualification, which will preclude him during that extended period of disqualification from offering his services more generally, openly and legitimately, to the harness racing industry as a whole.

- 58 On charges 1 and 2, I impose an aggregate penalty of disqualification for a period of 12 months, commencing immediately upon the expiration of the current periods of disqualification. That term will commence on 5 December 2017 and expire at midnight on 4 December 2018.


Judge Hampel
Vice President

