

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

REVIEW AND REGULATION LIST

VCAT REFERENCE NO. Z230/2019

CATCHWORDS

Review and Regulation List – Harness racing – charges of fraudulent and corrupt conduct – *Briginshaw* principles – weight of the evidence – *Racing Act 1958*.

APPLICANT	Steven Matson
RESPONDENT	Harness Racing Victoria
WHERE HELD	Melbourne
BEFORE	Senior Member E Wentworth
HEARING TYPE	Hearing
DATE OF HEARING	2 and 3 December 2019, 27 and 28 October 2020
DATE FINAL SUBMISSIONS RECEIVED	3 December 2020
DATE OF ORDER AND REASONS	27 April 2021
CITATION	Matson v Harness Racing Victoria (Review and Regulation) [2021] VCAT 383

ORDER

- 1 The decision of the Racing Appeals and Disciplinary Board made on 12 March 2019 is set aside and the charges against the applicant are dismissed.

E Wentworth
Senior Member

APPEARANCES:

For Applicant	Dr I Ingolby of counsel
For Respondent	Mr W Toohey of counsel



REASONS

OVERVIEW

- 1 This case is Mr Steven Matson's application for review of a decision of the Racing Appeals and Disciplinary Board (**the RAD Board**) finding him guilty of four charges brought by Harness Racing Victoria (**HRV**) Stewards. The RAD Board imposed a penalty of two years' disqualification.
- 2 The charges relate to two horses, Could Be Woody and Westvillageemily (**the horses**), nominated to compete in Race 4 and Race 9 respectively at Shepparton on 28 September 2018. Mr Vince Vallelonga was the registered trainer of both. Mr Matson was engaged to drive them at Shepparton. Mr Matson owned one of the horses, Could Be Woody.
- 3 HRV alleges, in essence, that Mr Matson engaged in a fraud, that he was in fact training the horses and Mr Vallelonga was trainer in name only. HRV say that Mr Vallelonga admitted as much in a telephone conversation Stewards had with him on 28 September 2018. HRV alleges that these facts constitute breach of Australian Harness Racing Rules prohibiting:
 - fraudulent and corrupt conduct;
 - fraudulently or improperly nominating or starting a horse in a race; and
 - carrying on a licensed activity while not the holder of a current licence.
- 4 HRV's case relies on statements made by Mr Vallelonga in a telephone call with Stewards on 28 September 2018, that Mr Matson was training the horses and was in charge of them, and on some of his evidence at the hearing before me.
- 5 HRV contends I should accept the evidence Mr Vallelonga gave before me in evidence in chief (HRV called Mr Vallelonga) and not accept evidence favourable to Mr Matson that Mr Vallelonga gave in cross-examination and re-examination at VCAT,¹ and at the RAD Board hearing.
- 6 The following is a brief summary of what Mr Vallelonga has said at different times:
 - In a telephone interview on 28 September 2018 with Senior Stipendiary Steward Ms Kylie Harrison,² Mr Vallelonga said that Mr Matson was in charge of the horses, and Mr Matson was training them under his (Mr Vallelonga's) name.³

¹ Re-examination, by counsel for HRV, was essentially cross-examination after I gave leave to counsel for HRV to treat Mr Vallelonga as an unfavourable witness, following an apparent 'backflip' in Mr Vallelonga's evidence during cross-examination by counsel for Mr Matson.

² With Steward Michael Ross listening in.

³ The relevant particulars of each charge.



- At the RAD Board, Mr Vallelonga gave unsworn evidence that he meant that Mr Matson was in charge of them *on the day*, and was working them, under his direction either by direct instructions or via a whiteboard. When he said to Ms Harrison in the interview that he was not training the horses he meant not *physically* training the horses. Ms Harrison called him, she said, because they had not found the horses at his stables in Bolinda and found them instead at Mr Matson and his partner Ms Maryanne Laffan's property in Kilmore. He had been asleep, was suffering severe pain and was on pain medication to relieve the pain. He said he was not thinking clearly in the call with Stewards because of the effect of the pain medication.
- In sworn evidence in chief before me, as a witness called by HRV, he adopted as true and correct a statement, discussed in detail later in these reasons, that said in paragraph 3 that Mr Matson was the trainer of the whole team at that time including Westvillageemily and Could Be Woody with the assistance of Mr Tommy Hill.
- In cross-examination by counsel for Mr Matson, he said paragraph 3 was not true, that he was the trainer, Mr Matson was working them under his direction because he (Mr Vallelonga) could not physically work the horses, and Mr Matson was not there as trainer.
- In re-examination/cross-examination by counsel for HRV as an unfavourable witness, he confirmed his evidence under cross-examination, added to his evidence and said he had not been happy to sign the statement, which his solicitor had drafted, but understood it was a part of a deal to have a shorter disqualification period.⁴

7 Mr Matson says, in essence, that he was not the trainer, and HRV have not proved these serious charges to the required standard. He has consistently denied the allegations. He has maintained that he was helping Mr Vallelonga, who had been badly injured in a stable accident in July 2018, by working the two horses and others on Mr Vallelonga's property at Bolinda, when he was able to do so. In return for Mr Matson's help, Mr Vallelonga had the horses on his property,⁵ put them in his name as trainer, and took responsibility for their training, giving instructions in person or on a whiteboard. Mr Matson worked them under Mr Vallelonga's instruction.

8 Mr Matson contends that Mr Vallelonga's statements in the phone interview, and those parts of his evidence at the hearing HRV rely on, do not prove HRV's case against Mr Matson to the required standard. Mr Matson points out that Mr Vallelonga also gave evidence that he was the trainer but could not train the horses *physically* because of his injuries; that

⁴ The RAD Board had found Mr Vallelonga guilty of similar charges and imposed a six-month disqualification.

⁵ Mr Matson's partner, Maryanne Laffan, had previously trained the horses at their property in Kilmore. Because of Ms Laffan's 2018 disqualification, she could no longer train them and had to move them off the Kilmore property. They moved to Mr Vallelonga's property with HRV's permission.



Mr Matson worked the horses under his instruction; and that he gave instructions about the horses in person and on a whiteboard at his Bolinda property.

- 9 Mr Matson contends that, given the very serious charges and where he has consistently denied the allegations and Mr Vallelonga has given evidence, favourable (as well as unfavourable) to Mr Matson, HRV have not proved the charges.
- 10 This case, together with the related case involving Mr Vallelonga's application for review of similar findings against him,⁶ had an unusual and complex progression towards the ultimate close of HRV's evidence. I say more later about the procedural issues that arose.
- 11 The burden and standard of proof had relevance in this case. Ultimately, for reasons which follow, I was not comfortably satisfied that HRV had proved its case against Mr Matson. I turn now to the principles relevant to reaching that view.

Burden and standard of proof

- 12 HRV carries the burden of proof. Mr Matson does not have to prove his innocence.
- 13 Contrary to the submission of counsel for Mr Matson, the standard of proof is not the criminal standard – beyond reasonable doubt. The standard of proof is the civil standard – on the balance of probabilities.
- 14 But the seriousness of the allegations and the gravity of the consequences of finding them proved means that it is proper for the Tribunal to take account of the common law principles established by *Briginshaw v Briginshaw* [1938] HCA 34; (1938) 60 CLR 336 (*Briginshaw*):

Except upon criminal issues to be proved by the prosecution, it is enough for the affirmative of an allegation to be made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of the allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters, 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences.⁷

⁶ Mr Vallelonga withdrew his application for review on the third day of the hearing.
⁷ Per Dixon J at p. 362.



- 15 In occupational disciplinary cases before the Tribunal, those principles are translated into a requirement that the Tribunal be ‘comfortably satisfied’ of the facts in issue:

The notion of ‘inexact proof, and indefinite testimony or indirect [inferences]’ needs to be translated to a comfortable level of satisfaction, fairly and properly arrived at, commensurate with the gravity of the charge, achieved in accordance with fair processes appropriate to and adopted by such a body.⁸

- 16 The *Briginshaw* principles were relevant in assessing the evidence given before me by Mr Vallelonga, who was:
- called by HRV as their witness after Mr Vallelonga’s solicitor, Mr Allan McMonnies, advised Mr Vallelonga would change his plea to guilty, provide a signed statement, and make himself available as a witness for HRV;
 - cross-examined by counsel for Mr Matson with what might be described as considerable effect, leading to Mr Vallelonga’s solicitor withdrawing from acting; a warning about perjury from me to Mr Vallelonga; and an adjournment of the hearing so that Mr Vallelonga could obtain independent advice;⁹ and
 - then re-examined by counsel for HRV, who sought and obtained leave to cross-examine Mr Vallelonga as an unfavourable witness.¹⁰

THE CHARGES

- 17 On 12 March 2019, the RAD Board found Mr Matson guilty of four charges:¹¹
- **Charge 1:** breach of rule 241 of the Australian Harness Racing Rules (**Rules**): *A person shall not in connection with any part of the harness racing industry do anything which is fraudulent or corrupt.*
 - The charge alleges that Mr Matson engaged in fraudulent conduct in that he was training ‘Could Be Woody’ and ‘Westvillageemily’ when Vince Vallelonga was the registered trainer of the horses.
 - **Charge 3:** breach of rule 216: *A person whether alone or in association with others shall not fraudulently or improperly nominate or start a horse in a race.*

⁸ *Karakatsanis & Anor v Racing Victoria Limited* [2013] VSCA 305 at [38]; see also *Kyriackou v Law Institute of Victoria Ltd* [2014] VSCA 322.

⁹ The adjournment was extended by Mr Vallelonga suffering another accident in early 2020 and by the COVID-19 crisis.

¹⁰ HRV then sought leave to re-open their case so that they could contact Mr McMonnies with a view to calling him to rebut Mr Vallelonga’s evidence in re-examination. Ultimately, they did not do so.

¹¹ Charge 2 was an ‘alternative’ charge under rule 239A that Mr Matson’s conduct or negligence had led to a breach of rule 241 by Mr Vallelonga.



- The charge concerned the nomination of ‘Could Be Woody’ to compete in Race 4 at Shepparton on 28 September 2018.
- **Charge 4:** breach of rule 216: *A person whether alone or in association with others shall not fraudulently or improperly nominate or start a horse in a race.*
 - The charge concerned the nomination of ‘Westvillageemily’ to compete in Race 9 at Shepparton on 28 September 2018.
- **Charge 5:** breach of rule 91(1): *A person shall not carry on an activity regulated by licence (a) if that person is not the holder of a current licence.*
 - The charge alleged that Mr Matson carried out an activity regulated by a trainer’s licence when he was not the holder of such a licence.

What does it mean to ‘train’ a horse?

- 18 Unfortunately, in hindsight, the parties did not provide an agreed definition of what it means to train a horse at the outset of the case. While it might be expected that the components of what a trainer does (as opposed to, say, a stablehand) are common knowledge and generally agreed, the potential conflict in definitions emerged only in written submissions after the evidence closed.
- 19 This in turn raises an issue of precision of proof. The submissions were also relevant to evaluating the evidence given by Mr Vallelonga about what he meant by ‘training’ in the telephone interview on 28 September 2018, for the purpose of deciding whether the charges had been proved to the required standard.
- 20 In written submissions after the hearing, counsel for HRV contended that Mr Matson did ‘everything with the Horses that a trainer would be expected to do’, namely:
- feeding;
 - preparing the harnesses;
 - working the horses;
 - using his own farrier and paying the farrier himself; and
 - attempting to register the horses to race using Mr Vallelonga’s code and password on Harness Web.¹²

¹² The evidence was that on 24 September 2018, Mr Vallelonga called Mr Matson and asked him if he could enter the horses for Shepparton and two others for Maryborough on 1 October 2018, as he was having trouble getting on to the HRV website and was running out of time. He gave Mr Matson his code and password. Mr Matson had no luck. Mr Vallelonga ultimately entered the horses over the phone. I did not consider this to be evidence that Mr Matson had taken over the training of the horses.



- 21 In his written submissions, counsel for Mr Matson referred to the definitions of ‘training’ and ‘trainer’ in the Australian Harness Racing Rule Dictionary (**the Dictionary**), and what the Rules say in rule 90A about the respective duties of trainers and stablehands.
- 22 Counsel for Mr Matson submitted that there is a distinction between the Dictionary definition of ‘training’ and colloquial use of the word ‘train’ (to look after), and that most of what HRV had included in its list above fell within the process of keeping a horse in good health, which was not within the Dictionary definition of ‘training’.
- 23 In reply, counsel for HRV submitted that ‘the niceties of definitions’ (in the relevant paragraphs of Mr Matson’s submissions) are ‘simply an attempt to explain what on the face of it requires no explanation’.
- 24 I say more about the submissions after setting out the definitions and rules referred to by counsel for Mr Matson.

Definitions in the Australian Harness Racing Rules Dictionary

- 25 ‘Training’ and ‘trainer’ are defined as follows:
- ‘Training’ includes the preparation, education and exercising of a horse to race, but not the mere process of keeping a horse in good health.
- ‘Trainer’ includes a person who though not holding a licence granted under these rules trains a horse or does other things which are only done or usually done by trainers.
- 26 There are no examples of things which are *only* or *usually* done by trainers. The definition of ‘training’ *includes* preparation, education and exercising, but not ‘the mere process of keeping a horse in good health’.
- 27 The Rules, however, provide additional assistance.

The Australian Harness Racing Rules

- 28 Rules 90-91 are to do with licences.
- 29 In relation to trainer’s licences, rules 90A(2.9) and (2.10) provide, amongst other things, that:
- the holder of a trainer’s licence shall ensure that all persons carrying out the activities of a stablehand are licensed as stablehands;
 - a trainer is at all times responsible for the administration and conduct of his stables; and
 - a trainer is at all times responsible for the care, control and supervision of the horses in his stables.



- 30 In relation to stablehands, rule 90A(3.4) provides that:
- The holder of a stablehand’s licence is licensed, under the supervision or instructions of a licensed trainer, to -
 - carry out track work;
 - assist with the training, management, care and control of horses; and
 - assist with pre-race preparation of, and post-race procedures affecting, a horse.
- 31 I take from the Rules referred to that, while a trainer is responsible for the administration and conduct of their stables and the care and control of the horses in their stables, tasks referred to in rule 90A(3.4), and in HRV’s list such as track work, preparation, feeding (and other aspects of the care of a horse), may be done by stablehands under the supervision or instructions of a trainer. The Rules contemplate that those tasks are not things which are done *only* by trainers.
- 32 In other words, a person not holding a trainer’s licence, such as Mr Matson or stablehands generally, will not become a ‘trainer’ within the definition in the Dictionary merely by undertaking those tasks, provided they do so under instructions from a licensed trainer. Stablehands are licensed to carry out those tasks but must do so under instructions or supervision.
- 33 I regard the definitions in the Dictionary and the content of the above Rules as relevant when considering what HRV has to prove against Mr Matson.
- 34 On the basis of the definitions in the Dictionary, together with the content of the above rules, I agree with the submission on behalf of Mr Matson that HRV’s list is not determinative on the question of whether Mr Matson was training the horses and includes tasks which may be done by others without becoming a ‘trainer’.
- 35 The question of whether Mr Vallelonga gave instructions to Mr Matson, and others who may have cared for, exercised or prepared Could Be Woody and Westvillageemily at the Bolinda property, is therefore central in this case. I agree with the submission of HRV to this effect.
- 36 HRV contended that there were no such instructions in place and the suggestion of instructions, verbal or written, ‘is and has always been, an attempt to escape conviction of the charges laid’.
- 37 Mr Matson and the witnesses called on his behalf who worked at the Bolinda property say Mr Vallelonga gave them instructions in relation to all the horses, including Could Be Woody and Westvillageemily.
- 38 Mr Vallelonga gave a range of evidence on that matter, as noted above and discussed further below.
- 39 Before leaving the issue of instructions, I note that in written submissions, HRV contended that it was ‘completely irrelevant’ whether a whiteboard



did nor did not exist at Mr Vallelonga's property. I disagree. HRV has the burden of proving that Mr Matson was the trainer of the horses and that Mr Vallelonga did not train them. If the weight of the evidence supports a finding that there was a whiteboard, and it was used by Mr Vallelonga to give instructions to those who worked in his stables, that will be a relevant finding.

40 I turn now to the evidence.

Background facts

41 The following particulars to each charge are not in dispute:

- On 28 September 2018, Vince Vallelonga was the registered trainer of the standardbred horses 'Could Be Woody' and 'Westvillagemily'.
- On 28 September 2018, 'Could Be Woody' was nominated to compete in Race 4 at Shepparton and 'Westvillagemily' was nominated to compete in Race 9 at Shepparton.
- On 28 September 2018, both horses were located at Mr Matson's registered address in Kilmore.

42 A further particular to each charge was that:

- Vince Vallelonga confirmed in a phone interview with HRV Stewards that you [Mr Matson] were in charge of 'Could Be Woody' and 'Westvillageemily' and Vince Vallelonga had allowed you to train these horses under his name.

43 What Mr Vallelonga is recorded as saying in the phone interview is not in dispute. The dispute is about what Mr Vallelonga meant in his answers to the Stewards and whether in all the circumstances, including Mr Vallelonga's later evidence, Mr Matson should be found guilty of the charges.

44 Much of what happened on the day is not in dispute. On 28 September 2018, Mr Vallelonga was resting at his partner's house in Romsey. He had suffered a serious injury in a stable accident in July 2018 – a snapped femur and fractured hip. He was still suffering from severe pain and was on pain medication including endone.¹³ Mr Matson was listed to drive the horses at Shepparton. He picked them up from Mr Vallelonga's property in Bolinda in the mid-afternoon, after having issues with finding a suitable float.

45 Mr Matson stopped off at his Kilmore property on the way from Bolinda to Shepparton. He said he had stopped off to have a shower as he was still in his work clothes. This was not challenged.¹⁴ He took the horses out of the float because it was raining, which can make the rubber floor slippery.

¹³ The fact of this is not challenged. The effect of the pain medication on Mr Vallelonga in the interview is disputed by HRV.

¹⁴ Mr Matson's evidence, that he works as a stevedore and was working on the docks for 11 of the 35 days he was alleged to be the trainer of the horses, was not contradicted.



- 46 The Stewards, Ms Kylie Harrison and Mr Michael Ross, found Mr Matson and the horses at the Kilmore property. They had gone to Mr Vallelonga's property at Bolinda for a race day inspection to check the horses were there and make sure they were not being given any prohibited treatments. They found no one at Bolinda, and no sign of the horses, and had driven to Mr Matson's property to see if the horses were there.
- 47 Both Ms Harrison and Mr Ross agreed in their evidence at the hearing that they were not looking for a whiteboard when they were at the Bolinda property. They did not notice one but could not dispute that one was there.¹⁵
- 48 There is no doubt that Mr Matson should not have taken the horses to his Kilmore property, even for a short time. But he has not been charged with having the horses at a 'disqualified' property.
- 49 There was no evidence that Ms Laffan knew he had taken them to the Kilmore property, and she has not been charged over their presence there. She had gone to Maldon for the day with quilting friends and found the Stewards, Mr Matson, and the horses at the property when she returned.
- 50 Nor was there any evidence that Mr Vallelonga knew Mr Matson was planning to take the horses there. To the contrary, in his evidence he made it clear he was surprised and angry to be told they had been found at a disqualified property.
- 51 The Stewards did not witness Mr Matson doing anything that might constitute training at either the Bolinda or the Kilmore property, and freely conceded as much at the RAD Board hearing and before me. As counsel for HRV submitted, this is not fatal to HRV's case: it is rare for someone to be 'caught in the act'. But it does mean the case against Mr Matson primarily relies on the phone interview with Mr Vallelonga, made by the Stewards while at Mr Matson's property on 28 September 2018.
- 52 I turn now to the evidence of what Mr Vallelonga said in the phone interview, what he said about that phone interview at the RAD Board hearing, and his evidence at the hearing before me.

WHAT MR VALLELONGA HAS SAID

The phone interview on 28 September 2018

- 53 Ms Harrison made the call, with Mr Ross listening. Ms Harrison did not formally introduce herself as a Senior Stipendiary Steward, although there is no dispute that Mr Vallelonga knew who she was. She did not tell Mr Vallelonga that she was recording the call and did not tell him that Mr Ross was listening in until later in the call.
- 54 In contrast, in his interview with Mr Matson on the same day Mr Ross advised Mr Matson they would be recording the interview (introducing the

¹⁵ HRV nevertheless disputes the existence and the relevance of the whiteboard.



information with ‘just for fair and – accuracy reading’), introduced himself as a Stipendiary Steward, and confirmed Ms Harrison was with him.

- 55 The RAD Board admitted the evidence of the transcript over objections from the representative for Mr Matson and Mr Vallelonga. In these proceedings, Mr Vallelonga’s solicitor foreshadowed, then withdrew at the start of the hearing, an application on similar grounds under the *Surveillance Devices Act 1999* (Vic).¹⁶ On the first day of hearing, counsel for Mr Matson objected to the admission of the interview transcript as against Mr Matson, on the basis of the *Surveillance Devices Act 1999* (Vic) and other grounds. Counsel withdrew that objection on the second day of hearing after Mr Vallelonga became a witness for HRV and adopted the transcript as a true and correct record in his evidence in chief.
- 56 In the circumstances, I allowed the evidence of what Mr Vallelonga said to Ms Harrison and Mr Ross in the call. There was no dispute that Mr Vallelonga, as a licensed trainer, was obliged to answer questions from Stewards and that the transcript was an accurate record of what he said in answer to those questions. Mr Vallelonga was called as a witness and was able to give evidence about what was said; what he considered to be the effect of the strong pain medication he was taking; and what he meant by his answers to the questions he was asked. Both parties were able to make submissions about the weight that should be given to what Mr Vallelonga said.
- 57 I observe, however, that, depending on the case and what is otherwise the state of the evidence, questions of fairness may arise where a telephone call has been recorded without disclosing that fact, and the record is then used for proceedings under the *Racing Act 1958*. Putting to one side any questions under the *Surveillance Devices Act 1999* (Vic) (which I did not have to resolve), disclosing the fact that a phone call by Stewards is being recorded indicates unequivocally that a record will be made and used and is fair process, in my view.
- 58 Ms Harrison introduced herself. She told Mr Vallelonga that the horses were not at Bolinda and were at the Kilmore property, and Mr Vallelonga said he was unaware of that. The conversation included the following exchanges:
- Ms Harrison: Have you been out there today?¹⁷
- Mr Vallelonga: No, I haven’t today, no, not at all.
- Ms Harrison: So the horses are racing tonight?
- Mr Vallelonga: Yeah.
- Ms Harrison: And you haven’t been out there?
- Mr Vallelonga: No, not today.

¹⁶ Alleged breach of s 6(1) of that Act, which concerns, among other matters, using a listening device to record a private conversation without consent.

¹⁷ Referring to the Bolinda property.



Ms Harrison: Who's in charge of the horses?

Mr Vallelonga: Steve.

Ms Harrison: Steve Matson?

Mr Vallelonga: Yeah.

Ms Harrison: Okay. So where would – do you know where Steve Matson would have the horses if they weren't at your property?

Mr Vallelonga: They were there. No, I was there yesterday and they were there yesterday.

...

Ms Harrison: So do you train these horses?

Mr Vallelonga: No, I don't. I don't.

Ms Harrison: You don't train those horses?

Mr Vallelonga: No.

Ms Harrison: But they're in your name.

Mr Vallelonga: Yeah, because he – he needed somebody – he needed 'em to be off his property at my place and – but he didn't have a trainer's licence. He talked me into putting them into my name which I was a little bit reluctant but I just gave him the benefit of the doubt and just told him not to cause any trouble until he found someone else with a licence.

Ms Harrison: So you've allowed somebody that hasn't been able to get their own licence to train horses under your name?

Mr Vallelonga: Yeah, I did, and he's well, he's got a stablehand licence, I believe, and a driver's licence.

Ms Harrison: Yeah, yes he does.

Mr Vallelonga: Yeah.

Ms Harrison: He's got his driver's licence but he hasn't been able to get his trainer's licence.

Mr Vallelonga: Yeah.

Ms Harrison: So you've allowed him to train horses under your name?

Mr Vallelonga: Yeah, I did.

Ms Harrison: So you've had no say in what these horses do? You haven't been training them?

Mr Vallelonga: No, no.

Ms Harrison: He's done all the work?



Mr Vallelonga: I – as you know, I’ve got a broken – broken leg and a fractured hip, so I haven’t been – I hardly go to the farm. I go to the property a couple of times a week but I – I haven’t been there lately.

...

Ms Harrison: How often do you talk to Mr Matson about the training of the horses?

Mr Vallelonga: Oh, only when I go to the farm but I don’t have anything to do with them really.

59 As counsel for HRV submitted, the interview with Mr Vallelonga sounds like a ‘classic example’ of someone who has ‘come clean’. He certainly gives the impression of being angry that he has allowed himself to be dragged into the predicament of the horses being found at a disqualified property; and wanting to distance himself from Mr Matson and anything to do with the horses. What he meant by ‘training’, however, including whether he meant training for the purposes of the Dictionary and the Rules, is raised as an issue by what he subsequently said.

Mr Matson’s evidence at the 28 September Steward’s Inquiry

60 Later on 28 September 2018, the Stewards held an inquiry at the Shepparton meeting and called Mr Matson to give evidence.¹⁸ In summary, Mr Matson said:

- He had picked up the horses from Mr Vallelonga’s property at Bolinda at about 3pm and arrived at his Kilmore property at around 3.40pm.
- He had gone to the Bolinda property in the morning and worked four horses for Mr Vallelonga. [I note that Mr Matson refers to ‘the board’: ‘*And he had – the board – I had to work four horses*’. Mr Matson said later he was referring to the whiteboard. The relevance is that, contrary to later submissions by HRV, a board was first mentioned by Mr Matson on 28 September 2018 and not, as submitted, for the first time at the later RAD Board hearing].
- He’d had trouble getting a float. Mr Vallelonga had rung him and said he couldn’t use Mr Vallelonga’s float. His own float was getting repaired. He made inquiries of a Mr Mifsud and eventually was able to borrow a spare float from a neighbour, Robert Walters. (Mr Walters confirmed to the Stewards that Mr Matson had borrowed his float that day.)
- The horses had not been treated with anything. (Tests did not show any prohibited substances).

61 The Stewards issued charges on 4 January 2019.

¹⁸ Transcript commences at p48 of the Tribunal Book.



What Mr Vallelonga said at the RAD Board hearing

- 62 The Chairman of the RAD Board raised an issue at the outset about whether the barrister who appeared for Mr Vallelonga and Mr Matson, Mr Higgins, had a conflict of interest, given they had made ‘diametrically opposed’ statements. Mr Higgins said he was satisfied that there was no conflict, disagreed that the statements were diametrically opposed, and said he had not sought ethics advice. The matter went no further. Counsel for Mr Matson raised with me the conflict identified by the Board, as a question of fairness for Mr Matson, and asked that I exclude the transcript of the hearing, save that he wanted to put Mr Vallelonga’s evidence to him. Mr Vallelonga’s solicitor said he had no objection to the transcript of the RAD Board hearing being admitted.
- 63 It is well-established that review hearings at the Tribunal are merits review. The Tribunal is not reviewing the fairness or otherwise of the decision made by the original decision-maker. The Tribunal considers the evidence before the decision-maker, which will usually include the transcript of evidence at the RAD Board hearing, and any additional evidence before it, before making a fresh decision.
- 64 I allowed the (unsworn) evidence Mr Vallelonga gave before the RAD Board because he referred to and confirmed it at different points in his evidence. On the question of fairness to Mr Matson, although ultimately not accepted by the RAD Board, it is evidence that is favourable to him.
- 65 Mr Vallelonga told the RAD Board he was not *physically* training the horses but was giving instructions including instructions on a whiteboard in the gearing-up shed.
- 66 Mr Vallelonga also told the RAD Board that, while he answered the questions he was asked in the phone interview, he was not thinking clearly because he had been asleep and was drowsy from the medications. As counsel for the HRV submitted, Mr Vallelonga did not sound drowsy on the audio recording of the interview, and was able to ask relevant questions, including about what property the horses had been found on. Nevertheless, that evidence is relevant to an assessment of the explanation Mr Vallelonga gave for not including in his answers to Stewards the additional information which he gave at the RAD Board hearing and before me.
- 67 At the RAD Board hearing, Mr Vallelonga said, in summary that:
- There was a large whiteboard in the gearing-up shed used for everyday training, writing up the training schedule for the horses, the names, paddocks, and boxes. The whiteboard was there on 28 September 2018.
 - On that date, he was resting at his partner’s place at Romsey because he needed care and help at that time. He was on the pain medication listed in a letter provided by Dr Bock of the Royal Melbourne



Hospital.¹⁹ The medication had the consequence of making him drowsy and unable to communicate properly – mainly the endone made him drowsy and unable to understand a lot of things.

- He spent two weeks in hospital from 17 July 2018, when the stable accident happened. He was discharged to his partner's house. For three weeks he wasn't allowed to leave the house, he couldn't drive. He relied on other people to take him places but the pain was so severe he couldn't really move.
- In the period from late August to 28 September 2018, he would go from his partner's house to Bolinda. He would try to get there most days. In the early few weeks, he was only there for an hour or two in the morning just to oversee the horses he had there. Physically he couldn't do anything, he was just there to give instructions and write up the whiteboard for the next day.
- On the odd day he couldn't get there or was in too much pain he'd ring up Roy Roots – a visiting trainer from Sydney. He'd get him to write up the whiteboard. And his partner would go from work past the farm to check on things and he'd get her to write up the whiteboard if it hadn't been done. And Tom Hill used to come and help him of a morning. Mr Hill wanted to do a bit of work at the farm and give him a hand because he was injured, and he was giving Mr Hill the odd drive.
- Other people would make entries on the whiteboard on his instruction.
- He wasn't at the Bolinda property on 28 September 2018 but had been there the day before, on 27 September. He'd written up the whiteboard for the next day, 28 September. The entries included entries for both of the horses the subject of the charges, and both horses were there on the 27th.
- As at 28 September 2018, Mr Vallelonga used Tony Dillon as a farrier. Mr Matson used and paid his own farrier, Stephen Said.
- He had agreed to Mr Matson moving the horses to his property for training. Due to his accident, Mr Matson had offered a bit of support to keep his team going, to keep the business running. Mr Matson had said he could come out when he wasn't working (Mr Matson worked as a stevedore). Mr Matson asked if he could bring three of his horses and he agreed, provided Mr Matson got authorisation from HRV.
- He told Mr Matson to make sure there was no trouble, he appreciated the help and would help him in return by bringing the horses over and taking charge of them, but he didn't want any trouble.

¹⁹ The letter dated 27 February 2019 states that Mr Vallelonga was on multiple medications in approximately July to September 2018. During his inpatient stay he was on a combination of paracetamol, targin, endone, gabapentin, tramadol, meloxicam, and clonidine. The medication was for managing the severe pain associated with his injury.



- In answer to a question from the Chairman about what he meant, Mr Vallelonga said he didn't want any positives or anything like that coming from the horses while under his care.
- While he agreed he said to the Stewards that he did not train the horses, he meant he wasn't training them physically, because he couldn't, and he had Mr Matson, Mr Hill and Mr Roots giving him a hand. He agreed he had said Mr Matson had done all the work. What he meant was that Mr Matson had done all the work under his instructions. Mr Matson was working his own horses under Mr Vallelonga's direction.
- He (Mr Vallelonga) was responsible for planning the horses' preparations as at 28 September, and he did that mainly by writing on the whiteboard every day.
- Feed was a pretty standard procedure: unless they needed to change it, the feed program was always the same. Stabling was the same daily. With presentation, whoever was taking them to the races that day tidied them up and groomed them and got them ready.
- In cross-examination, he said, in summary:²⁰
 - He agreed that Mr Matson paid the farrier's fees for the two horses and did not see a problem with that – the farrier had come to shoe the horses Mr Matson owned and he paid them.²¹ Mr Vallelonga agreed that seeing to the shoeing of the horses was one of the responsibilities of a trainer.
 - He knew that if the Stewards asked him questions, he had to answer them. He knew Ms Harrison was a Steward, but he did not remember some of the questions that Ms Harrison asked him.
 - He was a bit 'under the weather' when she called. He was caught unawares. He was asleep when the phone rang. All of a sudden, he was being asked these questions. He agreed he didn't ask Ms Harrison to postpone the interview. He got a little disorientated. He disagreed when it was put to him that, from the tape, there was no indication of not being able to be spoken to or slurring his words.
 - He agreed he said in answer to the question 'who's in charge of the horses' – 'Steve' but said he meant that Mr Matson was in charge of them that day; he assumed that Ms Harrison was asking him about that day.

²⁰ Much of the cross-examination involved taking Mr Vallelonga line by line through the transcript of the interview. I refer to but for relative brevity do not repeat the whole of the cross-examination.

²¹ The form guide for Shepparton exhibited to Mr Ross's witness statement showed that Mr Matson owned one but not both horses.



- When he said he didn't train the horses, he meant that he doesn't physically train them because of his broken leg and fractured hip. He agreed he knew Mr Matson didn't have a trainer's licence but knew he had a driver's licence and a stablehand's licence.
- He disagreed that when he said he didn't want trouble that meant he knew there might be trouble because he had allowed himself to be 'front man' when he had nothing to do with those horses.
- He agreed he said that he'd allowed someone who hasn't been able to get their own licence to train horses under his name but said he was actually training the horses, they were in his name.
- He maintained he trained the horses under his name, under his direction and Mr Matson was doing the legwork.
- He agreed he didn't mention the whiteboard but said he should have mentioned it.
- He disagreed that he had come up with the explanation of the whiteboard because he realised he had confessed and was trying to get out of it. He disagreed that he wanted the horses to be moved on because he knew it was a sham. He said he wanted them moved on because he did not want them – in his opinion they were not good enough to earn enough money and they were costing him money.

Mr Matson's evidence at the RAD Board hearing

- 68 I interpose here that Mr Matson's evidence at the RAD Board hearing was, in essence, that he worked the horses under Mr Vallelonga's direction. Mr Vallelonga gave those instructions if he was at the stables, he'd tell him what to do – how to work them, and it was all written on the whiteboard. He and Tommy Hill always looked at the whiteboard and did what was on it.
- 69 He said he got permission to move the horses to Mr Vallelonga's property. He thought, because Mr Vallelonga had been around a long time, he might find the problems behind the two who had not been very good.

THE VCAT HEARING

- 70 The hearing took place over four days. I referred earlier to the unusual and complex progression towards the close of HRV's case. While it is not usually relevant to refer to procedural matters in reasons for decision, in this case the progress of the case has more relevance. In summary, the following occurred.



Day 1

- 71 At the start of the first day, Mr Vallelonga's solicitor advised that he was not proposing to call evidence, was not seeking to rely on the *Surveillance Devices Act 1999* (Vic), and was content to rely on the Tribunal Book and make submissions on whether findings could be made. He was not conceding that the RAD Board evidence should go in but was happy for the transcript of interview to go in.
- 72 Counsel for HRV said that HRV wanted to Mr Vallelonga to give evidence, although it was not clear how Mr Vallelonga could be compelled to give evidence, other than by HRV summoning him to do so.
- 73 Counsel for Mr Matson also said he wanted Mr Vallelonga to make a statement. Counsel said that he wanted to put Mr Vallelonga's evidence at the RAD Board to him, but that the transcript should otherwise be treated as inadmissible to support the case against Mr Matson because the lawyer representing him acted in a conflict of interest by representing both. Counsel also made an application for separate hearings.
- 74 The hearing was adjourned for the day for HRV to get instructions on the application for separate hearings, and for the giving of a statement by Mr Vallelonga to be considered.

Day 2

- 75 At the start of the second day, Mr Vallelonga's solicitor said that he had provided HRV (and counsel for Mr Matson) with a statement and Mr Vallelonga was available to give evidence. Counsel for HRV said he would call Mr Vallelonga.
- 76 After further discussion and a concession by counsel for Mr Matson, I ruled against the application for separate hearings.
- 77 Mr Vallelonga's solicitor then said that Mr Vallelonga now admitted the charges against him but would appeal against penalty. I note here that Mr Vallelonga later said, on day 3, that he had not agreed to plead guilty.
- 78 HRV opened their case by calling Mr Ross and Ms Harrison. Mr Ross confirmed his witness statement and Ms Harrison, who had not provided a witness statement to the Tribunal, confirmed her evidence at the RAD Board hearing. In cross-examination, both agreed:
- they did not see any physical evidence of Mr Matson training the horses at either the Bolinda or the Kilmore property;
 - when they went to the Bolinda property they were looking for the horses and to make sure nothing was being administered to them on race day;
 - they were not looking for a whiteboard and could not dispute that one was there; and



- they did not challenge Mr Matson’s statement that the horses were at his property because he had stopped off for a shower.

79 Ms Harrison agreed that the gear that was there at the Kilmore property was referable to the horses being on the way to race. In re-examination, she said that the concern about the gear was that Mr Matson was preparing the horses from his own property.

Mr Vallelonga’s evidence in chief

80 HRV then called Mr Vallelonga. Central to Mr Vallelonga’s evidence-in-chief was the statement provided by Mr Vallelonga’s solicitor to HRV, counsel for Mr Matson, and the Tribunal, marked as exhibit ‘HRV 1’.

81 I note here that counsel for HRV sought to also introduce an unsigned document which he said Mr McMonnies had given him on 29 November 2019. After discussion with Mr Toohey and McMonnies, I concluded that what he was referring to was a draft proposed statement prepared by Mr McMonnies for the purpose of discussions between HRV and Mr McMonnies; which had not been adopted by Mr Vallelonga; and was not admissible as a statement by him.

The signed statement

82 The signed statement, HRV 1, is handwritten (Mr McMonnies had apparently written it on the train), signed by Mr Vallelonga, dated 2 December 2019, and witnessed by Mr McMonnies.

83 The signed statement has several parts crossed out and some initialled additions in the same hand but a different pen. Mr McMonnies later provided an unsigned typed transcript, with paragraph numbers.

84 I have indicated below the paragraph numbers in the unsigned typed transcript, because of the relevance of cross-examination in relation to ‘paragraph 3’. The typed transcript included a paragraph 7 which is not in the signed statement and so not included below.

Statement of Vincent Anthony Vallelonga of [address]

- [1] On 28 September 2019 I was interviewed by telephone by Steward Harrison.
- [2] I am prepared to give evidence in the hearing at VCAT at the request of the Stewards and I will state that the contents of the telephone interview (as transcribed in the Court Book) is true and correct.
- [3] Mr Matson was the trainer of the whole team at that time including West Village Emily [sic] and Could be Woody with the assistance of Mr Hill.
- [4] Mr Matson approached me to use my name in respect of his two horses West Village Emily [sic] and Could be Woody.
- [5] I reluctantly agreed to use my name as trainer as he was helping with my whole team.



[6] I was physically unable to train or work horses at this time due to having a broken femur and fractured hip. Any suggestion I did this is untrue.

[no paragraph 7 in the signed statement]

[8] I was stupid to agree to help him out and use my name and regret doing so.

I hereby acknowledge that this statement is true and correct and I make it in the belief that a person making a false statement in the circumstances is liable to the penalties of perjury.

[signed]

V A Vallelonga

Dated 2 December 2019

Witnessed by Allan McMonnies.

85 The sworn evidence in chief by Mr Vallelonga was, in summary:

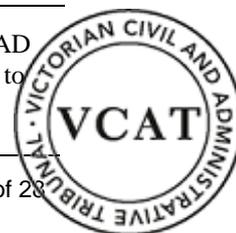
- In the interview, he answered the questions that were put to him.
- He told the truth.
- He didn't ask Ms Harrison any questions – at the time she rang him he was asleep and was on medication for a broken femur and fractured hip and just answered the questions that were asked.
- He could have been more specific about the answers if he had been more 'switched' at the time.
- The contents of the statement are true and correct.

Mr Vallelonga's evidence in cross examination

86 Under cross-examination by counsel for Mr Matson, Mr Vallelonga said or agreed to the following:

- He was telling the truth when he gave evidence at the RAD Board.
- He knew the evidence was important to the RAD Board, that it was a formal setting and serious issues were at stake.
- He told the truth in his evidence about the whiteboard to the RAD Board.
- When he spoke of the trouble that he warned Mr Matson about, his concern was in the context of being responsible as trainer.
- He was telling the truth in his evidence at the RAD Board, including:²²
 - when he said that what he meant (by saying he wasn't training them), was that he was not training the horses physically because

²² Counsel for Mr Matson took Mr Vallelonga almost line by line through his evidence at the RAD Board hearing. I refer to without repeating the transcript of the cross-examination which was to the effect that he was telling the truth.



he couldn't and he had Mr Matson, Mr Hill and Mr Roots giving him a hand;

- when he said that Mr Matson was working the horses under his direction;
- when he said that his instructions were mainly written on the whiteboard every day;
- when he told the Chairman he was the trainer;
- when he said that he was actually training the horses, under his direction and Mr Matson was doing the legwork; and
- when he said that he meant Mr Matson was in charge of the horses, he meant on that day, because he assumed Ms Harrison was asking about that day.

87 Counsel for Mr Matson then asked Mr Vallelonga about the statement HRV 1. There was the following exchange:

You see, what I don't understand is this, Mr Vallelonga. If you were telling the truth when you made those statements to the RAD Board were you also telling the truth in paragraph 3 of this witness statement when you say Mr Matson was the trainer? - - - Well, he was working because I was physically unable to do them, but he wasn't there as the trainer, no.

But he wasn't the trainer was he? - - - No.

Who²³ was doing the work? - - - No, correct.

So paragraph 3 of your witness statement is incorrect where you say Mr Matson was the trainer, isn't it - - - Yes.

When you say that, 'He was helping with my whole team,' in paragraph 5,²⁴ that is a more accurate statement of the reality isn't it? - - - Yes, it is.

88 That ended the cross-examination.

89 Counsel for HRV then made application to have Mr Vallelonga declared an unfavourable witness. Counsel for Mr Matson opposed the application. He agreed that Mr Vallelonga had just given evidence unfavourable to HRV that was also inconsistent with what he had said in examination in chief. However, given that the only evidence in support of the allegation that Mr Matson ever trained the horses is particular interpretations of what Mr Vallelonga said at different times, whatever Mr Vallelonga might say next, it was clear that he was 'totally unreliable'. There was therefore no case against Mr Matson.

90 I told counsel I proposed to allow the application on the grounds that the evidence was certainly unfavourable, and Mr Vallelonga's credit was at the heart of HRV's case, but I remained concerned about the risk Mr

²³ The transcript has 'Who' but this appears to be a mis-transcription of 'He'.

²⁴ 'I reluctantly agreed to use my name as trainer as he was helping with my whole team.'



Vallelonga was exposed to as a result of giving apparently inconsistent evidence. There was then a discussion about enabling Mr McMonnies to speak to Mr Vallelonga on a limited basis, subject to any ethics advice he (Mr McMonnies) should receive in the meantime.

- 91 When the hearing resumed after the lunch adjournment, Mr McMonnies advised that he was in a position where he needed to cease to act. He said he was not supposed to and so did not provide reasons.
- 92 There was then a discussion about the status and reliability of Mr Vallelonga's plea of guilty to the three charges, in the light of the evidence that had just been given, and the need for him to have independent advice.
- 93 Counsel for Mr Matson's proposed no case submission was deferred because as things stood, Mr Vallelonga was still to be re-examined. (It was ultimately not made).
- 94 Mr Vallelonga confirmed that he wanted the opportunity to obtain independent representation.
- 95 The hearing was then adjourned. It was proposed to resume on 11 December 2019. I became unavailable on that date. Mr Vallelonga in any event had difficulties with obtaining independent representation into 2020 and then had a further hospitalisation due to his leg not having healed properly from the previous injury.
- 96 The hearing resumed on 27 October 2020.

Day 3

- 97 Mr Vallelonga appeared with Mr Lance Justice as a non-legal representative. Mr Justice advised the Tribunal that he had had discussions with Mr McMonnies and Mr Vallelonga wished to withdraw his application for review. He said that because of his injuries, Mr Vallelonga was unlikely to be able to train horses in the near future. He was still available, however, to give evidence.

Mr Vallelonga's evidence in re-examination

- 98 Consistent with leave given to treat Mr Vallelonga as an unfavourable witness, I allowed counsel for HRV to ask leading questions but with the content directed to the inconsistent statements made.
- 99 The re-examination did not advance HRV's case, in my view.
- 100 It provided an opportunity for Mr Vallelonga to:
- say more about what he meant when he answered the Stewards' questions on 28 September 2018;
 - explain his expressed concerns about Mr Matson and why he wanted to move the horses off his property (they had started going to races and he was worried about race-related breaches because of Mr Matson's record);



- explain his readiness to agree with them being scratched (they were found on a disqualified property on race day, so it was inevitable);
- make some sense of what had appeared to be inconsistencies (he used ‘train’ and ‘work’ interchangeably);
- explain that he had withdrawn his application for review not because the charges were true but because he could not afford a lawyer, Mr Justice had advised him to do so, and he was no longer in the industry;
- confirm his evidence in cross-examination by counsel for Mr Matson that the witness statement was not correct; and
- raise some serious questions about the circumstances in which he had signed the handwritten statement. He said he was not comfortable signing it; he should not have signed it; he told his lawyer he was not happy about it, but was told by his lawyer it was part of the deal being discussed; and that his lawyer was cutting a deal to get a reduced disqualification period if he signed a statement.

- 101 In the course of re-examination, counsel for HRV suggested to Mr Vallelonga that he was ‘telling lie after lie’ and was ‘playing games.’
- 102 Mr Vallelonga denied the suggestion and said that he was answering the questions he was asked. He said that he is not a good speaker but that he was telling the truth. He denied that the only time he told the truth was in the interview with the Stewards.
- 103 Counsel for HRV concluded re-examination at the end of the day and advised that was the close of the case for HRV. Counsel for Mr Matson said that he would open the following day and call his witnesses: Mr Matson, his partner Maryanne Laffan, their daughter Dellareece Matson, and Tommy Hill. Each had made witness statements.
- 104 I make the following observations about the evidence given by Mr Vallelonga as at the close of HRV’s case.
- 105 In re-examination, counsel for HRV objected to what he said were non-responsive answers by Mr Vallelonga. In my view, Mr Vallelonga was not an unresponsive witness, although his answers may have been unwelcome. As submitted by counsel for Mr Matson, Mr Vallelonga’s answers were directed to the questions he was asked. His answer to the question about the witness statement, for example, was in response to it being put to him that it was true and correct.
- 106 Contrary to the submissions on behalf of HRV that Mr Vallelonga was lying, my impression of Mr Vallelonga was that in re-examination he was, perhaps finally, telling the whole truth. Counsel for the HRV suggested he was ‘playing games’ but there was no evidence of it, or of any collusion with Mr Matson. He had withdrawn his application for review. Relevantly, he had nothing to lose or gain by telling the truth.



- 107 My impression from his evidence on re-examination was that, from Mr Vallelonga's perspective, he had been truthful to Stewards but there had been more to say. He could have chosen his words more carefully and would have if he had been more 'switched on'. He had said 'training' when he meant 'working'. He had agreed he said Mr Matson was in charge of the horses but said he meant that he was in charge of the horses on that day. At the RAD Board hearing, he said, he had told the truth.
- 108 While it might seem implausible that a trainer would use the words 'train' and 'work' interchangeably, Mr Vallelonga gave sworn evidence that was what he meant. I must take that evidence into account when weighing the evidence of what Mr Vallelonga said in the interview with Ms Harrison, for the purposes of the case against Mr Matson.
- 109 It is certainly plausible that Mr Vallelonga assumed he was being asked about who was in charge of the horses on that day, when the preceding sequence of questions and answers are taken into account.
- 110 Mr Vallelonga's evidence in cross-examination by counsel for Mr Matson, and in re-examination/cross-examination by counsel for HRV, also raised doubt, about the plea of guilty communicated by Mr McMonnies, as discussed earlier. In re-examination, counsel for HRV put to Mr Vallelonga that he had pleaded guilty. Mr Vallelonga denied it. He said he did not plead guilty, and that after receiving advice from Mr Justice he withdrew his application. In submissions, HRV relied on the plea. After considering the evidence given in cross-examination and re-examination, my view is that there is insufficient certainty for the plea to stand as a matter adverse to Mr Matson.

Day 4

- 111 When the hearing resumed, counsel for HRV said that, given what had been said by Mr Vallelonga and his unresponsive answers, he sought to reserve the right to re-open HRV's case. Counsel said that they wished to speak to Mr McMonnies and potentially call him as a rebuttal witness, to rebut Mr Vallelonga's 'lie' about a deal and his evidence that he was unhappy about signing the statement.
- 112 Counsel for Mr Matson submitted that there was little utility in calling Mr McMonnies, and his evidence was likely to have little probative weight. It was common for there to be discussions behind the scenes about potential agreement, similar to plea-bargaining in the criminal courts. Further, HRV should not be allowed to call more evidence once Mr Matson had opened his case: he was entitled to know the case against him before he opened his case.
- 113 I expressed my reservations about the utility of calling Mr McMonnies, even if he were able to give evidence about what occurred between himself and his client (because of lawyer/client privilege). I considered, however, that HRV should have a reasonable opportunity to call a rebuttal witness if they thought it advisable, given the unexpected nature of Mr Vallelonga's



evidence about the statement, but could not reserve the right to do so. Mr Matson was entitled to insist on HRV's case being closed before he gave evidence. And costs of any adjournment would be reserved.

- 114 Counsel for Mr Matson advised that he would waive that entitlement rather than have a further adjournment, as Mr Matson could not afford the costs of further days of hearing. In the event, HRV later advised that Mr McMonnies had said he was not able to give evidence, on advice, and confirmed the closure of their case as at the end of day 3.

Summary of the evidence for Mr Matson

- 115 Mr Matson filed witness statements of himself, his partner Ms Laffan, their daughter Ms Dellareece Matson, and Mr Tommy Hill dated November 2019. Each gave evidence on day 4, confirmed their witness statement, and was cross-examined.
- 116 Mr Matson's evidence was consistent with the evidence he gave at the RAD Board hearing, summarised in the Overview section of these reasons, with some additional information about what was on the whiteboard on 28 September 2018.²⁵ Despite lengthy cross-examination, he was not shaken on the essential elements of his defence – that he was working the horses at the direction of Mr Vallelonga and was not the trainer, that Mr Vallelonga was the trainer.
- 117 Mr Hill gave evidence that in 2018 he was a volunteer worker at Mr Vallelonga's stables. From early 2018, he had been doing fast work and jogging horses one morning a week. From 19 July 2018, after Mr Vallelonga's accident, until early November 2018 he helped out at the stables four or five mornings a week. Mr Matson was also working at the stables part time. Mr Hill stated that Mr Vallelonga would give verbal instructions to them or by writing on the whiteboard that was fixed to the wall in the shed at the stables. The whiteboard also had useful phone numbers, the names of the horses and the yards they were kept in.
- 118 Ms Matson gave evidence that she went to Mr Vallelonga's stables with her father on four occasions in September 2018. She helped her father with feeding and working the horses (she had a stablehand's licence at the time which lapsed and has applied for a trainer's licence). She stated that the first time she went there, an HRV Steward, Steven Svanosio, was there to check the condition of a horse after a complaint by an owner and asked them to catch the horse for him. Mr Vallelonga was there, and after checking the horse and taking photos, Mr Svanosio told him in Ms Matson's presence that he had nothing to worry about.
- 119 Ms Matson stated that on the second occasion she and her father worked the horses according to the instructions on a whiteboard. Mr Vallelonga arrived and she heard him and her father have a conversation about the horses and their training. Mr Vallelonga went home after about two hours

²⁵ He said the instructions were 'to work (jog) 4 horses for 8 laps on the track for each horse'.



as he was not feeling well. On the third occasion, Mr Vallelonga was at the stables and she and her father worked all the horses under Mr Vallelonga's direct instruction. On the fourth occasion, Mr Vallelonga was not there. He had left instructions on the whiteboard.

- 120 Apart from uncontentious matters about her disqualification and what she did and saw on 28 September 2018, Ms Laffan gave evidence that Mr Matson had been helping Mr Vallelonga 'on and off' since June 2018, when a full-time worker left. After the stable accident, Mr Matson had helped out 'most days' to work the horses that were racing, with the help of Tommy Hill and on a few occasions with Dellareece. Mr Matson was helping Mr Vallelonga around his work schedule as a GWE (guaranteed wage earner) at Qube Ports. He has a minimum of 26 hours work a fortnight and receives a text each day at 4pm telling him if he has to work. The shifts are mornings, afternoon, and evening. Each shift can be anywhere from seven to 12 hours per shift. She knew, because Mr Matson told her and because she answered the phone a few times when Mr Vallelonga rang, that Mr Vallelonga would ring Mr Matson most mornings to see if Mr Matson would pick him up from his home; tell Mr Matson he might make it to the stables; or say the instructions for the day were on the whiteboard.
- 121 Counsel for HRV submitted that I should treat the statements made by Ms Laffan, Ms Matson and Mr Hill with 'scepticism, suspicion and incredulity.' I declined to do so for the following reasons.
- 122 I gave weight to the evidence of Mr Hill. While not entirely independent – Mr Vallelonga had given him rides in return for his help at the Bolinda stables – as a non-family member and a hobby trainer, he has no stake in the outcome of this case and he impressed me as a good witness who answered questions with care. He was patient in cross-examination and not shaken on his evidence, which I accepted.
- 123 Ms Laffan and Ms Matson are not independent witnesses, and occasionally showed impatience with the questions they were being asked in cross-examination, but they both gave me the impression of doing their best to give truthful answers within the limits of their knowledge, making concessions as appropriate. As a registered trainer and an applicant for a trainer's licence respectively, they would have a great deal to lose if they were to give untruthful evidence at a hearing under the *Racing Act*.
- 124 Each were shaken on relatively minor (in my view) aspects of their statement, in Ms Matson's case to do with dates and whether she worked and/or fed the horses on particular occasions. I accept Ms Matson's evidence that she went to Mr Vallelonga's property on several occasions in September 2018 to help her father with the work, including on the occasion she described when Mr Vallelonga and a Steward were there (the latter aspect of her evidence was not challenged). She was not shaken on the important aspect of her evidence, that there were either instructions on a whiteboard, or, if Mr Vallelonga was there, he gave them direct instructions.



- 125 Most of Ms Laffan's evidence was indirect evidence. The most relevant part of her evidence, in my view, was the details she gave of her husband's work, how it was scheduled, and the demands on his time. It was consistent with his evidence about the restrictions on his ability to go to the Bolinda property on a full-time basis, and consistent with Mr Hill's evidence that Mr Matson worked part-time at the stables.
- 126 Contrary to the submission on behalf of HRV, I did not regard it as a matter of criticism that they had not made statements until November 2019, some eight months after the RAD Board hearing and had not been called to give evidence there, primarily because Mr Matson only became independently represented after that hearing, and also because those statement were expressly prepared for the VCAT hearing in December 2019.

CONSIDERATION AND CONCLUSION

- 127 I have carefully considered the evidence and submissions made in this case. I refer to without repeating the observations made throughout these reasons in relation to what has to be proved, and to what standard, and my observations and findings on the evidence.
- 128 Counsel for HRV submitted that this is a very straightforward case, and that the case against Mr Matson is overwhelming. I disagree.
- 129 HRV's case against Mr Matson relies entirely on what Mr Vallelonga has said. The problem is that Mr Vallelonga has said different things at different times and in different circumstances.
- 130 Counsel for HRV submitted that it was open to me to believe what Mr Vallelonga said to the Stewards in the phone interview and in his evidence in chief before me, and disbelieve what he had said at the RAD Board hearing and in his evidence before me in cross-examination and re-examination. Counsel for Mr Matson submitted that the opposite conclusion was equally open, and this was the essential problem with HRV's case.
- 131 The conflict between Mr Vallelonga's evidence in chief in adopting the witness statement, and his evidence under cross-examination and re-examination remains problematic, for him and potentially for his lawyer.²⁶ But I do not consider this should be regarded as a problem for Mr Matson.
- 132 In essence, HRV chose to call Mr Vallelonga as its witness. If, as submitted on behalf of Mr Matson, he is an unreliable witness, the weight of his evidence, as against Mr Matson, is inevitably reduced. Equally, if, as contended by HRV, Mr Vallelonga lied on oath, the weight of his evidence is considerably reduced. If, contrary to the submissions of HRV, he used imprecise language when he spoke to Stewards and has satisfactorily explained what he meant, his evidence overall is in Mr Matson's favour.

²⁶ Save to observe that in disciplinary proceedings there are often negotiations between the parties that may or may not result in a 'plea', and to note that counsel for HRV said there was no 'deal', do not, in my view, need to resolve what may have happened 'behind the scenes'.



- 133 Requiring precise proof in this case is about more than ‘niceties of definitions’ – I refer to the discussion earlier about what it means to ‘train’ a horse. The charges laid against Mr Matson are of fraudulent and corrupt conduct, which are of the utmost seriousness, with grave consequences for him, not only in his professional life as a driver. As the *Briginshaw* principles tell us, such charges require more than ‘inexact proofs, indefinite testimony, or indirect inferences’ to be proved to the reasonable satisfaction of the Tribunal. At the very least, the evidence of what Mr Vallelonga has said constitutes indefinite testimony, in my view.
- 134 With the standard of proof in mind, I have weighed in the balance with what Mr Vallelonga has said on the occasions relied on by HRV, the consistent evidence of Mr Matson, supported by the sworn evidence of Tommy Hill before me, part of the sworn evidence of Mr Vallelonga, and to a more limited extent, the evidence of Ms Dellareece Matson and Ms Laffan. The standard of proof has not been met in my view.
- 135 For the reasons above, I am not comfortably satisfied that the charges against Mr Matson are proved. The charges will be dismissed.

E Wentworth
Senior Member

