RACING APPEALS TRIBUNAL

RAT 1/20

DATE OF HEARING: TUESDAY 25 FEBRIUARY 2020

TRIBUNAL: **PRESIDENT**: MR T ANDERSON QC

IN ATTENDANCE:

MR MATT SANTORO, DEPUTY CHIEF STEWARD, THOROUGHBRED RACING SA LTD

APPELLANT: MR C CURTIS

IN THE MATTER of an Appeal by **MR CRAIG CURTIS** against a decision of Thoroughbred Racing SA Ltd Stewards.

BREACH OF RULES: Rule 231(1)(b)(ii)

"A person must not, if the person is in charge of a horse, fail at any time to take such reasonable steps as are necessary to alleviate any pain inflicted upon or being suffered by the horse."

Rule 231(1)(b)(iii)

"A person must not, if the person is in charge of a horse, fail at any time to provide veterinary treatment to the horse where such treatment is necessary for the horse."

PENALTY: 9 months disqualification

DETERMINATION

Mr Craig Curtis is a TRSA licensed trainer within South Australia.

He is 58 years of age and has held a licence for 32 years.

He appeals from a decision of the TRSA Stewards given on 23 January 2020 in which he was disqualified from training for a period of nine months.

He claims that the penalty was too severe.

The Stewards inspected Mr Curtis's stables on 13 December 2019 and found an unnamed thoroughbred filly that was emaciated and distressed and with what appeared to them to be a broken leg.

Originally the Stewards charged Mr Curtis with three offences, but on reflection they decided not to proceed with the first of those charges, which was failing to exercise reasonable care of the horse so as to prevent an act of cruelty.

The charges which proceeded were pursuant to Rule 231(1)(b)(ii). The rule reads, *"A person must not, if the person is in charge of a horse, fail at any time to take such reasonable steps as are necessary to alleviate any pain inflicted upon or being suffered by the horse."*

He was also charged under Rule 231(1)(b)(iii). The rule reads, *"A person must not, if the person is in charge of a horse, fail at any time to provide veterinary treatment to the horse where such treatment is necessary for the horse."*

Mr Curtis pleaded guilty to both of the above charges.

The Tribunal was shown photographs of the horse, taken at the time of inspection, and they are indicative of a lack of proper care.

In the photos the horse is seen to be severely emaciated, and that is obvious to anyone looking at the photographs.

Some six weeks prior to the attendance of the Stewards, the filly had been inspected by a veterinary surgeon, Dr Jade Mather.

Mr Curtis was advised by Dr Mather that the horse had what appeared to be a broken leg and should be euthanised. Mr Curtis proceeded to treat the filly with a bandage and with a dose of painkiller every second day.

On 13 December 2019, the day of the Stewards' inspection, the filly was inspected by another veterinarian, Dr Peter Horridge, who examined the horse at the request of the Stewards.

In his evidence Dr Horridge indicated that the pain relief dosage which Mr Curtis was giving the horse was quite inadequate for a horse in such a poor condition and in considerable pain.

Dr Horridge said in his evidence, *"The horse had a very enlarged fetlock area on its off-hind leg. The horse had considerable muscle wastage on the offside rump area and was in relatively poor condition and was unable to weight-bear on the offside leg."*

Dr Horridge said that he believed euthanasia was the most appropriate course of action.

In giving that opinion he took into account that the condition had been longstanding.

He also took into account the fact that the horse was in considerable discomfort because of its inability to weight-bear on its leg.

As to the possibility of salvaging the horse, Dr Horridge said, *"If the intention was to salvage the horse, there should have been more intensive treatment associated with the condition."*

Dr Marmion was another veterinarian consulted by the Stewards and he examined the X-rays and the photos. He said that the horse was in *"very light condition".*

He went on to say, with the emaciated condition and a lot of muscle wasting over the affected right hind leg, and the fact that the horse was only able to weight-bear marginally on the toe of that leg, it meant, in his view, that without doing diagnostic tests, euthanasia was the most appropriate course of action.

Dr Marmion said that the horse had a chronic condition that had been going on for some time which was not responding to rest.

He said it appeared to him most likely to be an infection of the right hind digital tendon sheath and the horse appeared to be in a lot of pain.

He said further that, at the time he examined the X-rays, if it was able to be diagnosed, the most appropriate action would be to perform surgery on the leg by doing an arthroscopy on the tendon sheath and cleaning it out.

The horse was euthanised as a result of the opinions obtained by the Stewards.

After considering the evidence, the Stewards then decided to lay the charges to which I have referred to earlier.

As I indicated, they initially laid three charges but then decided to not proceed on the first charge.

In relation to the charges to which Mr Curtis pleaded guilty, the particulars provided by the Stewards in relation to the breach of AR 231(1)(b)(ii) are that, *"Mr Curtis, as a licensed trainer and a person in charge of the unnamed thoroughbred filly, failed to take such reasonable steps as were necessary to alleviate any pain suffered by the horse".* They went on to add, *"those reasonable steps being either (a) to have the horse euthanised on or closer to the time of the advice being received from Dr Mather, or (b) to engage in a more extensive veterinary program of care to facilitate the possible rehabilitation of the horse".* In relation to the charge under AR 231(1)(b)(iii), the particulars alleged by the Stewards are that, *"Mr Curtis, as a licensed trainer and a person in charge of the unnamed filly, failed to provide veterinary treatment to the horse referred to by failing to seek further veterinary treatment between the time of the examination on 1 November 2019 by Dr Mather and the time of the arrival of the TRSA Stewards at his stable on Friday, 13 December 2019".*

The Stewards provided brief reasons after accepting the pleas of guilty to both charges.

Their brief reasons were stated as follows: *"We believe that the horse was in your care, that you should have acted in a more prompt manner after receiving the advice from Dr Jade Mather on or about 1 November 2019 in either seeking further veterinary advice or making immediate arrangements to have the horse euthanised."*

Mr Curtis said in his evidence that, based on his experience, he believed that bandaging and treating with medication might work.

Mr Curtis submitted to the Stewards that none of his actions were intentional in relation to causing harm to the horse.

He said, *"I was negligent in the fact that I probably should have moved things a lot quicker than what I did."*

At the hearing before the Tribunal, Mr Curtis indicated that he wanted to call an expert witness, another veterinarian, Dr Olivier Simon, who would also act as his advocate. I informed him that it was not possible for Dr Simon to undertake both roles.

On reflection Mr Curtis then asked that Dr Simon be called to give evidence as an expert.

Dr Simon is a highly qualified veterinarian, specialising in horses.

I indicated that I would hear Dr Simon's evidence to decide whether it was relevant.

After hearing his evidence, I have decided that it was marginally relevant.

I say "marginally" because he was at the distinct disadvantage of never having seen the horse either dead or alive.

He had, however, examined the X-rays and photographs taken by the Stewards plus earlier photographs taken by Mr Curtis before the condition of the horse deteriorated.

His evidence was to the effect that there was no fracture to be seen on the X-rays. To that extent, he is probably on the same footing as Dr Marmion.

Whatever the cause, Dr Simon agreed that what was shown on X-rays was indicative of a serious problem and that it had to be treated.

He said he would have ordered ultrasound images and taken blood to test for infection.

Dr Simon agreed that, on the history that he had obtained and observing the photographs, there had been a rapid deterioration in the condition of the horse over a period of 6 weeks.

He said this could be caused by not being fed correctly or by not processing the food correctly. It could also be caused by pain. It could further be caused by disease.

From his expertise, he said that he observed on X-rays, "advanced remodelling of both proximal sesamoid bones".

He explained this as meaning that the profile of the bone is profoundly changed and there is a proliferation of bone around the normal shape of the bone. He agreed that the changes observed on the X-rays marked significant trauma to those

bones, but he added that the trauma could have been caused by infection or direct shock. He maintained, however, that is was not due to a fracture.

He said that Mr Curtis probably should have sought additional advice when the horse was not responding. He agreed that the horse was in a poor condition but added that it had potentially missed the chance of a better outcome if more diagnostic procedures had been used at the outset.

As I have indicated, I regard this evidence as only marginally relevant because there is not that much difference between the views expressed by the veterinarians and in the end result, it probably doesn't make any difference whether the leg was broken as suggested by Dr Mather, or whether the views expressed by Dr Marmion and Dr Simon are correct.

Whatever the case, the rapid deterioration of the horse and the failure to seek further professional advice tells heavily against Mr Curtis.

The Stewards considered their options in relation to imposing a penalty. They did not consider that a reprimand was an appropriate penalty in the circumstances. I agree with that decision. Likewise, they believed that a fine was inappropriate. Again, I agree.

Because of the seriousness of the offending the Stewards decided that suspension was not an appropriate penalty. Again, I agree.

After considering that a disqualification was the only appropriate penalty, the Stewards said, *"In the circumstances, having regards to your guilty plea, a good clean record, your longstanding involvement in the industry, your cooperation at and during the inquiry and throughout the process, the fact that you showed remorse and the fact that your livelihood is impacted in this matter are factors that we take into account in mitigation of penalty."* They added, *"And we measure that up and contrast it, if you like, against matters such as the seriousness of the offences which impact on the welfare of horses, the negative impact on the reputation of the industry, and penalties for similar offences in Australia."*

After considering the two charges, the Stewards decided to impose a disqualification for a period of 18 months. However, having regard to all the factors, they decided that there should be a reduction of 50 per cent, and therefore the penalties were reduced to a nine-month disqualification in each case. The penalties are to be served concurrently.

The Tribunal takes into account that Mr Curtis did plead guilty to the charges. He also admitted in his evidence to the Stewards and to the Tribunal that he was negligent and that he should have followed up with professional advice.

On the whole of the evidence, there may be considerable doubt as to whether there was an actual fracture, but as I have indicated earlier, in the long run I don't believe that it makes any significant difference.

The evidence of Dr Simon does not really advance the cause of Mr Curtis, but it does confirm the fact that he should have, with his experience as a horseman, sought intervention at an earlier time.

He did say when confronted by the Stewards on 13 December 2019 that he had decided to euthanise the horse in two days' time.

That is somewhat difficult to understand in view of the fact that he was treating the horse himself with his bandaging and pain relief throughout the long period which elapsed between Dr Mather's suggestion of euthanasia, and him finally telling the Stewards that that's what he was going to do.

It is unnecessary to point out that in the meantime, the horse must have endured considerable pain, and that is not disputed by any of the experts.

I have taken into account that Mr Curtis did not intend to cause the horse unnecessary pain. However, he should have sought ongoing professional advice earlier and clearly, by continuing with his own treatment when it was not working, he was negligent, as he has admitted.

In his submissions to the Tribunal, Mr Curtis stressed the fact that he was totally dependent on the racing industry for all of his income. Aside from his training fees, which were relatively modest, he earns approximately $50,000 per annum from his work as a barrier attendant and breaking horses for the industry.

All of this income would disappear if he was disqualified.

He has no dependants.

At the time of the hearing, he had four horses in work with two to come into work. To his credit he had a clean record after 32 years in the industry.

Mr Curtis argued that a suspension was the appropriate penalty. I have already indicated I do not agree with this.

This matter was too serious for a suspension.

Mr Santoro, representing the Stewards, provided the Tribunal with two decisions from New South Wales which he said were taken into account by the Stewards. In one matter the horse had not been provided with veterinary treatment for nine months and was in an "extremely poor condition". The owner trainer was disqualified for nine months after pleading guilty to a breach of AR 231(1)(b)(iii). He was also charged with failing to provide nutrition but that is not relevant here.

In the other matter there was also a charge under AR 231(1)(b)(iii). The charged person was a trainer. The horse became lame after working and this continued for several days. The lameness became worse and did not improve. No veterinary advice was sought. The horse was finally euthanised when it suffered an injury to its off fore humerus after a manipulation. The trainer in that case was disqualified for 12 months after an initial period of 18 months was reduced because of mitigating factors.

In the case of Mr Curtis, the Stewards also took into account the matters which have previously been mentioned and set out. They took into account, as stated by them, the fact that Mr Curtis' livelihood was impacted.

Mr Curtis told me that he would not find another job and therefore his days in the racing industry were effectively finished by a 9 months disqualification.

I think this is a somewhat pessimistic attitude because he is a very experienced horseman and outside of the racing industry there must be work for someone as experienced as he is in all facets of horse breaking training and handling.

The effect of Mr Curtis' negligence was the impact on the welfare of the unnamed filly. There is also a negative impact on the reputation of the industry, as described by the Stewards, and as a matter of public importance it is imperative to create a penalty which is severe but at the same time takes account of the mitigating factors.

Mr Curtis relies solely on the racing industry for the predominant part of his income.

I consider that when this is looked at in its proper light it becomes a very important factor indeed.

I am not suggesting the Stewards did not take it into account, as they clearly did. It is my view, however, that they have underestimated the impact of a long disqualification on Mr Curtis, and for that reason I think that their starting point of 18 months' disqualification was too high.

I consider that the appropriate starting point for this disqualification in each of the two charges was 10 months. I do not disagree with the Stewards in reducing the penalty by half for the reasons which they gave.

Therefore, taking into account my assessment of the ability of Mr Curtis to derive his income from the racing industry, the final penalty should be a disqualification for five months.

The Tribunal finding is that on each charge, there will be a disqualification of five months, to be served concurrently.

I order the refund of the appropriate proportion of the bond lodged with the appeal, because the appeal has been successful.

I order that the disqualification take effect from midnight on Monday 16 March 2020 and expire at midnight on Sunday 16 August 2020.