

DECISION

Racing Integrity Act 2016, section 252AB

Review application number	RAP-37	
Name	Stuart Hill	
Panel	Ms Dianne Condon (Acting Chairperson) Mr Martin Einfeld KC (Panel Member) Ms Juanita Maiden (Panel Member)	
Code	Thoroughbred	
Rule	Australian Rules of Racing 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 when such treatment is necessary for the horse	
Penalty Notice number	PN-008521	
Appearances & Representation	Applicant	Self-Represented
	Respondent	Benjamin Campbell, MinterEllison
Hearing Date	21 & 22 August 2023	
Decision Date	28 August 2023	
Decision	Pursuant to 252AH(1)(c) the Racing decision is set aside and a decision of not guilty is substituted.	
Case references	<i>Briginshaw v Briginshaw</i> (1938) 60 CLR 336 <i>Mark Currie v QRIC</i> RAP-22, 5 June 2023 <i>Madeleine Wishart v QRIC</i> RAP-8, 12 April 2023 <i>Wayne Carroll v Racing NSW</i> , Appeal Panel of Racing NSW 5 June 2023 <i>Allan Foran v Racing NSW</i> , Appeal Panel of Racing NSW, 10 May 2023	

Reasons for Decision

Background

- [1] The Applicant in this matter, Mr Stuart Hill, is a licensed thoroughbred trainer in Mareeba. He trained the thoroughbred Vlad Vladikoff, a six-year-old gelding.
- [2] On 25 July 2023, Stewards conducted an inquiry into the circumstances surrounding the euthanasia of the registered thoroughbred Vlad Vladikoff on 13 May 2023.
- [3] Following that hearing, the Applicant was charged by way of Penalty Infringement Notice 008521 dated 25 July 2023 with breaches pursuant to Australian Thoroughbreds Racing Rule AR231(1)(b)(i)(ii)(iii) alleged on 13 May 2023. Those subsections provide:

231 Care and Welfare of Horses

(1) A person must not: ...

(b) if the person is in charge of a horse – fail at any time:

(i) to exercise reasonable care, control or supervision of the horse so as to prevent an act of cruelty to the horse;

(ii) to take such reasonable steps as are necessary to alleviate any pain inflicted upon or being suffered by the horse;

(iii) to provide veterinary treatment to the horse where such treatment is necessary for the horse;

- [4] The particulars of charges to which the Applicant entered a plea of guilty were as follows: -
- Failed to exercise reasonable care, control or supervision of VLAD VLADIKOFF so as to prevent an act of cruelty to the horse and failed to take such reasonable steps as are necessary to alleviate any pain being suffered by the horse, also further failed to provide veterinary treatment to the horse where such treatment is necessary.*
- [5] Further brief matters were alleged under the heading “Summary of reasons” in the Penalty Notice which alleged offence between-dates of 10 May 2023 to 13 May 2023:
- Between the period of 10 May 2023 & 13 May 2023, Failed to exercise reasonable care, control or supervision of Vlad Vladikoff so as to prevent an act of cruelty to the horse and failed to take such reasonable steps as are necessary to alleviate any pain being suffered by the horse, also further failed to provide veterinary treatment to the horse where such treatment is necessary.*
- [6] The Applicant was found guilty following the Stewards’ Inquiry and by way of penalty, a two-year disqualification of his trainer’s licence was imposed.
- [7] On 28 July 2023 the Applicant lodged an Application for Review under the *Racing Integrity Act 2016* (‘the Act’) with the Queensland Racing Appeals Panel seeking a review of the Stewards’ decision concerning the finding of guilt and contending that the penalty imposed was manifestly excessive.

- [8] By way of order of the Panel made on 4 August 2023, the two-year disqualification was unconditionally stayed and directions were given to the parties for the filing of evidence, submissions and any list of witnesses to be called at the hearing before the Panel.
- [9] The relevant grounds in his application for review as outlined by the Applicant relate to his assertions in summary that he is not guilty:
- (a) he was denied natural justice by the Stewards including to advance his case at the Stewards' inquiry;
 - (b) the Stewards' finding of guilt was based on misleading, irrelevant and incorrect evidence; and
 - (c) he provided veterinary attendance and treatment to Vlad Vladikoff between 10 and 13 May 2023.

[10] Before this Panel, the whole of the materials provided to the Stewards' Inquiry were admitted into evidence and considered by the Panel, as were multiple submissions and supporting documents from the Applicant.

Amendment of the Charge

- [11] At the preliminary hearing on 4 August 2023 the Panel directed the Respondent to particularise the charges alleged, on the basis that in the Panel's preliminary view, the charges as presented in the Penalty Notice were duplicitous. By way of submission filed on 8 August 2023 the Respondent conceded the charge was duplicitous and sought to amend the charge so as to narrow it to a breach of AR 231(1)(b)(iii) only; and provided particulars relevant to that narrowed charge.
- [12] At the hearing of the matter the Applicant did not oppose the Respondent's application to amend the charge with the provision of particulars accordingly. The Panel granted leave for the Respondent to amend the charge to a breach of AR 231(1)(b)(iii) with particulars as provided on 8 August 2023, save for particulars 8 and 9 which were amended with leave at the hearing. The particulars rely in part on certain statements made by the Applicant before the Stewards' inquiry and in summary are that:
- (a) as licensed trainer of Vlad Vladikoff the Applicant was the person in charge of the horse;
 - (b) at approximately 10 May 2023 the health of Vlad Vladikoff began to deteriorate;
 - (c) the Applicant was fully aware that Vlad Vladikoff was suffering from a condition that was causing pain and distress to the horse;
 - (d) the Applicant failed to provide veterinary treatment to Vlad Vladikoff where such treatment was necessary for the horse on 10 May, 11 May and 12 May 2023 until such treatment was provided at 1 to 2pm; and
 - (e) failure to provide veterinary treatment to Vlad Vladikoff when necessary resulted in the horse's condition deteriorating to a stage that ultimately veterinary advice was to euthanise the horse to prevent further pain and suffering.

[13] Whereas the Applicant pleaded guilty to the combined confusing charge laid by the Stewards, the Applicant pleaded not guilty before the Panel to the amended charge under AR 231(1)(b)(iii).

[14] As such the relevant charge for consideration in the review application is:

(1) A person must not: ...

(b) if the person is in charge of a horse – fail at any time:

(iii) to provide veterinary treatment to the horse where such treatment is necessary for the horse

[15] The elements of the breach under AR 231(1)(b)(iii) accordingly can be expressed as fourfold:

- A person in charge of a horse
- failed at any time to provide
- veterinary treatment
- where such treatment is necessary for the horse.

Evidence

[16] The evidence before the Stewards on 25 July 2023 consisted of:

- (a) a veterinary report of Dr Ethan Maloney BVSc, veterinarian of Sundance Veterinary Services Mareeba, dated 13 May 2023 who treated Vlad Vladikoff on dates relevant to the charge (and attaching photos of Vlad Vladikoff post euthanasia);¹
- (b) affidavit of Ms Kaytren Chambers dated 1 July 2023, stable hand at the Applicant's stables, regarding her involvement with the horse across the relevant dates;²
- (c) various Stable Inspection reports and associated file notes of Mr Paul Gillard, QRIC Steward, regarding stable inspections conducted at the Applicant's stables between 6 May 2021 and 28 March 2023;³
- (d) file note of Mr Gillard of 12 March 2023 of a conversation with Dr Maloney regarding the horse 'Little Annie Fanny';⁴
- (e) email of Dr Maloney to Mr Gillard dated 2 June 2023 enclosing his veterinary certificate dated 31 May 2023 regarding the horse Buwan;⁵ and
- (f) email between Mareeba Turf Club and the Applicant dated 8 March 2023⁶ and email between Mareeba Turf Club and Mr Gillard dated 7 July 2023,⁷ both concerning the Applicant's outstanding stable fees with the Turf Club.

[17] Neither Ms Chambers nor Dr Maloney gave oral evidence to the Stewards, nor was either present for cross-examination – statements made by the Applicant were made largely in response to questions from the Stewards. A transcript of the Stewards' Inquiry was produced and available before the Panel.

[18] Before outlining in sequence the evidence as it relates to the dates pertaining to the charge up until Vlad Vladikoff was euthanised,⁸ it's useful to outline the general evidence of Ms Chambers, Dr Maloney and the Applicant.

[19] Ms Chambers was not made available for cross-examination before the Panel. Her affidavit of 1 July 2023 provided to the Stewards sets out that:

¹ Exhibit 2

² Exhibit 1

³ Exhibit 6

⁴ Exhibit 6

⁵ Exhibit 3

⁶ Exhibit 4

⁷ Exhibit 5

⁸ 'relevant dates'

- (a) she holds a current thoroughbred stable hand licence effective from 21 March 2023;
- (b) she was employed by the Applicant as a stable hand at the Yuin Me Racing Stables and Services between 21 March 2023 and 28 May 2023;
- (c) she held 50% ownership of Vlad Vladikoff since 14 April 2023;
- (d) the other 50% ownership of Vlad Vladikoff was held by the Applicant;
- (e) Vlad Vladikoff was agisted at the relevant time with two other horses trained by the Applicant, namely 'Little Annie Fanny' and 'Leo's Knight';
- (f) across the relevant dates her mother was in attendance with her when she attended the agistment property as she was on a learner driver's permit; and
- (g) in relation to her employment with the Applicant she was not paid regularly and that she is in discussions with Fair Work regarding the matter.

[20] Dr Maloney's report was before the Stewards; despite an indication being given by the Panel at a preliminary hearing on 4 August 2023 that:

- (a) appropriate veterinary evidence might prove valuable to the Panel; and
- (b) a direction that any additional evidence might be provided by the Respondent no later than a specified date, later extended at the Respondent's request,

no additional veterinary evidence was filed before the review hearing began.

[21] Following a late application at the hearing proper before the Panel to lead evidence from Dr Maloney, the Respondent was granted leave by the Panel to lead evidence from Dr Maloney confined only to his direct evidence as to his conversations with the Applicant between 10 May 2023 and 13 May 2023.

[22] The Panel declined to permit further evidence from Dr Maloney of an "expert" nature, because that may have required an adjournment to permit the Applicant to obtain and serve competing veterinary evidence, not possible in light of the narrow timeframe provided by the legislation within which the Panel must give its decision.⁹ Evidence of conversations between the Applicant and Dr Maloney on the other hand could be answered without further delay. Accordingly leave was given to the Respondent to adduce further evidence from Dr Maloney of conversations he had with the Applicant but not evidence of an expert nature.

[23] The Respondent subsequently tendered a draft affidavit of Dr Maloney on the second day of hearing which Dr Maloney orally affirmed in the hearing. Dr Maloney confirmed to the Panel he has been a registered veterinarian since 2014. His evidence was that his report of 13 May 2023 was prepared from clinical notes he took at the end of each day across the relevant dates and that he was requested to prepare that report by the Stewards on 13 May 2023.

[24] Dr Maloney's evidence was also that his draft affidavit was prepared on 21 to 22 August 2023 having regard to his recollection based on his report prepared on 13 May 2023.

[25] Arising from Dr Maloney's evidence the Panel requested Dr Maloney's affidavit in final verified form. In his evidence to the Panel Dr Maloney also indicated that he could make available the clinical notes upon which his report was based. Neither of these documents have been subsequently provided to the Panel.

⁹ *Racing Integrity Act 2016* s.252AG(a)

[26] In his evidence before the Stewards and the Panel, by way of general matters, the Applicant gave evidence that as at May 2023 he:

- (a) was a trainer licensed by the Queensland Racing Integrity Commission (QRIC);
- (b) was accordingly bound by the Australian Rules of Racing;
- (c) was the holder of a restricted licence and had been training for 2 years;¹⁰
- (d) was the owner of the related business Yuin Me Racing Stables and Services;
- (e) had one employee, being Ms Chambers as a stable hand;
- (f) was the licensed Trainer of the registered racehorse Vlad Vladikoff;
- (g) was the co-owner of Vlad Vladikoff by way of 50% share with Ms Chambers in equal share;
- (h) was the person in charge of the horse Vlad Vladikoff between 10 May and 13 May 2023 and was the ultimate decision maker regarding his care and treatment;
- (i) had Vlad Vladikoff being spelled on a private agistment property owned by Ms Rachel Shred at Lot 73 Querin Road Bihboorha;
- (j) had two other horses trained by the Applicant at the same agistment property, namely Little Annie Fanny and Leo's Knight;
- (k) provided daily care to Vlad Vladikoff, Little Annie Fanny and Leo's Knight in the spelling paddock at the property; and
- (l) had a horse in training at stables at Mareeba Turf Club, namely Buwan, to which he also provided daily care.

Events of 10 to 13 May 2023

Wednesday 10 May 2023

[27] Regarding the events of Wednesday 10 May 2023 the affidavit of Ms Chambers outlines that:¹¹

- (a) at 8:30am on 10 May 2023 she arrived with the Applicant and her mother at the agistment paddock to feed Vlad Vladikoff and two other horses the Applicant trained;
- (b) she observed signs in Vlad Vladikoff of what she considered to be colic, including lack of interest in the food she offered, that he was showing signs of discomfort (digging at the ground and flehmen response) and that he lay down on the grass letting out a big groan;
- (c) together with the Applicant they coaxed Vlad Vladikoff off the ground and Ms Chambers hand-fed him feed with molasses mix until he became disinterested and lay down back on the grass letting out another groan;
- (d) she suggested to the Applicant an urgent vet visit to assess Vlad Vladikoff's condition and give any treatment required;
- (e) later in the day at 4:20pm she received a message from the Applicant on facebook messenger to the effect that the horse was down and that "he needs a vet" and that the Applicant stated that he will try and get in touch with Dr Maloney;

¹⁰ Transcript of Stewards' Inquiry of 25 July 2023 line 1058

¹¹ Exhibit 1 paragraphs 8 to 30

- (f) at about 6:45pm she met the Applicant again at the agistment property as agreed with him where she saw Vlad Vladikoff laying in the paddock. He showed no interest in food when she offered it to him and he was moving his legs and groaning;
- (g) she stayed until about 8:30pm, leaving the Applicant with the horse and at which time she states Vlad Vladikoff was still showing clear signs of pain and discomfort and no signs of improvement in his behaviour; and
- (h) she had not had a clear indication from the Applicant that day whether a vet had been called.

[28] The Applicant's evidence regarding the events of Wednesday 10 May 2023 before the Stewards in summary was that:

- (a) the Applicant was made aware by Rachel Shred, owner of the agistment property, that Vlad Vladikoff was unwell and he went to the property to check on the horse;¹²
- (b) when he first saw Vlad Vladikoff he seemed to be unwell,¹³ in pain and seemed to be uncomfortable;
- (c) he did not consider the symptoms to be signs of a colic nature;¹⁴
- (d) the exact nature of the health of the horse and what was wrong with him was unknown to the Applicant at the time;¹⁵
- (e) this is the first day that Vlad Vladikoff was down and he coaxed him up;¹⁶
- (f) he agreed with the Stewards the horse was showing obvious signs of distress and pain and that's why he called the vet;¹⁷
- (g) he called Dr Maloney that evening and had a lengthy conversation, where Dr Maloney stated that he would come and check on the horse if the Applicant needed him to, however the Applicant said to Dr Maloney it wasn't necessary for him to come at that time. He informed Dr Maloney he did not consider it to be colic to which Dr Maloney somewhat agreed;¹⁸
- (h) the Applicant asked Dr Maloney whether he should give Vlad Vladikoff two different pain medications he had, being Bute paste and TMPS paste,¹⁹ to which Dr Maloney responded in the affirmative to give both medications and advising the Applicant to monitor the horse closely;²⁰
- (i) on Dr Maloney's advice the Applicant orally treated Vlad Vladikoff with both medications that evening and stayed with the horse, monitoring him for a couple of hours;²¹ and
- (j) the Applicant's belief at this time was that he thought it was unnecessary for Dr Maloney to come see Vlad Vladikoff as he thought it was something he could manage, based on the conversation with and the advice of Dr Maloney and the horse's response to the medication.

¹² Transcript of Stewards' Inquiry of 25 July 2023 lines 968-969

¹³ Ibid line 970

¹⁴ Ibid line 972

¹⁵ Ibid line 385

¹⁶ Ibid line 364

¹⁷ Ibid line 379-381

¹⁸ Ibid line 972-973

¹⁹ Ibid line 614-616, 1041

²⁰ Ibid lines 614-616, 629-632 & 973-975

²¹ Ibid lines 975-976

- [29] Before the Panel the Applicant relayed much of the evidence he gave to the Stewards. He confirmed he had a half hour conversation with Dr Maloney at 6:45pm where he said he described Vlad Vladikoff's symptoms of pawing at the yard, reluctance to eat and drink and wanting to lie down, which he stated were similar to colic. However, he gave evidence to the Panel that he didn't think it was colic because Vlad Vladikoff was not wanting to go down, he was not rolling and tossing and that they even had him up and walking around.
- [30] The Applicant said he asked Dr Maloney's advice, including about the medications, which Dr Maloney confirmed to him he should administer those medications and continue to monitor the horse. The Applicant said Bute was pain relief and TMPS an anti-inflammatory and that Dr Maloney had given him those for Little Annie Fanny. He confirmed at the time Dr Maloney was satisfied with this course (with respect to Vlad Vladikoff). The Applicant denied that in that conversation he played down Vlad Vladikoff's symptoms to Dr Maloney.
- [31] The Applicant gave further evidence that after speaking to Dr Maloney he went to get the medications at his stables at the Mareeba Turf club, which was 20 minutes away and upon returning gave the Bute and TMPS paste to Vlad Vladikoff by oral syringe in the paddock just before 8pm, which he said Ms Chambers witnessed. He said Ms Chambers left at about 8:30pm and that he stayed with Vlad Vladikoff until about 10:30pm where his condition was "status quo", in that he had no interest in food or drink but he was still on his feet.
- [32] Before the Panel the Applicant strongly denied that Ms Chambers had ever said to him that she thought the horse was suffering from colic or that he should seek veterinary treatment. He said they had a discussion about the symptoms and Ms Chambers agreed with him that it wasn't colic.
- [33] The Applicant was cross-examined at the hearing before the Panel about his attendance to Vlad Vladikoff in the paddock early in the morning at about 8am with Ms Chambers, where he said they watched him and tried to get him to his feet and Ms Chambers added molasses to his feed. He said there was no discussion with her about what they should do. His evidence was that whilst he was concerned about the horse's welfare, he did not call Dr Maloney at that time as he'd had horses in that situation prior. He gave evidence that he stayed and monitored Vlad Vladikoff for an hour. He denied the horse had groaned.
- [34] The Applicant confirmed under cross-examination that he received a text later in the day about 4:20pm from Ms Chambers that Vlad Vladikoff needed a vet, but he did not have any contact with Dr Maloney at that stage as he had not yet been back out to see the horse. He said he proceeded to the paddock to see the horse at about 5pm and observed Vlad Vladikoff was lying down. The Applicant said he didn't try to feed the horse but tried with Ms Chambers to coax him up. The Applicant said he got up for about 5 minutes and lay back down and that he was not groaning, but his gut was making a noise. He said he called Dr Maloney at 5:45pm using Ms Chambers' phone as his didn't have service in the paddock.
- [35] Dr Maloney's report had included details of the events of Wednesday 10 May 2023:
- (a) the Applicant called him around lunchtime to discuss Vlad Vladikoff having mild colic symptoms and that he discussed the case with the Applicant who said it wasn't that concerning and he will monitor the horse throughout the day and night;
 - (b) Dr Maloney phoned the Applicant at 4:24pm where he was advised that Vlad Vladikoff was "doing good" and that the Applicant did not require Dr Maloney to see him. Dr Maloney advised him to monitor the horse throughout the night and to make contact with him first thing

Thursday morning (between 5am and 10am) if he required Dr Maloney to attend the property; also that Dr Maloney would call him later that day for updates; and

- (c) despite several missed calls to the Applicant in the afternoon, Dr Maloney made contact with the Applicant's caretaker/employee (unnamed) at 7:22pm where she advised the horse was "going good" and they did not require his services and that they will monitor the horse.

[36] Dr Maloney's belated affidavit reiterated that he had a conversation with the Applicant at lunchtime where he was advised that Vlad Vladikoff was down and the Applicant thought he had mild colic symptoms; and that he didn't need Dr Maloney to come at that stage and he would keep an eye on him. His draft affidavit stated that the Applicant did not ask for Dr Maloney's opinion about the horse's medical condition or whether he had colic.

[37] Further the affidavit relayed that when Dr Maloney spoke to the Applicant again at 4:24pm he was told the horse was going good and that he wasn't needed to see him; and that Dr Maloney advised the Applicant to keep watching Vlad Vladikoff tonight and first thing and to call him in the morning if he was needed.

[38] Dr Maloney refuted, as to both conversations that day, that the Applicant ever advised him that he had Bute and TMPS paste and that he asked Dr Maloney if he should use those medications to treat Vlad Vladikoff. Dr Maloney's evidence was that he is confident that the Applicant never mentioned the medication because if it was mentioned, he would not have recommended it without examining the horse first as this involved prescription only medication.

[39] When pressed by the Panel, Dr Maloney was equivocal about a statement he had made before the Panel (which was not otherwise in his affidavit) that he had told the Applicant that he needed to get a vet out to determine what was wrong with the horse or if it was colic. He stated that statement was based on his recollection and what was his standard procedure with every client.

Thursday 11 May 2023

[40] Regarding the events of Thursday 11 May 2023 the affidavit of Ms Chambers outlines:²²

- (a) she arrived at the agistment at about 8:30am to feed Vlad Vladikoff whilst the Applicant fed the other two horses;
- (b) she and the Applicant coaxed Vlad Vladikoff onto his feet and he ate a small amount of the feed of molasses, water and chaff;
- (c) she haltered him and walked him around the flat ground of the paddock where he passed dry faeces. After this he lay down and groaned and refused to be coaxed up again; and
- (d) after some missed calls between the Applicant and Dr Maloney, the Applicant used her phone to contact Dr Maloney at about 9:20am but she was unsure of the result of this phone call.

[41] The Applicant's evidence before the Stewards regarding the events of Thursday 11 May 2023 in summary is:

- (a) early in the morning he went to check on Vlad Vladikoff and that he was showing improvement,²³ observing the horse was standing, walking around and even had a playful run in the paddock for about 30 seconds;

²² Exhibit 1 paragraphs 31 to 45

²³ Transcript of Stewards' Inquiry 25 July 2023 lines 416, 602-607 & 636

- (b) the horse was already on his feet and did not need coaxing up²⁴ and that he also consumed the feed and fresh molasses water given;²⁵
- (c) he phoned Dr Maloney to give him an update and indicated to him that the horse had improved and the medication seemed to have worked. The Applicant requested whether he should give another does of the medication and that Dr Maloney advised him to do so and to keep monitoring the horse;²⁶ and
- (d) that afternoon the horse still seemed to be recovering and that he called Dr Maloney and told him this.²⁷

[42] After confirming he attended the paddock at 7:30am, before the Panel the Applicant confirmed the improved condition he observed Vald Vladikoff to be in. He confirmed that he called Dr Maloney just after 9am to report that Vlad Vladikoff had improved. The Applicant accounted that he said to Dr Maloney that he had more of the same medication to give Vlad Vladikoff as the previous night, to which he said Dr Maloney confirmed should be given to the horse, to keep monitoring him and to make sure he was eating and drinking.

[43] The Applicant said on this advice he orally administered both the Bute and TMPS paste which he said Ms Chambers was present for and observed. Following this, the Applicant said the horse continued to eat and drink and walk around and that he, Ms Chambers and her mother all stayed until 10 to 10:30am. He said at no stage was the horse lying down nor groaned.

[44] The Applicant gave evidence that later that afternoon he re-attended the paddock around 3pm on his own and gave Vlad Vladikoff more feed and molasses water. He said that when he left the horse after about an hour at 4pm, Vlad Vladikoff was still walking around and eating and drinking as he had been that morning. The Applicant said he did not speak to Dr Maloney again that day, despite having said as much to the Stewards.

[45] Dr Maloney's report included details of the events of Thursday 11 May 2023 that he had not heard from the Applicant in the morning and after calling several times he spoke to the Applicant who advised that Vlad Vladikoff was good to the Applicant's knowledge. Dr Maloney could give no account as to whether the Applicant looked at the horse and stated that he received no further updates that day.

[46] Dr Maloney's affidavit outlined that he spoke to the Applicant at 9:30am and was told the horse was doing good and that Ms Chambers was looking after him. He stated in his affidavit regarding this conversation, there was no mention of Bute or TMPS paste, including for treatment of Vlad Vladikoff.

Friday 12 May 2023

[47] Regarding the events of Friday 12 May 2023 the affidavit of Ms Chambers outlines:²⁸

- (a) she arrived at the agistment property at about 8:30am where the Applicant was present and she observed Vlad Vladikoff was laying down and showing signs of discomfort and symptoms of colic, including lack of interest in feed, not wanting to stand and groaning;

²⁴ Ibid line 345

²⁵ Ibid lines 977-981

²⁶ Ibid lines 981-984

²⁷ Ibid lines 985-986

²⁸ Exhibit 1 paragraphs 46 to 59

- (b) the Applicant agreed with her that Vlad Vladikoff needed to see a vet that day and she made arrangements with Dr Maloney to attend the agistment as she had better phone reception than the Applicant;
- (c) Dr Maloney arrived at the property with an associate at about 11:30am and she observed him do a health check on Vlad Vladikoff after assisting the horse onto his feet. She stated that Dr Maloney informed them the horse had very depressed noise coming from one side of his gut and she witnessed him administer electrolytes, ulcer paste and a mild sedative to Vlad Valdikoff; and
- (d) after Dr Maloney left, the horse started to drink water autonomously and ate a substantial amount of the chaff and drank the molasses water she offered. She spent time with him until she had to leave in the late afternoon.

[48] The Applicant's evidence before the Stewards regarding the events of Friday 12 May 2023 in summary is:

- (a) that Vlad Vladikoff had relapsed and deteriorated again²⁹ and he rang Dr Maloney as soon as he was aware the horse had an issue and asked if he could come and check the horse that afternoon;³⁰
- (b) Dr Maloney attended to assess Vlad Vladikoff that afternoon³¹ and the Applicant was present when Dr Maloney gave the horse medication (electrolytes and ulcer paste);³²
- (c) that this was the first time a vet had been out and that he had continued to contact Dr Maloney to give him updates every time he went to check on the horse;³³ and
- (d) that Vlad Vladikoff showed signs of improvement after Dr Maloney's treatment but didn't show interest in his feed.³⁴

[49] The Applicant gave evidence to the Panel that he attended the paddock at 7:30am as per his usual routine and that he called Dr Maloney as soon as he determined Vlad Vladikoff had relapsed, observing the horse was lying down, groaning, not interested in food or water and showing clear signs of discomfort. He said he asked Dr Maloney to come out, who in response advised that he needed to. The Applicant said Dr Maloney gave him no further advice and that he was not sure how long he stayed with the horse, but that he had tried to get him to eat and drink and lay down and that the horse did lie down again.

[50] Under cross-examination as to his morning attendance on Vlad Vladikoff, the Applicant said he still wasn't sure what was wrong with the horse at that stage but directed Ms Chambers to text Dr Maloney and that she called Dr Maloney.

[51] The Applicant's evidence was that he went out to meet Dr Maloney between 1 and 2pm and that he arrived prior to Dr Maloney and his assistant, as well as Ms Chambers and her mother. His evidence was that upon assessment Dr Maloney advised him that Vlad Vladikoff had colic, that it didn't look good and that he was unsure if treatment would be successful.

²⁹ Transcript of Stewards' Inquiry of 25 July 2023 lines 612, 639 & 986

³⁰ Ibid lines 987-991 and 992-994

³¹ Ibid lines 1009-1010

³² Ibid lines 571, 986

³³ Ibid lines 991-993

³⁴ Ibid lines 429-32 & 563-564. The Applicant corrected his earlier statement at transcript line 434 that the horse did not improve after this treatment

[52] The Applicant confirmed that Dr Maloney administered ulcer paste orally and an IV needle and that after the treatment the horse walked around and ended up lying down. The Applicant said Dr Maloney left about half an hour later and that he stayed until between 3 and 4pm, at which time Vlad Vladikoff was not showing signs of improvement; and that despite showing interest in food and water, the horse did not consume food and did not drink a lot of fluid.

[53] Dr Maloney's report had included details of the events of Friday 12 May 2023:

- (a) he had not heard from the Applicant in the morning but had a phone call from him around lunch-time advising him that Vlad Vladikoff was not doing well;
- (b) Dr Maloney advised the Applicant that the horse needed veterinary attention and that he would need to attend the property to have an assessment of the horse, to which Applicant agreed;
- (c) he attended the property to assess the horse between 1 and 2pm where he found Vlad Vladikoff recumbent, dull and depressed, with other observations including a body condition score of 2/5;
- (d) he gave immediate first aid including anti-inflammatories, gastric ulcer therapy and electrolytes;
- (e) that the horse responded positively and he was drinking well (1.2litres of fluid), passing moist faeces and starting to eat moist chaff feed; and
- (f) the caretaker for the Applicant (unnamed) phoned later that afternoon and advised Dr Maloney that Vlad Vladikoff had responded positively and was doing very well from the treatment provided, to which Dr Maloney advised for she and the Applicant to give him regular updates.

[54] Dr Maloney's affidavit refutes that he spoke with the Applicant at 7:30am or any other time in the morning, rather he was called at lunchtime where the Applicant advised Dr Maloney that the horse was really not doing well, to which his advice was he really should come see the horse because he needs urgent veterinary treatment.

[55] Dr Maloney's evidence before the Panel about his standard practice was that he was routinely called about veterinary issues and that his standard procedure, once a client tells him what's happening, is that the matter is triaged. He said in cases like the Applicant's, a vet visit is necessary to determine what is going on and that he can't give treatment advice over the phone. He also gave evidence that the 'flehman response'³⁵ could be indicative of a couple of things in a horse, including pain, excitement and pleasure.

Saturday 13 May 2023

[56] This is a date outside of the alleged offending period under the amended charge. Whilst the evidence discloses some differences in the time at which attendances on Vlad Vladikoff occurred and when conversations took place, particularly as between the Applicant, Dr Maloney and Ms Chambers, those differences are not material to consideration of the Applicant's liability.³⁶

[57] It is sufficient to note that across those witnesses, the evidence is consistent with the fact that Vlad Vladikoff was not well on that day despite treatment provided from Dr Maloney the afternoon prior. The Applicant agreed via phone³⁷ that Dr Maloney attend to the horse and that the advice from Dr Maloney

³⁵ He said this was a horse curling up its left top lip; as referred to in Exhibit 1 at paragraph 12

³⁶ Respondent's Outline of submissions dated 18 August 2023 at paragraph 31

³⁷ The Applicant's evidence is that he contacted Dr Maloney to seek his attendance due to the horse's poor condition that day as observed by him at about 7am; Dr Maloney's evidence is that he contacted the Applicant to seek this instruction after being notified about the condition of the horse by Rachel Shred at 2pm

was, subject to his assessment of the horse, that his condition was serious and the options were either continued treatment or potential euthanasia.

[58] It is also not in dispute that Dr Maloney attended the horse at about 4pm that day and his assessment was for immediate euthanasia on humane grounds, as the welfare of the horse was significantly compromised. Neither is it in contest that Dr Maloney obtained the Applicant's consent for this by phone and that Dr Maloney subsequently euthanised Vlad Vladikoff at about 4:30pm.

[59] More generally the Applicant's further evidence of including as to the relevant dates was:

- (a) Vlad Vladikoff was not showing any signs of being unwell in the days preceding 10 May 2023;
- (b) Dr Maloney did not give him any other advice in conversations with him - this included no advice given as to giving Vlad Vladikoff ulcer paste and electrolytes (the treatment given by Dr Maloney on 12 May 2023);
- (c) 12 May 2023 was the first time in the relevant dates that a vet had attended Vlad Vladikoff;
- (d) he kept in daily communication with Dr Maloney regarding Vlad Vladikoff;
- (e) he conceded that at the time he was not experienced in animal husbandry; and
- (f) under cross-examination, the Applicant denied that a reason he didn't call a vet sooner was that he couldn't afford more vet attendances. He said that financial motivation played no part in his decision-making in respect of Vlad Vladikoff.

[60] The Applicant also gave evidence to the Panel that he was notified of the Stewards' Inquiry by way of a telephone call from Mr Paul Gillard a couple of days prior to the inquiry taking place and that he received no written notice of the charges that the Stewards were investigating as subject of the inquiry.

Discussion

[61] The onus of proving the charge and each element thereof rests throughout upon the Respondent on the balance of probabilities to the *Briginshaw*³⁸ standard i.e. the Panel must be comfortably satisfied that each component of the offence has been made out. The standard of proof required although not to the same level as that required in criminal cases, should be in accordance with the principles identified in cases such as *Briginshaw* and the evidence should be both cogent and probative if a determination adverse to the Applicant is to be reached.³⁹

[62] It is not in contest before the Panel that the Applicant was the person in charge of Vlad Vladikoff between 10 May 2023 and 13 May 2023.⁴⁰ As such the Panel finds this element of the offence established to the requisite standard.

[63] Accordingly, the remaining elements of the charge as outlined at paragraph 15 of which the Respondent must satisfy the Panel are:

- that the Applicant failed to provide at any time between 10 May 2023 and 1 to 2pm on 12 May 2023
- veterinary treatment
- where such treatment was necessary for Vlad Vladikoff.

³⁸ *Briginshaw v Briginshaw* (1938) 60 CLR 336, 361-362 as endorsed in *Mark Currie v QRIC* RAP-22, 5 June 2023 at [124]

³⁹ *Madeleine Wishart v QRIC* RAP-8, 12 April 2023

⁴⁰ Paragraph 26(h) of these Reasons

- [64] While the Panel is not aware of any Queensland authorities which examine the construction of a charge under AR 231(1)(b)(iii), there are recent New South Wales authorities which endorse the position that the offence is one of strict rather than absolute liability, for which a defence of honest and reasonable but mistaken belief is available.⁴¹ Those cases and others⁴² examine what may be reasonable steps in the circumstances of each particular case. It is not particularly helpful however to consider those in this case having regard to the Panel's construction of the charge below.
- [65] In interpreting the Rule the Panel is to prefer the interpretation that will best achieve the purpose of the Act.⁴³
- [66] "Necessary" is not defined under the Rules and should in our view bear the meaning "*essential*".⁴⁴
- [67] Nor do the rules provide a definition of "veterinary treatment". In *Wayne Carroll v Racing NSW*⁴⁵ the tribunal noted that it was common ground in that case that the term was considered to be treatment provided by a qualified veterinarian.
- [68] The Respondent's case as consistently advanced before the Panel is that the relevant veterinary treatment only occurred when the Applicant called for Dr Maloney to assess Vlad Vladikoff on 12 May 2023.⁴⁶ Notwithstanding other critical elements of the charge, the difficulty with this submission is that veterinary 'assessment' on its own is not likely consistent with the ordinary meaning of "treatment":
- "the action or way of treating a patient or a condition medically or surgically : management and care to prevent, cure, ameliorate, or slow progression of a medical condition".⁴⁷*
- [69] The phrase "at any time" in the charge also bears import. The Respondent's submission with respect to this element is understood to be that in these circumstances it is to mean "at any time between 10 May 2023 and 1 to 2pm on 12 May 2023" i.e. that the Applicant failed to call a veterinarian to have the horse assessed. The Panel accepts the Respondent's further submission that the phrase 'at any time' as applicable to this case cannot be the whole period particularised, as they correctly concede the evidence suggests there were times when Vlad Valdikoff was well. The preferable construction then is that the phrase means if at "some" time during the period alleged by way of the charge.
- [70] On the proper construction of the charge then the Panel is of the view that Rule requires proof of a failure to provide:
- (a) some identifiable veterinary treatment;
 - (b) which was necessary at some particular identifiable point in time.
- [71] There are obvious differences in the versions of events relied upon by the Applicant and the Respondent. For example, whereas the Applicant asserts that Vlad Vladikoff's condition did not become sufficiently serious to warrant veterinary treatment until Friday 12 May 2023, Ms Chambers asserted that the horse's condition was already serious on Wednesday and Thursday 10 and 11 May 2023.

⁴¹ *Wayne Carroll v Racing NSW*, Appeal Panel of Racing NSW 5 June 2023 at [7]; *Allan Foran v Racing NSW*, Appeal Panel of Racing NSW, 10 May 2023 at [13]; Note Respondent's Outline of submissions dated 18 August 2023 at paragraphs [12] and [15].

⁴² *Gordon Yorke v Racing NSW*, Appeal Panel of Racing NSW 7 September 2022 at [41] & [42]

⁴³ *Mark Currie v QRIC RAP-22*, 5 June 2023 at [23] to [25]

⁴⁴ Oxford Dictionary

⁴⁵ Appeal Panel of Racing NSW 5 June 2023 at [8]

⁴⁶ Respondent's Outline of submissions dated 18 August 2023 paragraph 8(b) & (c)

⁴⁷ Miriam Webster Dictionary

- [72] Further, there is a direct contradiction between the Applicant and Dr Maloney as to what was said in telephone discussions they had on 10 and 11 May 2023, in particularly as to whether Dr Maloney did or did not advise the Applicant as to medication which he might (or might not) give to Vlad Vladikoff.
- [73] The Panel accepts that the Applicant has consistently advanced his case before the Stewards and the Panel that he was managing Vlad Vladikoff's condition on the advice of Dr Maloney, including by the administration of the medications on 10 and 11 May 2023; that the horse was improved on 11 May 2023; and that he sought that Dr Maloney attend to Vlad Vladikoff when he considered it was necessary on 12 May 2023.
- [74] On a more considered view of his case, Mr Campbell for the Respondent asked the Panel to infer that the condition of Vlad Vladikoff upon Dr Maloney's assessment and subsequent treatment of the horse on 12 May 2023 means that:
- (a) the horse was in the same or similar condition on 10 and/or 11 May 2023; and
 - (b) accordingly, treatment such as that administered on 12 May 2023 by Dr Maloney was necessary on those dates.
- [75] Although Dr Maloney does not say so in terms, the Panel is prepared to accept by inference that the treatment Dr Maloney provided between 1pm and 2pm on 12 May 2023 was likely necessary at that point in time. However, it does not follow that on the preceding days the horse's condition was sufficiently serious so as to make veterinary treatment necessary.
- [76] Notwithstanding the apparent inconsistencies in the evidence, it is not necessary to resolve those and other conflicts in the evidence having regard to the proper construction of the Rule.
- [77] The Panel considers a whole view of the evidence supports a finding that the horse was unwell at some times during the relevant dates and at other times he was going well. The Panel can only draw inferences from objective evidence.
- [78] The Respondent had the opportunity if so minded to provide expert opinion⁴⁸ to the effect that the condition of the horse when seen by Dr Maloney was such that it conveyed a necessity for treatment on 10 and 11 May 2023. Yet no such evidence was forthcoming.
- [79] The evidence which Dr Maloney did give just did not go that far. Moreover, a further problem for the Respondent arose from the fact that Dr Maloney's own report, provided by and relied upon by the Stewards at their inquiry and by the Respondent before the Panel, itself recorded two important events:
- (a) firstly, Dr Maloney stated that at 7.22pm on Wednesday 10 May 2023 he was advised by the Applicant's "caretaker/employee" (presumably, but not definitely Ms Chambers) that the horse was "going good" and his services were not required; and
 - (b) secondly, Dr Maloney affirmed advice from the Applicant at 4.24pm on 11 May 2023 that the horse's condition at that time was "good".
- [80] In the face of this evidence and absent appropriate expert opinion, it is not possible to conclude that on 10 and 11 May 2023 the horse required essential veterinary treatment.
- [81] Indeed, Mr Campbell for the Respondent was more than once invited (particularly in light of the matters referred to in the previous paragraph) to identify before the Panel the precise veterinary treatment that was necessary, in what way it was necessary and just when, before it was given, it should have been

⁴⁸ Particularly from the preliminary hearing on 4 August 2023, having regard to the matters outlined in paragraph 20

given. He was and remained unable to identify where the answers to these critical questions could be found in the evidence.

- [82] Clearly enough the Respondent cannot not make out their case under the sub-rule invoked so far as it concerned the events of 12 May 2023 – on that day the Applicant sought veterinary assistance and it was given. Having regard to Dr Maloney’s evidence that he was informed on both 10 and 11 May 2023 that the horse was in good condition, there is simply an absence of evidence that on those days the horse needed identifiable veterinary treatment that was required or essential.
- [83] The fact that Dr Maloney’s report indicated that some treatment “should” have been given before 12 May 2023 as relied on by the Respondent, amounts to no more than that such (non-specified) treatment was advisable or would have been recommended. However, that is not to say that the appropriate treatment was “necessary”.
- [84] There is one final point that should be addressed. The Respondent has relied before us on “admissions” made by the Applicant to the Stewards. There is a problem with such reliance. The so-called admissions were very general in nature and were made either before any charge was laid or after the charge was laid in terms of three of the sub-rules under AR231(1)(b) together, so that it is not clear whether the Applicant was admitting to matters peculiar to the subject of the charge before us. In any event, admissions form part of the evidence only and they are to be viewed in light of the evidence as a whole.
- [85] Safeguarding the welfare of animals involved in racing is central to the purposes of the Act⁴⁹ and accordingly the provision for offences such as those under AR231 are critical to ensuring the integrity of and public confidence in the industry.⁵⁰ Rules relating to the welfare of horses are amongst the most important in the Australian Rules of Racing and welfare standards must be high.⁵¹
- [86] As a corollary, it is important to ensure that suspected breaches of those obligations imposed on licensed persons concerning the care and welfare of animals involved in racing are thoroughly inquired into by the regulator; and that persons whose conduct falls short of the requisite standards are subject to sanction.
- [87] Whilst the Panel may have some concerns regarding the Applicant’s capacities in terms of his care for the horse at the relevant time,⁵² that is not the issue to be determined.
- [88] The offence which the Panel has had to consider, as a matter of construction, arguably poses a higher level of required proof than others, such for example as that under AR231(1)(b)(ii) where reasonable steps only needs to be proved.
- [89] The Panel considers that, particularly in the absence of relevant expert veterinary evidence, the essential ingredients of the offence have not been established by the Respondent. The Respondent has failed to demonstrate in our view precisely what veterinary treatment was essential to be administered to Vlad Vladikoff on either 10 or 11 or 12 May 2023 prior to the time at which Dr Maloney attended the horse and gave it electrolytes and the other treatment he then provided.
- [90] Accordingly, the Panel cannot be and is not comfortably satisfied to the requisite standard that the Applicant contravened AR 231(1)(b)(iii).

⁴⁹ *Racing Integrity Act 2016* s.3(1)(c)

⁵⁰ *Ibid* s.3(1)(a) & (b)

⁵¹ *Wayne Carroll v Racing NSW*, Appeal Panel of Racing NSW 5 June 2023 at [27]

⁵² The Applicant made submissions before the Panel regarding further training and education he has been undertaking with an experienced trainer since May 2023

Order

[91] In accordance with section 252AH(1)(c) of the Act, the Panel's decision is that the racing decision made by the Stewards on 25 July 2023 is set aside and substituted by a decision that the Applicant is not guilty of a breach of AR231(1)(b)(iii).

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