

NEW SOUTH WALES HARNESS RACING APPEAL PANEL

APPEAL PANEL MEMBERS
Hon. W Haylen KC
B Skinner
J Murphy

THURSDAY 22 JUNE 2023

APPELLANT LESLIE ENKS

RESPONDENT HRNSW

SEVERITY APPEAL

AUSTRALIAN HARNESS RACING RULES
190(1), (2) & (4)

DECISION

- 1. Severity appeal is upheld, a period of disqualification of 2 years and 6 months commencing from 6 February 2023 is imposed.**
- 2. Half of the appeal deposit is to be returned.**

- 1 On 20 January 2023, Mr Enks was the trainer of NEVILLE SHANNON that was to compete at Tamworth in race 4. A pre-race blood sample taken from the horse disclosed that Total Plasma Carbon Dioxide (TCO2) above the prescribed threshold was detected, and that finding was confirmed in the "B" sample.
- 2 HRNSW Stewards issued charges against Mr Enks under AHRR 190(1),(2), & (4), namely, 190 (1) A horse shall be presented for a race free of prohibited substances; (2) If a horse is presented for a race otherwise than in accordance with sub rule (1) the trainer of the horse is guilty of an offence; (4) An offence under sub rule (2) or (3) is committed regardless of the circumstances in which the prohibited substance came to be present in the horse.
- 3 Mr Enks pleaded guilty to those charges and was disqualified for a period of 3 years to commence from 6 February 2023, being the date upon which he was stood down pursuant to the provisions of AHRR 183. Mr Enks application for a stay of these orders was refused. He then filed an Appeal contesting the severity of the period of disqualification.
- 4 The case argued for HRNSW was that the level of TCO2 at 37.7 found in the horse was very high and struck at the heart of harness racing.

Offences of this type reduced the public confidence in the sport and strong action against offenders was required to maintain its credibility. Importantly, this was Mr Enks second TCO2 breach, although the first was committed nearly 20 years ago, in 2004. The evidence was that Mr Enks trained a very small number of horses in the Tamworth region and that his first offence was the TCO2 offence in 2004. He did not come under notice again until 2006, when he was fined \$200 and then there was a gap of around 6 years when he was again fined \$200 for an in-race offence. Shortly after, in 2013 he was again fined \$200 for failing to keep and maintain a log book. The last offences committed by Mr Enks, were the 3 offences in early 2023 that are the subject of these proceedings. Under the HRNSW Penalty Guidelines, TCO2 is a class 2 prohibited substance, where the first offence warranted not less than 2 years disqualification, a second offence warranted no less than 5 years disqualification and a third offence warranted no less than 10 years disqualification. It was argued on Appeal, that the 3 year disqualification imposed by the Stewards in this case, struck the right balance under the Guidelines.
- 5 HRNSW also drew attention to 5 TCO2 cases as giving guidance to an appropriate penalty in this case. Two decisions were made by the Stewards in 2019 and 2020, resulting in a disqualification of 2 years 3 months, and disqualification for 3 years and nine months. Three decisions were made by the Racing Appeals Tribunal, where in January 2021 a disqualification of 14 months was imposed followed in 2022 by a decision to impose a disqualification of 5 years 11 months for a third TCO2 offence. In the third case, determined in 2023, the tribunal upheld a severity appeal and imposed a disqualification of 2 years and 7 months. The range for second TCO2 cases was quite marked, with a low of 14 months to a high of 3 years and 9 months. As might be expected, the surrounding facts and personal qualities of the offenders varied to the extent that only general consideration can be given to these cases. However, those cases demonstrate the seriousness of TCO2 offences and the general appropriateness of disqualification for significant periods.
- 6 In relation to the evidence in this case, HRNSW pointed out that in the interviews with Stewards there were important differences between Mr Enks and his son as to how much bicarb was routinely fed to the horse. Mr Enks stated that he was the only one to feed the horse and would only take a small amount of bicarb in his hand to

add to the feed: this was just a handful and a bit over a gram. However his son, Jeffrey Enks, said that he also fed the horse but referred to doing so with “big handfuls” of bicarb. While it is difficult to reconcile these two statements, on balance the Panel accepts the evidence of Jeffrey Enks on this matter, but the lack of detail as to when this occurred and whether it happened close to the horse returning the TCO2 reading in January, renders this evidence unreliable in deciding how and when the substance was given to the horse. In this context it is of some relevance that the Swab History for the horse covering 17 occasions, showed that only once it had returned a positive result, being the swab leading to the present proceedings. There were 2 swabs taken in 2019, 5 taken in 2020, 3 taken in 2021, 6 taken in 2022, and the last one taken in January 2023. Three swabs were taken in November 2022. This regular regime of swab testing, especially in November 2022, would normally put a trainer on notice of the risk they would be taking in presenting a horse knowing it had a prohibited substance in its system.

- 7 Of particular interest is the interview with Mr Enks conducted on 31 January 2023 by Steward Shane Cullen. Mr Cullen provided paper work from HRNSW concerning the positive sample taken from NEVILLE SHANNON on 20 January, showing the presence of TCO2. A general inspection of the stable took place and reference was made to a prior stable inspection report completed in late January 2020. At that time there was a direction to clean the feed room and ensure the security of substances. Mr Enks said that they had started cleaning all the floor and in the last few days a cupboard had been purchased to hold the “main stuff”, but he had yet to put a lock on it. Mr Cullen noted that the area had not been cleaned and there were empty containers on the ground. When asked for the log book, Mr Jeffrey Enks said that it was at his home but that he had not brought it up to date, including treatments for NEVILLE SHANNON. He agreed that the log book was out of date. When Mr Enks was asked why the log book was not at his home, being the trainer, he replied that the kids had “wrecked it”. He also said that he was no good at writing. The log book was finally brought to the premises and showed that the last entry was that signed by Mr Cullen on 27 January 2022. It was noted that there was still corrugated iron and other matter as borders to the yard that needed to be removed. The Feed shed had not been cleaned but a door had recently been put on it and eventually it would have a lock.
- 8 In submissions, HRNSW described Mr Enks training operation as a “shambles”. The evidence clearly shows that Mr Enks’ 2 or 3 horse stable did not reach the standard of what might be described as a professional training establishment. The failure to keep the log book updated, and the measuring of substances fed to the horses by reference to handfuls, small handfuls and big handfuls is simply unacceptable. These matters also mark the seriousness of these charges before the Panel. Although it cannot be precisely determined how Mr Enks horse came to have this high TCO2 reading, his lack of appropriate husbandry practices left his stable open to events of this nature.
- 9 Apart from the 2 TCO2 disqualifications, Mr Enks otherwise has a good record as a trainer. He has been fined for a few low level offences in a career of nearly 20 years and despite having few horses, the record shows a significant number of starters. On Appeal a number of personal character references were provided that overall speak well of his honesty and his community spirit. In particular, two supporting references came from leaders in Harness Racing in the Region. Mr Michael Jones, the Secretary Manager of the Tamworth Harness Racing Club Ltd. wrote for and on behalf of his

Board and spoke of Mr Enks being a willing volunteer for the club whenever he was asked to assist at race meetings and trials. He also spoke of Mr Enks efforts regarding the maintenance of the racing surface at Armidale Paceway that allowed racing and training to continue at that facility. The Club considered him to be well liked, honest and a hardworking industry participant. Mr Peter Munsie wrote as the President of the Armidale Harness Racing Club and had known Mr Enks for forty years or more. He spoke of Mr Enks impeccable character and honesty. Since the 1970's Mr Enks had been involved in the Armidale Club, was a member of the inaugural committee, and continued to be a committee member. He spoke of the "enormous job" Mr Enks had done as track curator for the past 12 years. Mr Enks had also been a volunteer involved in the maintenance of the Armidale track since it was built some forty years ago and had done an exceptional job. He had contributed a lot to the industry.

- 10 Having regard to all these factors, the Panel is satisfied that an appropriate penalty in this case is a disqualification of 2 years and 6 months, commencing from 6 February 2023. Having achieved some level of success on Appeal, the Panel directs that half of the Appeal deposit be returned to Mr Enks.

Hon Wayne Haylen KC – Principal Member
Mr B.Skinner – Panel member
Mr J.Murphy – Panel Member

26 June 2023