

## APPEAL PANEL OF RACING NEW SOUTH WALES

### IN THE MATTER OF THE APPEAL OF LICENSED TRAINER WAYNE CARROLL

Heard at Racing NSW Offices

Appeal Panel: **Mr L. Vellis - Convenor; Mr P. Innes; Mr C. Tuck**

Representatives: **Appellant - Mr M. Callanan, Solicitor for the Appellant (Director, NSW Trainers Association)**  
**Racing NSW - Mr T. Moxon, Chairman of Stewards for Racing NSW**

Date of Hearing: **25 March 2024**

Date of Reasons and Orders: **25 March 2024**

### REASONS FOR DECISION

1. On 13 March 2024, Racing NSW Stewards imposed a fine in the sum of \$4,000 on licensed trainer Mr Wayne Carroll (Appellant), in relation of AR 240(2) of the Australian Rules of Racing (**Rules**).
2. This rule provides that a person may be penalised if they bring a horse to a racecourse for purposes of participating in a race "*and a prohibited substance ...is detected in a sample taken from the horse prior to or following its running in any race*".
3. The Appellant pleaded guilty to the breach of the rule and was fined \$4,000. It arose following analysis of a blood sample taken from *Salute Again* after this horse ran in and won race 3 at the Murrumbidgee racecourse meeting conducted on 12 December 2023. A blood sample was taken after the race, whereby a prohibited substance on Prohibited List B, namely Mepivacaine was detected. As the horse had a prohibited substance in its blood sample, it was disqualified from its first place in the race under AR 240(1).
4. The Appellant has appealed to the Panel against the severity of penalty. He was represented by Mr M. Callanan, solicitor. Mr T. Moxon, the Deputy Chairman of Stewards, appeared for Racing NSW. The transcript of the Stewards' Inquiry was tendered.
5. Expert evidence was given about the substance Mepivacaine at the Stewards' Inquiry conducted on 13 March 2024. The Chief Veterinarian for Racing NSW, Dr P. Curl advised that it is a prohibited substance under the Rules. Mr J. Keledjian, the General Manager of the Australian Racing Forensic Laboratory, noted that this was the first instance the laboratory had encountered of Mepivacaine in plasma. Mr Keledjian noted that against a screening limit of 0.05, the level determined was 0.25 nanograms per ml, roughly five times the screening limit.

6. Dr Curl was of the view the transcript that in usual circumstances Mepivacaine should be eliminated from the horse's system in four days, although it seems possible it could remain for longer.
7. The Australian Government's Detection Times For Equine Medication notes that Mepivacaine detection times may exceed four days and is not recommended close to competition.
8. Mepivacaine is a prescription medication. The Stewards accepted, as does the Panel, that there is no evidence to suggest that the use of Mepivacaine by Dr Pulver was in issue and the Panel accepts that the Appellant was seeking to treat *Salute Again* for a head injury.

### **Submissions**

9. Mr Moxon for the Stewards acknowledged that there had been a non-intentional breach of the rule, but submitted that the fine imposed was warranted as AR 240(2) is a rule that is designed to protect the integrity of racing. He submitted, correctly, that a breach of the rule is always a serious matter. Regardless of the circumstances, it is always a bad look for racing when a horse is found to have a prohibited substance in its system, even at a low level. All the more so when that horse has won a race while that prohibited substance is in its system.
10. For the Appellant, Mr Callanan submitted that no steps taken by the Appellant would have been likely to have prevented a breach of the Rules here. Mr Callanan submitted that the Appellant had kept excellent records and did not have lax stable procedures. He also submitted that the Appellant prioritised *Salute Again's* welfare and had informed Dr Pulver that *Salute Again* was racing in eight days time, to which the Appellant was told by Dr Pulver that the Mepivacaine would be eliminated from the horse's system by then. Mr Callanan also submitted that there were no matters of aggravation in this case.
11. Mr Callanan also submitted that this was not an administration case against the Appellant. As the Appellant was the trainer and part-owner of *Salute Again*, Mr Callanan submitted that the disqualification had already cost the Appellant \$8,200 and had also caused the Appellant significant embarrassment among clients and industry participants. Mr Callanan submitted that the fine should be set aside with a reprimand the appropriate penalty.

### **Panel Resolution**

12. A breach of AR 240(2) is always an objectively serious offence. A breach of this rule will often result in suspension, or a disqualification. As breaches of this rule go, the appeal involves a breach at the very low end of seriousness.
13. It is difficult for the Panel to determine what else the Appellant could have done in the circumstances to avoid a breach of AR 240(2). The Panel accepts that the Appellant did all that he could do to look after the welfare of the horse, had sound procedures in place and

also communicated with Dr Pulver regarding his race plans. Nonetheless a breach of AR 240(2) has occurred.

14. The main purpose of the imposition of penalties for breaches of the Rules is to protect the image and integrity of the sport, and to send a message to the community that racing takes steps to always do that. In this case, as AR 240(2) is a rule of strict liability and roughly five times the screening limit of Mepivacaine was detected in a horse that raced and won, the Panel unanimously agrees that a fine remains the appropriate penalty, albeit in a reduced amount. The reduced amount of the fine also reflects that the Appellant has already indirectly suffered a penalty here, as his horse has been disqualified, costing him money, and no doubt some embarrassment among his clients and industry participants.
15. The appeal against severity of penalty must be allowed, and the fine reduced to \$1,000.
16. The orders of the Panel are:
  - a. Appeal against severity of penalty allowed.
  - b. Fine in the sum of \$4,000 set aside, and in lieu thereof, a penalty of a fine in the sum of \$1,000 for breach of AR 240(2) is imposed.
  - c. Appeal deposit to be refunded.

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