



HEARING AND DETERMINATION OF CHARGES ISSUED AGAINST LICENSED TRAINER MR LES KELLY IN RESPECT OF THE ANALYST'S FINDINGS OF HUMAN ERYTHROPOIETIN (EPO) PRESENT IN THE PRE-RACE BLOOD SAMPLES TAKEN FROM GOGOL & FREDDIE FOX TROT WHEN PRESENTED TO RACE IN THE RAMORNIE HANDICAP AT GRAFTON RACECOURSE ON 13 JULY 2022

Racing NSW Offices

15 June 2023

Stewards: **S G Railton (Chairman)**
 M A Holloway
 J R Johnstone
 T L Vanderstock

Stewards today heard and determined charges issued against licensed trainer Mr Les Kelly in respect of the Analyst's finding of human erythropoietin (EPO) present in blood samples taken from Gogol and Freddie Fox Trot prior to them running in the Ramornie Handicap at Grafton Racecourse on 13 July 2022.

Stewards opened the inquiry on 28 April 2023, where evidence was taken from Mr Les Kelly, the trainer of both Gogol and Freddie Fox Trot, who was assisted by Mr Jim Murdoch KC and instructing Solicitor Mr Greg Ryan. Evidence was also taken from licensed trainer Ms Melissa Kelly and licensed stable hand Ms Vanessa Paisley who were attendant upon Gogol and Freddie Fox Trot at the Grafton meeting and from Dr Chelsea Kramer who officiated as a raceday veterinarian at the said meeting.

Evidence was taken from two owners associated with Mr Kelly's stable in respect of their interaction with both horses on the day prior to Gogol and Freddie Fox Trot being presented to race in the Ramornie Handicap. Evidence was also taken from Australian Racing Forensic Laboratory General Manager, Mr John Keledjian. Expert evidence was presented on behalf of Mr Kelly by Emeritus Professor Colin Chapman with Racing NSW Stewards engaging Professor Martin Sillence to provide his expert evidence.

Following the adjournment of the inquiry on 28 April 2023, Stewards issued the following charges against Mr Les Kelly under AR240(2).

Charge 1 – AR240(2)

The details of the charge being that he did commit a breach of AR 240 (2) by reason of the following matters:

1. He is a licensed trainer with Racing Queensland and was the trainer of *Gogol* when that gelding was brought to Grafton racecourse on Wednesday 13 July, 2022 for the purpose of participating in Race 7 the Ramornie Handicap.
2. Prior to running in the Ramornie Handicap, blood sample B184420 was taken from *Gogol*.
3. Peptide VNFYAWK (T6 fragment) was detected in sample B184420 when analysed by two Official Racing Laboratories, namely the Australian Racing Forensic Laboratory and the Hong Kong Jockey Club Racing Laboratory.

4. Peptide VNFYAWK is a highly specific fragment of an erythropoiesis-stimulating agent which is a prohibited substance as it is a:
 - a. Erythropoiesis-stimulating agent which is specified as a prohibited substance on Prohibited List A;
 - b. substance capable at any time of causing either directly or indirectly an action and/or effect within the cardiovascular system, the respiratory system, the Musculo-skeletal system and/or the blood system which is specified as a prohibited substance on Prohibited List B; and/or
 - c. haematopoietic agent which is specified as a prohibited substance on Prohibited List B.

Plea: Guilty

Charge 2 – AR240(2)

The details of the charge being that he did commit a breach of AR 240 (2) by reason of the following matters:

5. He is a licensed trainer with Racing Queensland and was the trainer of *Freddie Fox Trot* when that gelding was brought to Grafton racecourse on Wednesday 13 July, 2022 for the purpose of participating in Race 7 the Ramornie Handicap.
6. Prior to running in the Ramornie Handicap, blood sample B185267 was taken from *Freddie Fox Trot*.
7. Peptide VNFYAWK (T6 fragment) was detected in sample B185267 when analysed by two Official Racing Laboratories, namely the Australian Racing Forensic Laboratory and the Hong Kong Jockey Club Racing Laboratory.
8. Peptide VNFYAWK is a highly specific fragment of an erythropoiesis-stimulating agent which is a prohibited substance as it is a:
 - a. Erythropoiesis-stimulating agent which is specified as a prohibited substance on Prohibited List A;
 - b. substance capable at any time of causing either directly or indirectly an action and/or effect within the cardiovascular system, the respiratory system, the Musculo-skeletal system and/or the blood system which is specified as a prohibited substance on Prohibited List B; and/or
 - c. haematopoietic agent which is specified as a prohibited substance on Prohibited List B.

Plea: Guilty

Penalty Considerations

Stewards considered the following matters in respect to penalty.

- Guilty plea in respect of each charge.
- The nature of the offences
- Mr Kelly's professional and personal circumstances
- His disciplinary record over an extended period as a licensed trainer
- Principles of specific and general deterrence and what message is sent to the industry in respect of such conduct.

- Purpose of issuing penalties as a protective measure for the image, interests and welfare of the thoroughbred racing industry.

Penalty

Charge 1

Stewards determined the appropriate penalty be a period of 20 months disqualification, reduced to 15 months allowing for a guilty plea and other relevant considerations.

Charge 2

Stewards determined an appropriate penalty be a period of 20 months disqualification, reduced to 15 months allowing for a guilty plea and other relevant considerations.

Having regard to the principals of totality, Stewards ruled that the periods of disqualification be served with partial concurrency with 12 months of the disqualification issued for charge 2 to be served concurrently with charge 1 and the remaining 3 months disqualification to be served cumulatively. The total period of disqualification therefore imposed upon Mr Kelly to be 18 months.

In accordance with the provisions of AR285(7) & (8), the commencement of the disqualification was deferred for a period of 7 days to commence on 22 June 2023 and to expire on 22 December 2024. Stewards further ruled that during that 7 day period no horse will be permitted to participate in an official trial or in a race.

Gogol & Freddie Fox Trot - AR240(1)

In accordance with the provisions of AR240(1) Gogol and Freddie Fox Trot were disqualified from 12th and 14th placing in the Ramornie Handicap, run at Grafton Racecourse on 13 July 2022. The placings were amended accordingly.

Relevant Rules

Division 2 – Prohibited substance in a sample taken from a horse

AR 240 Prohibited substance in sample taken from horse at race meeting

- (1) *Subject to subrule (3), if a horse is brought to a racecourse and a prohibited substance on Prohibited List A and/or Prohibited List B is detected in a sample taken from the horse prior to or following its running in any race, the horse must be disqualified from any race in which it started on that day.*
- (2) *Subject to subrule (3), if a horse is brought to a racecourse for the purpose of participating in a race and a prohibited substance on Prohibited List A and/or Prohibited List B is detected in a sample taken from the horse prior to or following its running in any race, the trainer and any other person who was in charge of the horse at any relevant time breaches these Australian Rules.*

SCHEDULE 1 – PROHIBITED SUBSTANCES LISTS AND EXEMPTIONS / THRESHOLDS

PART 1 – SUBSTANCES PROHIBITED AT ALL TIMES

Division 1 – Prohibited List A

The substances set out below in Division 1 are specified as prohibited substances.

1. Erythropoiesis-stimulating agents, including but not limited to erythropoietin (**EPO**), epoetin alfa, epoetin beta, darbepoetin alfa, and methoxy polyethylene glycol-epoetin beta (mircer).
... ..

PART 2 – SUBSTANCES PROHIBITED ON RACE DAYS, CERTAIN TRIALS ETC

Division 1 – Prohibited list B

The substances set out below in Division 1 are specified as prohibited substances.

1. Substances capable at any time of causing either directly or indirectly an action and/or effect within one or more of the following mammalian body systems:

... ..

- (b) the cardiovascular system;
- (c) the respiratory system;
- (e) the musculoskeletal system;

... ..

(i) the blood system; and

2. Substances within, but not limited to, the following categories:

... ..

(pp) haematopoietic agents;

Division 4 – Penalties

AR 283 Penalties

- (7) A person or body authorised by these Australian Rules to suspend or disqualify any trainer may defer the commencement of the period of suspension or disqualification for no more than 7 clear days following the day the suspension or disqualification was imposed, and upon terms and conditions considered fit.
- (8) Notwithstanding that the commencement of a period of disqualification may be deferred under subrule (7), a trainer must not start a horse in any race from the time of the decision.

**S G RAILTON
CHAIRMAN OF STEWARDS**