

RACING APPEALS TRIBUNAL

RAT 5/2020

DATE OF HEARING: 9 July 2020

TRIBUNAL: **DEPUTY PRESIDENT:** MR M KING

ASSESSOR: MR JOHN STALLARD

IN ATTENDANCE:

CHAIRMAN OF STEWARDS:

HARNESS RACING SA
LTD, MR S EWEN

APPELLANT: MR COREY JOHNSON

REPRESENTATIVE: MR ANTHONY O'CONNELL

IN THE MATTER of an Appeal by **MR COREY JOHNSON** against a decision of Harness Racing SA Ltd Stewards.

BREACH OF RULE: AHR Rule 163(1)(a)(iii) which states:

A driver shall not cause or contribute to any ... interference.

HRSA PENALTY: Suspended from driving for a period of 21 days.

DETERMINATION

The Appellant, Corey Johnson is a licensed driver.

On 30 May 2020 the Appellant drove a horse **THE DAPPER DON** in Race 7 at Globe Derby Park.

As the horses were in the back straight for the final time in that race an incident occurred. Following the Race, the Stewards held an Inquiry into the incident.

At the conclusion of the Inquiry the Stewards resolved to charge the Appellant with a breach of Rule 163(a)(iii). Rule 163(1a)(iii) states:-

163 (1) A driver shall not –

(a) cause or contribute to any

(iii) interference;

Particulars of the charge were given to the Appellant by the Stewards in the following terms: -

“... You being the driver of **THE DAPPER DON** did drive and cause interference to **FOR THE CORZ** near the 400 meters when you steered your horse back down over the track causing interference to Miss Hill’s drive **FOR THE CORZ**.

The Appellant pleaded guilty and after hearing submissions as to penalty a suspension of 28 days was imposed.

The Appellant appeals to this Tribunal against both the conviction and penalty.

At the appeal the Appellant was represented by an advocate, Mr Anthony O’Connell who appeared by way of video link.

At the outset, the Appellant sought leave to withdraw the guilty plea he had entered at the Stewards Inquiry. As that was not opposed by the Stewards the Appellant was permitted to withdraw his guilty plea after acknowledging that he appreciated that the discount on penalty afforded to him by the Stewards for entering a guilty plea may no longer be available to him if his appeal was not successful.

In thorough and detailed submissions on behalf of the Appellant, Mr O’Connell submitted that the Stewards decision to convict the Appellant was not safe and that there was an insufficient basis in the evidence for the Stewards to be comfortably satisfied that the Appellant had committed the offence. Mr O’Connell focused primarily on 2 propositions:-

- a. That the Stewards had charged the Appellant with causing interference, from which he inferred that the Stewards regarded the Appellant as the sole cause of the interference which arose; and
- b. That the Stewards characterisation of the conduct of the Appellant as having steered down the track of his own accord was not supported by the evidence.

The interference arose when the driver of **FOR THE CORZ** commenced to ease out from behind a tiring horse in front. As she did so, the Appellant driving **THE DAPPER DON** was passing.

The Appellant’s submission was that the interference which occurred arose largely if not wholly because of the unwise movement of the driver of **FOR THE CORZ** and that the Appellant did no more than hold his line on **THE DAPPER DON**.

The Stewards contested this view of the incident and asserted that the driver of **FOR THE CORZ** eased out as she was entitled to do, and that

the Appellant then steered down the track in a manner which gave rise to serious interference and the risk of a dangerous incident.

During the appeal the vision of the race was reviewed and submissions as to what it revealed were put by each party. The submissions put on behalf of the Appellant and the Stewards were carefully thought out and considered and were of great assistance to the Tribunal and its considerations.

At the conclusion of the arguments on appeal, the Tribunal reviewed the film further and had the benefit of the expert advice of the appointed assessor, Mr Stallard who provided insightful comments.

Having reviewed the film, the finding of the Tribunal is that the Appellant could not fairly be said to have been the sole cause of the interference which arose. Rather, the driver of **FOR THE CORZ** appeared to have been caught somewhat by surprise by the speed at which the horse in front of her was slowing. As a result, by the time she commenced her movement out from behind the tiring horse the opportunity to ease out safely and without causing interference was fleeting. The movement out of her horse was difficult to characterise as solely an easing out. In response to that movement the Appellant chose to drive his horse back down the track towards **FOR THE CORZ**.

The vision of the race provided support for the proposition that the conduct of the Appellant was not the sole cause of the interference, however that conduct, namely steering back down the track to limit the pathway of **FOR THE CORZ**, (the evidence for which could be seen on the video i.e. the Appellant pulling on the left rein of **THE DAPPER DON** and leading his body weight to the left), contributed to a significant extent to the contact between the Appellant's wheel and **FOR THE CORZ** and was a significant interference. The finding of the Tribunal is that whilst the Appellant was not the sole cause of the interference, his conduct as detailed did contribute to the interference. As a result, and after having offered the parties opportunity to make further submissions, the Tribunal elected to exercise its power to vary the decision of the Stewards by substituting a decision that, in the view of the Tribunal, should have been made in the first instance. That decision was to find the Appellant guilty of breach of Rule 163 in that he contributed to interference with the horse **FOR THE CORZ** and that interference was significant.

Submissions were then heard from both parties as to penalty.

The interference which was caused was significant and potentially very dangerous. The Stewards recognised this in arriving at the penalty imposed. The Stewards further took into account the disappointing driving record of the Appellant in offences of this type.

Given the Appellant's driving record, consideration of a reprimand or suspended sentence was not appropriate.

However, the finding of the Tribunal was that the circumstances of the incident were more multi-factorial than the Stewards had found.

On that basis the penalty is varied and a suspension of 14 days is imposed.

The order of this Tribunal is that the appeal is allowed to the extent that an alternative decision is substituted for the decision of the Stewards namely that the Appellant is found guilty of a breach of Rule 163(a)(iii) , in that he did contribute to interference with **FOR THE CORZ**. A penalty of 14-day suspension commencing midnight Monday 13 July 2020 is imposed.

There is an Order for a refund of the applicable portion of the bond.