

RACING APPEALS TRIBUNAL

RAT 10/2018

DATE OF HEARING: 25 July 2018

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

ASSESSOR: **MR J STALLARD**

IN ATTENDANCE: **MR S EWEN, STEWARD, HARNESS RACING SA LTD**

APPELLANT: **MR MICHAEL SMITH**

APPELLANT REPRESENTATIVE: **MR MARIO BORG**

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

BREACH OF RULE: AHR Rule 168 (1) (a)

A person shall not before, during or after a race drive in a manner which is in the opinion of the Stewards:-

(a). Careless;

PENALTY: A suspension of licence for 14 days

DETERMINATION

The appellant Michael Smith is a driver licensed by HRSA.

On 28 May 2018 the Appellant drove **TOPNOTCH MACH** in Race 5 at Globe Derby Park.

Following the Race, the Stewards commenced an Inquiry into the Appellant's driving in the Race. The Inquiry was held on Saturday 28 May 2018.

After hearing evidence from the Appellant and another driver Mr Loone (**MOHEGAN SUN**) the Stewards resolved to charge the Appellant with a breach of Rule 168.1 (a) of the Harness Racing Rules (HRR).

"Rule 168.1 (a) states:-

A person shall not before, during or after a race drive in a manner which is in the opinion of the Stewards:-

(a) Careless;

Particulars of the offence were provided to the Appellant in the following terms:-

*“The particulars being that you Michael Smith in Race 5 at Globe Derby Park on 28 May driving **TOPNOTCH MACH** has, you’ve been careless in allowing your horse to shift into a position that was never there, there to be taken and therefore locking wheels with Mr Loone and as a result you put both horses out of the race.”*

The Appellant pleaded not guilty.

After consideration the Stewards found the Appellant guilty of the charge and after hearing the submissions from the Appellant as to penalty applied a penalty of a suspension of the Appellant’s licence for a period of 14 days.

The Appellant appealed against that decision to this Tribunal.

At the hearing of the Appeal the Tribunal was assisted by the very experienced Assessor, Mr John Stallard whose analysis of the race vision was valuable.

In presenting his Appeal, the Appellant was assisted by Mr M Borg.

The incident which gave rise to the charge occurred as the horses raced down the back straight on the last occasion, and particularly as the horses were leaving the back straight.

At that time **MOHEGAN SUN** driven by Mr Loone was leading the field. **TOPNOTCH MACH** driven by the Appellant was immediately behind him.

As **MOHEGAN SUN** travelled up the back straight, it was positioned near but not hard against the pegs. The issue in relation to the Appellant’s driving turned on how far off the pegs **MOHEGAN SUN** was positioned and whether it gave sufficient room for **TOPNOTCH MACH** driven by the Appellant to pass on its inside.

On the Appellant’s behalf, Mr Borg urged the Tribunal to find that there was ample room for **TOPNOTCH MACH** to pass on the inside of **MOHEGAN SUN** (initially) and that as **TOPNOTCH MACH** came up inside **MOHEGAN SUN**, Mr Loone then drifted back down the track impermissibly, and thereby closed off the run. As a result the wheels of both sulkies came into contact.

In response, the Stewards expressed a very clear and unambiguous proposition, namely that at no point in the back straight was there ever room for a whole horse and sulky to come on a run inside of **MOHEGAN SUN**. By attempting to do so on **TOPNOTCH MACH**, the Appellant drove carelessly and ultimately created the contact between wheels of the two sulkies.

During the Appeal the vision of the race was reviewed numerous times with the assistance of commentary from the parties. While assisted by Mr Borg, the Appellant also made a concise submission as to the space he felt was available for him to pass through on the inside of **MOHEGAN SUN**.

After hearing the careful arguments of the parties, and reviewing the vision of the race on numerous occasions with the assistance of the Assessor, it is the view of this Tribunal the race vision discloses that there was never adequate room for **TOPNOTCH MACH** and its sulky to pass on the inside of **MOHEGAN SUN** without contacting or crossing the pegs. Without adequate room, the Appellant was not entitled to take that run and in so doing drove carelessly.

Whilst the Tribunal accepts that the Appellant honestly believed then and still believes there was room for the run, that belief is not supported by the vision and the Appellant's judgment in this situation was erroneous.

The Appellant's Appeal against conviction is dismissed and the decision of the Stewards stands.

The Appellant also appealed against the penalty imposed. After considering submissions from both parties, the Appeal against penalty is also dismissed.

The Tribunal orders that the Appellant's suspension for 14 days is to commence at midnight on Saturday 28 July 2018.

There will be an order for a refund of the applicable portion of the bond.