

RACING APPEALS TRIBUNAL

RAT 11/2018

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 RYAN HRYHOREC

APPELLANT REPRESENTATIVE: MR LANCE JUSTICE

IN THE MATTER of an Appeal by **MR RYAN HRYHOREC** 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;

(b).”

PENALTY: A suspension of licence for 28 days

DETERMINATION

The Appellant Mr Ryan Hryhorec is a licensed driver.

On Saturday, 19 May 2018 in Race 5 at Globe Derby Park he drove a two-year-old **DISCLOSURE** in the “2 year old Golden Nursery Final”.

Following the Race, the Stewards commenced an Inquiry into the running of the race and incidents occurring during race.

The Inquiry was held over two hearings, firstly on 19 May and secondly on 26 May.

After reviewing vision of the race and hearing evidence from the Appellant, from a driver Mr Brewin who had driven **ABOVE AVERAGE** and a driver Ms Lee who had driven **MARTYS PARTY**, the Stewards determined to charge the Appellant with an offence under the Harness Racing Rules particularly under Rule 168 (1) (a).

Rule 168 (1) (a) states:

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

(a) Careless;

(b)

Particulars of the charge were provided to the Appellant in the following terms:

“Particulars of the charge are that Mr Hryhorec the driver of **DISCLOSURE** on Saturday 19/05/2018 in Race 5 the 2018 Alabar Golden Nursery Final drove in a careless manner by allowing your horse to shift in and tighten the racing room of **ABOVE AVERAGE** driven by Mr Brewin and as the field raced towards the first turn in doing so **ABOVE AVERAGE** became unbalanced and eventually broke gait losing all chance itself and then causing interference to trailing runners.”

The Appellant pleaded not guilty.

After further deliberation, Stewards found the Appellant guilty of the charge and after hearing submissions as to penalty imposed a suspension of the Appellant's driver's licence for 28 days.

The Appellant appealed against that decision to this Tribunal.

At the hearing of this Appeal the Appellant was assisted by Mr L Justice who provided a thorough and reasoned submission on the Appellant's behalf.

At the hearing of the Appeal the Tribunal had the benefit of the experience and knowledge of the Assessor to Mr J Stallard whose assistance in analysis of the race vision was valuable.

Initially at the hearing of the Appeal, the Appellant raised a procedural issue. The decision of the Stewards was handed down by Mr S Ewen as Chairman and Mr Ross Neal assisting him. The Appellant pointed out that on the second day of hearing a further steward, Mr Lawrence had been present. There is no indication on the transcript that Mr Lawrence played any part in the proceedings but it was submitted that he was present in this Stewards rooms during the deliberative phase. If Mr Lawrence were to have participated in the Stewards deliberations, it would not accord with the expected practice and would have been inappropriate in that he had not been present at the first stage of the hearing, and was not disclosed as a participating Steward in the Inquiry. However, the Tribunal was assured by Mr Ewen, appearing on Stewards behalf at the Appeal, and having been the Chairman of the Inquiry, that Mr Lawrence played no part whatsoever in the gathering of evidence, conducting of the Inquiry or consideration of the outcome of the Inquiry.

Whilst in some instances, it is possible that procedural irregularities in the conduct of the Stewards Inquiry might lead to a matter being referred back to the Stewards for a rehearing, with a potential irregularity of the nature alleged

here, and bearing in mind that the Appellants right on appeal is by way of a rehearing of the evidence given at the Inquiry, the Tribunal concluded that there was no basis for referring the matter for a rehearing and that the Appeal should proceed in the usual way.

On behalf of the Appellant, Mr Justice made a submission that the finding of guilt ought be overturned as the incident which occurred was only partially contributed to by the Appellant. He conceded that while the Appellant had angled down the track in an endeavour to find a position, he had only ever reached a point at which the room available to **ABOVE AVERAGE** driven by Mr Brewin was tight. He emphasised that there was no evidence of contact between the Appellant and Mr Brewin's sulkies, and that as the Appellant became aware of the tightening, he shifted up the track so as to afford Mr Brewin greater room.

He submitted that at the time the Appellant reached his closest point to Mr Brewin and **ABOVE AVERAGE**, the alignment of the sulkies was shaft on shaft and it was virtually impossible for the Appellant to place undue pressure on **ABOVE AVERAGE** from such a position.

Rather, he argued, that the horse and sulky inside **ABOVE AVERAGE**, namely **MARTYS PARTY** driven by Ms Lee had shifted up the track and this shift upwards was either the cause of, or a significant contributor to, **ABOVE AVERAGE** becoming unbalanced and later breaking gait.

In support he pointed to:

1. Selected excerpts from the evidence of Mr Brewin at the Stewards Inquiry which he said contained concessions that he felt pressure from the inside (**MARTYS PARTY**) rather than the outside (**DISCLOSURE**); and
2. That the vision suggested that **ABOVE AVERAGE** did not break gait until after the Appellant had moved away and in fact until a time corresponding to movement up the track by **MARTYS PARTY** driven by Ms Lee.

On that basis, he suggested that the movement up the track by **MARTYS PARTY**, rather than any movement by the Appellant caused the tightening on **ABOVE AVERAGE**.

In response, on behalf of the Stewards, Mr Ewen submitted that:

1. The evidence of Mr Brewin was consistently that he felt pressure from the outside; and
2. That for a brief period of time the wheel of the Appellant's sulky moved inside the line of the wheel of Mr Brewin's sulky and that movement caused tightening and interfered with **ABOVE AVERAGE**, causing it to become unbalanced. The Stewards conceded that the appellant moved back up the track to relieve that pressure but asserted that the

tightening caused **ABOVE AVERAGE** to become unbalanced and then to break gait.

Mr Ewen argued that if Ms Lee on **MARTYS PARTY** did move up the track, which was disputed, then such movement was not until after **ABOVE AVERAGE** had become unbalanced and was not the cause of that occurring. He pointed to a selection of passages in the transcript of the Steward's Inquiry where the Appellant and Mr Brewin had the opportunity to apportion blame for the incident to Ms Lee and **MARTY'S PARTY**, but clearly declined to do so.

Mr Ewen emphasised that **ABOVE AVERAGE** had no prior history of breaking and that the losing of gait appeared to have been a direct response to becoming unbalanced by the interference from the Appellant.

After reviewing the transcript again and having the opportunity of going through the vision of the race with each of the parties during their submissions, and hearing the valuable analysis of the Assessor, this Tribunal reached the following findings:

1. That the overall thrust of Mr Brewin's evidence was consistently that he felt that the pressure on **ABOVE AVERAGE** came from the outside and not from the inside, that is, from the Appellant and not from **MARTYS PARTY**;
2. In moving down the track, the Appellant had encroached too close to **ABOVE AVERAGE**, such that the wheel the Appellant's sulky came briefly inside the line of **ABOVE AVERAGE's** sulky;
3. That the tightening caused interference to **ABOVE AVERAGE** and caused it to become unbalanced which then lead it to break gait;
4. The significant tightening and interference by the Appellant with **ABOVE AVERAGE** caused **ABOVE AVERAGE** to become unbalanced and break gait, leading to the disruption to following horses.
5. That the inside horse, **MARTYS PARTY** did not contribute in a significant way to the occurrence of the incident.

On that basis, the decision of the Tribunal is that the conduct of the Appellant was sufficient to breach Rule 168 (1) (a) in that it amounted to careless driving.

The appeal against conviction is dismissed.

The Appellant also appealed against the penalty imposed on the basis that it was excessively severe. The Appellant pressed that:

1. The degree of carelessness here was at the lowest end of the range and ought to have caused the Stewards to reduce the penalty.

2. That the circumstances leading up to the offence included a number of mitigating factors such as that the horses involved were young, and that the Stewards found to adequately factor that into the sentencing considerations.
3. That the Appellant drives a significant number of races and the penalty for the Appellant is very severe.

The Appellant urged that consideration be given to reducing penalty, or suspending all or part of the penalty.

The Stewards argued that whilst it was acknowledged that:

1. The Appellant had endeavoured to relieve pressure promptly; and
2. The Appellant had a very good driving record considering the large number of drives he has had over the past 12 months;

and that nevertheless this was a race of significant status and value, and that penalties in such races will not be reduced given both the financial and industry image considerations involved.

In considering the penalty imposed by the Stewards, the starting point of 28 days suspension was appropriate. The Stewards consider an uplift of seven days due to the status and value of the race and the severe consequences to other drivers and horses, but considered that the Appellant's good record called for a discount of seven days, and thus the suspension was left at 28 days. The Stewards reasoning was sound and the penalty arrived at appropriate in light of all the factors already mentioned.

The Appellant's appeal against penalty is dismissed.