RACING APPEALS TRIBUNAL OF NEW SOUTH WALES

Tribunal: The Hon Justice Haylen
Advisor: Mr A Mullins

Appeal by Rodney Atkins against the Stewards' decision on 9 December 2010 to suspend him for a period of fourteen days pursuant to Harness Racing Rule 163(1)(a).

DECISION

1 On 9 December 2010 Harness Racing Stewards opened an Inquiry in relation to Race 2 at the Newcastle track, being the TSCNSW Pace. The incident involved the horse "Knight Hunter" driven by Mr R Atkins and the horse "On the Catwalk" driven by Mr C Davis. It appeared to the Stewards that there was an incident involving the two horses leaving the back straight on the first occasion and entering the front straight just prior to the bell lap. Stewards gave evidence that Mr Atkins on "Knight Hunter" had been caught in a position three-wide after the start. After beginning from the outside of the front line, "On the Catwalk" was moving forward and one off the marker peg but some distance from the runners in advance of him. Mr Atkins had taken the opportunity to commence to ease "Knight Hunter" from the three-wide position into a two-wide position in front of "On the Catwalk". In the Stewards' view it was as a result of this move by Mr Atkins that Mr Davis was obliged to steady "On the Cat Walk" and although no contact was observed, it appeared that Mr Atkins had moved "Knight Hunter" into a position where there was not quite a full length to negotiate the manoeuvre he was attempting.

2 After taking evidence from the drivers and in particular the evidence of Mr Atkins as to his drive behind "Knight Hunter", Mr Atkins was charged with a breach of Harness Racing Rule 163(1)(a). That Rule provides:

> *A driver shall not cause or contribute to any crossing, jostling or interference.*

In the course of giving particulars of the charge, the Stewards pointed out that it was the interference section of the Rule that concerned them and they were alleging that, leaving the back straight on the first occasion, Mr Atkins directed "Knight Hunter" when insufficiently clear of "On the Catwalk" causing that runner to be checked.

3 After viewing a DVD replay of the race, Mr Atkins entered a plea of guilty. In imposing a penalty the Stewards stated that incidents of this nature, where horses were checked when running into the first turn, were matters that were closely scrutinised by the Stewards and breaches

of the Rule would lead to a suspension. The Stewards took into account the early guilty plea entered by Mr Atkins for which a seven-day discount was allowed and a further discount was granted in respect of his good driving record although it was noted that he had been suspended in July 2010 for seven days and for fourteen days in late March 2009 under the same Rule. Taking those matters into account and the discounts available under the penalty regime under which the Stewards operated, a suspension of fourteen days was imposed on Mr Atkins.

4 Mr Atkins has appealed to this Tribunal against the severity of the penalty but did not appeal against the Stewards' finding that the Rule had been breached.

5 On appeal the Tribunal saw several DVD replays of the race and the incident in question in real time and in slow motion. Both parties provided a commentary from their perspective during the course of the replays and drew attention to particular aspects of the race in order to emphasise their position.

6 Although Mr Atkins is a young driver he has sixteen years' experience as a licensed driver. He drives primarily in the Newcastle area on a regular basis and occasionally drives at city tracks. Mr Atkins conceded that, while he had received a number of reprimands and three $100 fines under this Rule, many of those breaches had occurred earlier in his career. He pointed out that he had been suspended for fourteen days in late March 2009 under this Rule with his most recent suspension being for seven days for breaching the Rule in mid-July 2010. He submitted that the interference was minor and warranted no more than a reprimand.

7 In their submissions the Stewards, appropriately, emphasised the need for the utmost care to be taken by drivers when jostling for position and this was especially so early on in a race. It is apparent from this submission that the Stewards regard penalties imposed under this Rule to contain a significant deterrent component. However, while these matters may be readily accepted, each case falls to be considered on its own merits. After several viewings of the incident, the Tribunal is satisfied that there was a clear breach of the Rule but that the interference caused should place this breach in the lower range of available penalties. While the interference was relatively minor, the Tribunal is unable to accede to Mr Atkins' submission that the breach warrants only a reprimand. The Tribunal is comfortably satisfied that a suspension of seven days is the appropriate penalty having regard to not only the nature of the breach but also having regard to Mr Atkins' record (which is regarded as a relatively good record) and his early plea of guilty. The Tribunal did not receive any submissions concerning the date from which it would be appropriate for a suspension to commence having regard to drives already accepted by Mr Atkins in the near future. In those circumstances, the Tribunal will direct that the suspension take

effect from mid-night, Saturday 5 February 2011. If Mr Atkins has already committed to drives beyond that date, the parties have leave to make further submissions in writing at to the appropriate date for the suspension to commence or to present a different date consented to by the parties in which case the Tribunal will give consideration to varying the date of commencement of the penalty.

8 The Orders of the Tribunal are:

(1) The appeal is upheld.
(2) The penalty of fourteen days' suspension imposed by the Stewards is varied to a suspension of seven days.
(3) The period of suspension will commence from midnight on Saturday, 5 February 2011 unless varied by the Tribunal by further order.
(4) The Stay Order granted by the Tribunal is dissolved
(5) The appeal deposit is to be returned to the appellant.

The Hon Justice W R Haylen
3 February 2011