

RACING APPEALS TRIBUNAL OF NEW SOUTH WALES (HARNESS)

Tribunal: The Hon Justice Haylen
Advisor: Mr A Mullins

Appeal by Ingrid Darlington against the Stewards' decision on 11 November 2010 to suspend her for a period of twenty-one days pursuant to Rule 149(1) of the Harness Racing Rules

DECISION

1 On 22 February 2011 Ms Ingrid Darlington was found guilty of a breach of Harness Racing Rule 149(1) arising from her drive behind *All Smoked Up* in race 4 at Tabcorp Park, Menangle on that day. Stewards imposed a penalty of twenty-one days' suspension for breach of the Rule and Ms Darlington has appealed against the finding that she was in breach of the Rule and in the alternative, against the severity of the penalty.

2 Rule 149(1) is in the following terms:

A driver shall take all reasonable and permissible measures during the course of a race to ensure that the horse driven by that driver is given the full opportunity to win or obtain the best possible placing in the field.

The particulars of the charge were:

As the driver in race 4 of the horse All Smoked Up, it was unreasonable, after working extremely hard to go forward at the start from barrier 6, to continue to apply pressure to the leader Firealong around the first turn, which resulted in an extremely fast first quarter of 26.5 seconds, followed by a quick second quarter of 30.2 second, and through this All Smoked Up began to tire from the 400 metres, to finish down the track, beaten 24 metres.

3 The Tribunal was shown a DVD replay of the particular parts of the race where this breach was alleged to have occurred and each party was invited to draw to the attention of the Tribunal any particular aspect of the race so as to better understand the competing contentions.

4 The case for the Stewards centered on the fact that Ms Darlington drove *All Smoked Up* from barrier 6 in an attempt to lead the race in circumstances where there were five horses competing for the lead. By the end of the straight, for the first time, *All Smoked Up*

was in front but wide out and had come away from the other runners except for *Firealong* which was racing on its inside. *All Smoked Up* continued to contest the lead but shortly after turning out of the straight, *Firealong* had established itself on the pegs and slightly in front of *All Smoked Up*. The first quarter was covered in a very quick 26.5 seconds and the second quarter was run in a very competitive 30.2 seconds. The Stewards established that Ms Darlington had seen the time on the board and was aware that she had covered the first quarter in this very quick time and had still not been able to obtain the lead from *Firealong*. Having regard to the time taken for the first quarter, it was submitted that it was unreasonable to continue to pressure *Firealong* and seek the lead and there was ample opportunity to restrain *All Smoked Up* just after the first quarter and preserve the horse for a run in the straight in order to obtain the best possible finishing position.

- 5 The Stewards accepted that *All Smoked Up* was a speedy horse whose racing pattern was to lead or to race near the lead. A comparison of starts since February 2009 demonstrated that the time of 26.5 for the first quarter was the fastest time that she had run and was significantly so. The Stewards had no complaint about the horse searching for the lead early in the race: their complaint was that continuing on the outside of *Firealong* at a speedy pace led to the horse dropping out in the straight and being beaten by 24 metres.
- 6 The case for Ms Darlington, both before the Stewards and on appeal, was that the horse had been driven to instructions, was a very fast horse and had a well established pattern of either leading or being close to the lead in her races. It was suggested that, from the first turn at the bottom of the straight and into the back straight, she had restrained *All Smoked Up* although the horse continued to run strongly. Ms Darlington was of the view that, because of the horse's established pattern of racing, if she had been allowed to get to the front and lead, even at the fast pace recorded, she would have gone close to winning the race. In Ms Darlington's view it was better for the horse to run consistent quarters of 29 seconds but she did not think that she was in any trouble by running the first quarter in 26.5. During the Stewards' Inquiry Ms Darlington accepted that, in driving the horse to try to get to the lead, the recording of the time of 26.5 for the first quarter was her doing. The only reason that she did finally restrain the horse is because she could not get to the lead and there was no point to continue on if she could not get past *Firealong*.
- 7 In the appeal hearing, further comparative times were put forward for the horse to demonstrate that at other tracks, *All Smoked Up* had recorded fast first quarters and competitive second quarters in a number of runs, finishing two seconds, two thirds, a fourth, two

fifths and a seventh. This was the established pattern for the horse. That document, however, showed the fastest quarter at 28.9 seconds and the slowest quarter at 32.6 seconds. It was pointed out that, although *All Smoked Up* was travelling very quickly in the first and second quarter, she had not been unreasonably driven with the whip and in fact had not been driven with the whip at all when contesting for the lead, as was her normal pattern. It was also stated before the Stewards that *All Smoked Up* had the credentials to run along in the fashion that occurred in this race and that a number of starts ago she was the third fastest filly who had ever raced over a mile at Newcastle. Not only was she driving to instructions but also, with her father, they had studied the race and thought that was where the horse needed to be.

- 8 On appeal it was argued that the particulars of the breach could not be sustained because there was no evidence that the horse had continued "to apply pressure to *Firealong*" around the first turn and all that had happened was that *All Smoked Up* had shown its usual speed and was sitting up outside of five other horses before *Firealong* and *All Smoked Up* came away from that bunch. Having viewed the DVD replay a number of times, the Tribunal cannot accept that submission as representing a correct analysis of the race. It is abundantly clear that *All Smoked Up* was permitted to show its customary pace and was allowed to run along at this very fast pace in search of the lead. It is apparent from the DVD replay that, shortly before the end of the straight, *All Smoked Up* actually got to the lead and it was not until shortly out of the turn at the bottom of the straight that *Firealong*, who was crossing to the pegs, established itself in front of *All Smoked Up*. In the sense that *All Smoked Up* was searching for the lead, it was applying pressure to *Firealong*.
- 9 It was accepted on behalf of Ms Darlington that, after the first quarter, she may have made an error of judgment in continuing to seek the lead but by the end of the second quarter, she was restraining the horse. Again, the DVD replay demonstrates that the only clear point where restraint was applied by Ms Darlington was near the 2300 metre mark where, in fact, *All Smoked Up* had briefly put its head in front but was unable to go past *Firealong* and was then restrained.
- 10 The Tribunal has long accepted that to establish a breach of this rule, it does not permit the mere substitution of the Stewards' view as to how a particular horse should have been driven and does not seek to punish a mere error of judgment during the race but requires that the driver's conduct must be culpable in the sense that, objectively judged, it is found to be blameworthy. Regrettably, the Tribunal finds that in this instance the driver, Ms

Darlington, was blameworthy in the manner suggested by the Stewards and that having regard to the very fast pace of the first quarter, *All Smoked Up* should have been restrained, at least to take a sit off *Firealong* so as to give the horse every chance of obtaining the best possible finishing position at the end of the race. Although Ms Darlington had instructions to try to lead it was clear by the end of the very fast first quarter that *All Smoked Up* was not going to be able to get past *Firealong* and to be able to cross it safely. At that point and shortly after, despite instructions, her professional responsibility as a driver was to assess the ability of her horse to finish the race off if it kept trying to secure the lead at a very fast pace. There was a reasonable option open that still allowed the horse to race according to its usual pattern without seriously putting at risk its ability to finish off the race. It is accepted by the Tribunal, as it was by the Stewards, that had the horse been able to easily take up the lead the drive could not be judged as blameworthy: once *Firealong* showed determination to lead, this approach was no longer viable. It is for that reason that the appeal against the finding that the rule was breached must be dismissed.

- 11 It is apparent that, in setting the penalty of twenty-one days' suspension, the Stewards took into account Ms Darlington's relative inexperience and her good driving record as well as her lack of experience in driving at Menangle. An offence under this rule is frequently regarded as a serious breach but in this case the breach is appropriately described as falling within the lower range of seriousness considering the other factors taken into account by the Stewards. The penalty of twenty-one days' suspension is not a severe penalty and well within an appropriate range having regard to the nature of this breach. Having regard to these matters and the fact that in submissions no remarks were addressed to the question of the relative severity of the penalty, the Tribunal is content to confirm the suspension of twenty-one days.
- 12 Having regard to the above matters, the Tribunal makes the following orders:
 - (a) the appeal against the finding of a breach of Rule 149(1) and the penalty of twenty-one days' suspension is dismissed.
 - (b) the Tribunal confirms the penalty of a twenty-one day suspension.
 - (c) the suspension will commence at midnight on the date of this decision unless an alternative time is agreed with Stewards having regard to the reasonable commitments of Ms Darlington.

The Hon Justice W R Haylen
30 March 2011

