



RACING APPEALS TRIBUNAL
of New South Wales

Case Title: Cameron Fitzpatrick v Harness Racing NSW

Hearing Date(s): 17 October 2011

Ex tempore Decision Date: 18 October 2011

Jurisdiction: Racing Appeals Tribunal

Before: Kavanagh J

Decision:

- (1) The charge against Mr Fitzpatrick under HR 44(1) is upheld.
- (2) The Tribunal confirms the penalty imposed by HRNSW Stewards against Mr Fitzpatrick of a fine in the sum of \$300 for breach of HR 44(1).
- (3) The charge against Mr Fitzpatrick under HR 187(2) is dismissed.
- (4) The penalty imposed by HRNSW Stewards against Mr Fitzpatrick of a fine in the sum of \$200 for breach of HR 187(2) is set aside.
- (5) The appeal bond is to be retained by HRNSW.

Rules Cited: Australian Harness Racing Rules

Category: Principal Decision

Parties: Cameron Fitzpatrick (Appellant)
Harness Racing NSW (Respondent)

Representation
GJ Harris & Co (Appellant)
Harness Racing NSW (Respondent)

DECISION

The Appeal

- 1 This is an appeal by Cameron Fitzpatrick, a harness racing driver, from two decisions of the Stewards of Harness Racing New South Wales ("HRNSW").
- 2 The appellant drove "*The Peace Rose*" at race 3 at Tabcorp Park Menangle on 17 September 2011. Subsequent to the race, the Stewards opened an inquiry into the tactics adopted on the driving of *The Peace Rose*. The inquiry was adjourned on Saturday 17 September 2011 and reconvened on Tuesday 20 September 2011. At the reconvened inquiry of 20 September 2011, the appellant was charged with two contraventions of the Rules.

The Charge under Rule 44(1)

- 3 The first alleged contravention was of r 44(1) of the Australian Harness Racing Rules ("HR" or "the Rules") which reads:

Tactics

44. (1) A driver or 1 or more of the connections of a horse intending to adopt during a race tactics contrary to the horse's usual racing pattern shall, as soon as practicable, so notify the Stewards.

...

The particulars of the charge were:

... when driving *The Peace Rose* in race 3 on that evening, you failed to notify stewards, that you intended to drive the mare further forward ...

- 4 The appellant pleaded guilty to the charge under HR 44(1) that he drove *The Peace Rose* out in front and did not notify the Stewards that this was a different tactic to that usually followed when driving the horse in a race.

- 5 This appeal relates to the severity of the penalty. At the inquiry of 17 September 2011, the appellant pleaded guilty to the charge under HR 44(1) and was fined in the sum of \$300 for the offence.
- 6 The ground of appeal pleaded is that the penalty imposed by Harness Racing NSW is excessive.
- 7 In support of its contention the penalty is excessive, reliance is placed by the appellant on the published guidelines for penalty drawn up by HRNSW and relied upon in their consideration and reasons as to the quantification of penalty. It is contended those published guidelines indicate the maximum penalty for an offence under HR 44(1) is a fine in the sum of \$200. HRNSW contends that the document is only a "guide" and the quoted maximum penalty relates to breaches of "CO" races ("COs" are races for country front horses who, if they win a race, get graded up to C1 etc) or restricted races (these are races for horses who have not before competed who are also graded R1 etc). HRNSW contends a more severe penalty is usually given by the Stewards for breaches of the relevant rule if in a city race. The guidelines do not affirm this practice of HRNSW to increase the penalty for such a breach if the race is conducted on a city track.
- 8 The level of penalty applied to an offence under the Rules is a discretionary decision. The Stewards are those persons who carry the responsibility for ensuring the integrity of harness racing in NSW. They are the professionals who carry the responsibility for the proper conduct of harness race meetings. For the Tribunal to interfere with the discretionary decision of the Stewards, in the area of the in-competition driving conduct during a harness race, there must be evidence to sustain the decision on penalty was a misuse of the discretion. That is, it must be shown that the penalty was, in this case, excessive. I can see no ground on which to support the proposition that the level of the fine imposed on Mr Fitzpatrick was excessive. I do not accept that the absence in the guidelines of advice that the maximum penalty for a breach can be increased for an offence

during a city race is proof that the minimum increase imposed in the matter can be held to be excessive.

- 9 Therefore, in relation to the charge brought under HR 44(1), which in essence was a charge that the driver, Cameron Fitzpatrick, did not notify the Stewards of a change of tactics from the horse's usual racing pattern before the race to which the driver has pleaded guilty, I endorse the penalty of \$300.

The Charge under Rule 187(2)

- 10 At the hearing of 20 September 2011, the applicant was issued with a second charge under HR187(2) which reads:

Offences

187. (1) ...

(2) A person shall not refuse to answer questions or to produce a horse, document, substance or piece of equipment, or give false or misleading evidence or information at an inquiry or investigation.

...

The particulars of the charge were:

... at Menangle on 17 September 2011, when questioned over The Peace Rose, you were adamant that you drove that mare in exactly the same manner at its previous start that you were driver of it.

- 11 Mr Fitzpatrick pleaded not guilty before the Stewards. Mr Fitzpatrick was subsequently found guilty by the Stewards and fined in the sum of \$200.

- 12 The appellant, in appealing his conviction of this charge, relies upon the following two grounds of appeal:

Ground 1 - the appellant contends there is insufficient evidence to support the decision reached by the Stewards that the appellant committed such a breach.

Ground 2 - in the event the Tribunal upholds the finding of guilt by the appellant of a breach of HR187(2), the appellant appeals the penalty imposed by the Stewards.

- 13 At the first inquiry held by the Stewards on 17 September 2011, Mr Fitzpatrick was asked, without the aid of seeing the DVD of the race, how he recalled he normally drove the horse and he said:

Well sir, I've tried to come out on her every time. If I thought it was any different I would have come and seen you. I've never been fined for this rule.

The Chairman asked Mr Fitzpatrick:

If we go back through the records and look at it, you always drive it out of the gate with the stick?

Mr Fitzpatrick answered:

"Yes sir".

- 14 The Stewards determined to follow up on this evidence and adjourned the proceedings to view DVD footage of past starts of *The Peace Rose*. The following facts were revealed: *The Peace Rose* had three prior starts but Mr Fitzpatrick only drove her on two of those starts.

- 15 On the first start, I am satisfied (and it is agreed between the parties) the DVD of the race indicates Mr Fitzpatrick attempted to come out at the front using the whip with vigour. He gave evidence to the effect as follows:

Well I've always tapped it up sir - not to the vigour I did tonight I'll agree.

Mr Fitzpatrick was asked whether he varied his conduct on the evening of the race in question and he answered:

"Different vigour yes".

- 16 I have examined the DVD footage of *The Peace Rose's* start. The DVD coverage of the race indicates that Mr Fitzgerald gave a truthful recollection of his drive of *The Peace Rose* at its first start - he did use the whip.
- 17 There were two other starts of *The Peace Rose* but Mr Fitzpatrick only drove her in the second start. I have sighted the DVD of that start. The DVD does not indicate the use of the whip at the start. However, it is difficult to determine whether he intended to go out front given, as he also said of the horse, that it always "tries to, tries to go forward off the arch".
- 18 Given the answers provided by Mr Fitzpatrick, I am not persuaded there was an intention to mislead the Stewards in the evidence he gave on the first day of the inquiry.
- 19 I, therefore, am not satisfied, on the totality of the evidence, that the charge under HR187(2) has been established. Further, the basis of the charge was a question directed to past actions, which required his recollection, when the best evidence available was the DVDs which should have been made available to the driver. When the DVDs were made available, he made the appropriate concessions.
- 20 Further, in the particulars of the charge and in the correspondence to Mr Fitzpatrick, the obligation under HR187(2) has been referred to as "misleading information" and on another occasion as giving "false evidence". It is not satisfactory, in providing particulars to a charge, to generally recite the provisions of the rule, especially where, within the rule, there are specific distinguishing elements. The particulars should, with specificity, have recited what Mr Fitzpatrick was accused of doing and as when it is alleged he committed the breach. It is unclear to me whether it was alleged Mr Fitzpatrick gave "false evidence" or "misleading evidence" or whether he provided the Stewards with "false information" at that first day of the inquiry.

- 21 Given the way the charge was particularised, together with the evidence of Mr Fitzpatrick and an examination of the DVD evidence, I do not find the charge was proven.
- 22 Therefore, the penalty of a fine in the sum of \$200 imposed under HR187(2) is set aside.
- 23 A query was raised by HRNSW as to the fact that two charges were appealed but only one fee has been paid by the appellant on the appeal. These two charges were laid by the Stewards, and dealt with, together. Both at first instance and on appeal the charges have been dealt with at the same hearing. It is appropriate there be one fee on the appeal. In the circumstances, HRNSW shall retain the fee.

Orders

- (1) The charge against Mr Fitzpatrick under HR 44(1) is upheld.
- (2) The Tribunal confirms the penalty imposed by HRNSW Stewards against Mr Fitzpatrick of a fine in the sum of \$300 for breach of HR 44(1).
- (3) The charge against Mr Fitzpatrick under HR 187(2) is dismissed.
- (4) The penalty imposed by HRNSW Stewards against Mr Fitzpatrick of a fine in the sum of \$200 for breach of HR 187(2) is set aside.
- (5) The appeal bond is to be retained by HRNSW.