

RACING APPEALS TRIBUNAL OF NEW SOUTH WALES (HARNESS)

Tribunal: The Hon Justice Haylen
Advisor: Mr A Mullins

Appeal by James Nile Jnr against the Stewards' decision on 27 December 2010 to suspend him for a period of 14 days pursuant to Rule 163(1)(a) of the Harness Racing Rules

EX TEMPORE DECISION

We are in a position to announce our decision in the matter and shortly state our reasons for it.

Mr Nile, as a licensed driver and trainer, appeals against a penalty of 14 days' suspension imposed by Harness Racing Stewards for breach of rule 163(1)(a) arising from his drive on 27 December 2010 at the Penrith Paceway.

The Tribunal has had the benefit of reviewing the DVD replay of the race a number of times and has had the benefit also of Mr Bentley and Mr Nile making their comments about the incident in question.

The charge that the stewards announced on the night was in these terms, after referring to rule 163(1)(a) and drawing attention to the fact that the Rule states:

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

and announcing their concern with the crossing part of the rule in this case, these were the particulars: that Nile, as the driver of *Making Rhythm* in race 7

Permitted that horse to shift down the track breaching first turn and, as a result of that shift, tighten the racing room of Maddy Bid which was at all times racing to her inside. As a result of that that horse had to be checked by its driver and was carried over several marker pegs.

At the time Mr Nile pleaded not guilty and on this appeal also enters a plea of not guilty; in the alternative he challenges the severity of the penalty.

We are satisfied that, the charge as particularised has been made out. Our viewing of the DVD shows that *Making Rhythm* was permitted to shift down the track and that that shift resulted in the tightening of the racing room of *Maddy Bid*.

Having said that, the incident falls within a small compass, but nevertheless constitutes a breach of the rules of Harness Racing.

The next issue then becomes one of penalty. Mr Nile has been associated with harness racing for a number of years, although he tells us today that quite some time ago he gave up driving professionally and now drives as a hobby. His record indicates that it has been a good record in the context of his reduced number of drives but, nevertheless, although there was no agreement on the point, he seems to have a number of drives every year, more than just occasionally.

In recent times his record shows a 10 day suspension for two incidents in April 2008 and in 2010 a 10 day suspension for a breach of rule 163(1)(b) in May.

The matter now under appeal occurred in December 2010. Therefore by December he has breached the rule twice in 2010. Nevertheless, that is a good record and one that needs to be acknowledged.

Unlike the stewards, the Tribunal is not bound to a system of prearranged or concluded penalty regimes. The fact that the stewards do that is totally within their domain and in many respects understandable, but this Tribunal has the capacity to come to the issue of penalty forming a fresh view.

The Tribunal is of the view that an adequate penalty in this matter would be a suspension of ten days and that suspension will be substituted for the penalty of 14 days imposed by the stewards.

In relation to the appeal deposit, because the appeal was an all grounds appeal it is appropriate in this matter that the appeal deposit be forfeited. The penalty will commence today.

The Hon Justice W R Haylen
29 March 2011