

**RACING APPEALS
TRIBUNAL
NEW SOUTH WALES**

**TRIBUNAL MR DB ARMATI
ASSESSOR MR W ELLIS**

EX TEMPORE DECISION

THURSDAY 14 FEBRUARY 2019

APPELLANT BLAKE FITZPATRICK

**AUSTRALIAN HARNESS RACING
RULE 163(1)(a)(iii)**

DECISION:

- 1. Appeal upheld**
- 2. Appeal deposit refunded**

1. The appellant appeals against the decision of the stewards of 7 February 2019 to impose a period of suspension of his licence to drive for 10 days for a breach of Rule 163(1)(a)(iii), which states:

“A driver shall not cause or contribute to any interference.”

The particulars were that:

“you, the driver of Rollin With Holly, did permit your runner to shift down the track at the first turn and place Mr Towers’ runner, Premier Joy, in severely restricted room, and cause that runner to race inside the line of the marker pegs and race roughly for a short distance.”

2. The appellant has denied a breach of the rule at all times.

3. The evidence has comprised the transcript and DVD before the stewards, the stewards’ report and the race result, together with oral evidence of steward Mr Rando and of the appellant.

4. The issue is a simple one: did the appellant move down the track to such an extent that he caused the interference on Mr Towers? The factual distance involved is very limited.

5. Mr Rando was placed in the tower at the 350 metres and at the point where the incident was said to have taken place was basically looking straight at the horses. He did not at that point have a front or rear view which would have assisted him in his assessment.

6. The opinion he formed was that, by reason of the shifting down, he was quite clearly able, and was quite certain in his evidence to the Tribunal, that when the shifting down took place that Mr Fitzpatrick had moved down a sufficient distance that he was in the line of Mr Tower’s running line, or wheel line, and that that caused a tightening. There is no doubt that a tightening occurred; there is no doubt that Mr Towers’ wheel came into contact with a marker peg and that it ran roughly for one pace. At the time they were competing for the lead. Obviously, from that description, Mr Towers on the inside, Mr Fitzpatrick on the outside.

7. The video which would be expected to be the corroborative evidence is not of great assistance. The video does not have an angle which demonstrates from, say, a head-on or rear position, that at the critical point when it is said that the tightening took place, that the wheels were not lined with each other or otherwise Mr Fitzpatrick’s wheel was inside the line. The gap between the horses’ shoulders, which was estimated to be some 40 centimetres in oral evidence today, is difficult to assess because of the question whether one horse was in front of the other, which, of course, would cause angle differences.

8. The only other evidence is Mr Towers'. Mr Towers', at its highest, said there was a slight tightening and there was a shifting down from the outside. He was, however, able to maintain his running line and his racing capacity and it was only the touching of the peg and the racing rough for one step, so that the extent to which there may have been a tightening and therefore an interference would be at the very bottom end of the scale of such an assessment of conduct.

9. The place at which Mr Rando formed his opinion is not one that enabled a clear and unambiguous assessment of the exact position on the track of the wheels of Mr Fitzpatrick's sulky and nor does the video provide any assistance. Mr Towers' evidence on those points was not of great comfort.

10. One other factor might be touched upon in that the DVD does show a different coloration of sand or dirt on the track and it is quite apparent from looking at that that the case for the respondent does not become any stronger; in fact, weaker. That is it does not assist to establish a moving down.

10. The Tribunal does not propose to analyse these matters in greater detail because of the time of the day and other commitments which exist. In the circumstances, the Tribunal truncates its usual more detailed reasons.

11. This is an opinion of the stewards case and, as the Tribunal has said for some time, when fresh evidence is given, it is necessary for the respondent to satisfy the Tribunal that the opinion of the stewards is maintained and was reasonably available to them

12. On a comfortable satisfaction level the respondent fails to satisfy the Tribunal that the particulars as pleaded have been made out and fails to satisfy the Tribunal that the breach alleged has occurred.

13. The Tribunal finds that the opinion of the stewards was not reasonably open to them.

14. The appeal is upheld.

15. The Tribunal orders the appeal deposit refunded.
