

**RACING APPEALS
TRIBUNAL
NEW SOUTH WALES**

**TRIBUNAL MR E SELWYN OAM
ASSESSOR MR W ELLIS**

EX TEMPORE DECISION

THURSDAY 29 MARCH 2018

LICENSEE GAVIN FITZPATRICK

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

**DECISION: 1. Appeal upheld
2. Appeal deposit refunded**

This is an appeal by Gavin John Fitzpatrick, a licensed trainer and driver with Harness Racing New South Wales, against a decision by the stewards that he did breach Rule 163(1)(a)(iii) on 10 March 2018 at Young. Rule 163 says:

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

And subsection (5) says:

“A driver who, in the opinion of the Stewards, fails to comply with any provision of this Rule is guilty of an offence”.

The particulars on the charge are that the appellant in race four on the day was the driver of Weona Sizzler and the stewards formed the view that he shifted that runner down the track near the 2000 metres when not clear of Miss Turnbull’s runner, Trickys Beaut NZ, and as a result Trickys Beaut NZ has been tightened for room and was checked and broke.

The appellant was granted leave to challenge his conviction at this stage and, as leave was granted, the appellant also challenges the penalty imposed by the stewards.

The appellant was represented by Mr Hammond and Harness Racing New South Wales was represented by Mr Adams. The appellant’s solicitor indicated that he intended to adduce fresh evidence and, as was recorded in the decision of McCarthy 2014, a steward needs to be called to give evidence about his opinion where fresh evidence is adduced to determine whether his opinion has been changed by the fresh evidence that was adduced.

Harness Racing New South Wales called Mr Travis Quick, the chairman of the stewards panel at Young on 10 March 2018. In addition to this, the Authority relied on the transcript of the proceedings before the stewards at Young on the day in question. Video evidence of the race was also adduced, as was a still photograph of the race which showed the point of interference, if any. Mr Fitzpatrick gave evidence on his own behalf.

Mr Quick was re-called at the conclusion of the appellant’s case to the witness box to advise the Tribunal whether his opinion, as originally formed, had been changed by the fresh evidence adduced. The fresh evidence that was adduced was given by the appellant that Miss Turnbull had a conversation with him after the race in the stable yard and that she had said – and I do not use the precise words – that her horse, Trickys Beaut NZ, had caused the problem.

The second piece of additional evidence was that the Harness Racing New South Wales printout was tendered to show that in Penrith on 8 November

2017 Miss Turnbull's horse had acted in a similar manner as was described at Young.

In her evidence before the stewards' proceedings, Miss Turnbull had said – and I read her evidence – in answer to a question by the Chairman:

“Does anyone have any questions of Mr Ray? No. Miss Turnbull, what can you tell us?”

MISS TURNBULL: Yes, came out of the gate and it looked like the favourite wasn't going to get to the front, and I just chased him up in case I could have got the one-one, and then when he went to the front I grabbed hold of him and wanted cover and he just sort of resented it. It felt to me more that he got out into Mr Fitzpatrick's wheel and struck it.”

The “he” that she refers to is her horse.

There were three stewards that day at Young: Mr Quick, who was in the tower, Mr Frost, was nearby him; and Mr Ray, who was the only steward who observed the events of the race live as he was about four metres from the point of interference, if any. In the course of the stewards' inquiry, Mr Ray had said:

“Thanks, Mr Chairman. Drivers, I watched the running of the race from the stewards' tower at approximately the 300-metre mark. Shortly after the start approaching me it appears as though Mr Fitzpatrick, on his drive, Weona Sizzler, commenced to shift down the track. Miss Turnbull on Trickys Beaut, which was racing to his inside, struck trouble at that stage and appeared to run at a room and was checked and galloped as a result. From the head-on view, obviously I can't tell whether Mr Fitzpatrick was sufficiently clear of Miss Turnbull when he was shifting down the track, but the interference appeared to happen to Miss Turnbull as Mr Patrick” –

I think he means “Mr Fitzpatrick” –

“was crossing her line.”

The still photograph of that part of the interference, if any, clearly shows that Mr Quick and Mr Frost were too far away from the race to be able to see what had occurred. Mr Ray's position, as I already mentioned earlier, was he was much closer to the action and, as he says himself in the transcript of the proceedings before the stewards, he could not tell whether Mr Fitzpatrick was sufficiently clear of Miss Turnbull. The stewards formed their opinion as a result of viewing the film of the race rather than from their live observations, except for Mr Ray.

The Tribunal was greatly assisted by Mr Ellis, and the Tribunal and Mr Ellis viewed the film of the race several times, and upon viewing this film the Tribunal finds it to be inconclusive. The Tribunal finds it cannot ignore the fact that the horse Trickys Beaut NZ, driven by Miss Turnbull, raced roughly that day and due to its behaviour the Tribunal is not satisfied that the stewards' opinion on the day could be reasonably held.

The Tribunal must decide for itself whether there was a breach of the rule, and the Tribunal cannot be satisfied that the rule of not causing interference in the race was breached by the appellant.

Therefore, the opinion of the stewards was one that could not reasonably be held and as a consequence of that finding the appeal is upheld.

I order the appeal deposit refunded.
