

**RACING APPEALS
TRIBUNAL
NEW SOUTH WALES**

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

EX TEMPORE DECISION

MONDAY 14 MAY 2018

APPELLANT DANNY GIBSON

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

- DECISIONS:**
- 1. Appeal against finding of breach dismissed**
 - 2. Leave to withdraw appeal on severity of penalty**
 - 3. Appeal deposit forfeited**

1. Licensed driver Mr Danny Gibson appeals against the decision of the stewards of 16 April 2018 to suspend his licence to drive for a period of 14 days for a breach of Rule 163. The part of that rule particularised by the stewards is as follows:

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

That was particularised as follows:

“that at the Maitland Paceway on 16 April 2018 in race two, where you were the driver of Evils Afoot, rounding the final bend you have made insufficient effort from allowing Evils Afoot shifting inwards, which as a result checked Heavenly Flare, which broke stride.”

2. When confronted with that allegation the appellant pleaded not guilty. On his appeal to this Tribunal, he has maintained that he did not breach the rule and has appealed in respect of severity of penalty.

3. The evidence has comprised the transcript of the stewards' inquiry, the DVD of the three angles shown at that inquiry, together with the stewards' decision and a transcript correction by Chairman of Stewards on the occasion, Mr Rando, and also the recent race history of the horse Heavenly Flare. In addition, Mr Rando has given oral evidence, as has the appellant.

4. The horse Evils Afoot is known by the appellant to be one which ducks in and as a result wears a Murphy blind on its inside. That fact was known to the appellant at the time of his drive.

5. The other horse of interest, Heavenly Flare, has, on the appellant's evidence, a tendency to duck out and was said to have done so in the subject race on each of the turns. The exhibit of its race history, which runs from 4 August 2017 in a trial, with one of the stewards' comments, through to 4 May 2018, and in particular seven occasions on which it has raced, does not show that it has broken stride as a result of those matters but it did on one occasion break stride as a result of contact with its sulky. Therefore, the stewards' evidence is that Heavenly Flare is not a horse which has a racing history of concern to them.

6. The race, relevantly, was two laps of the Maitland track. Nothing untoward in the first lap except Mr Gibson's evidence that Heavenly Flare persisted in its boring out tendency at each of the turns. At the 600 metre point the horse Stormfront, driven by Mr Hedges, is said, by the evidence of Mr Rando, to have tired as a result of which Miss Dart's horse, Heavenly Flare, was caused to break and gallop and that had an immediate impact upon Evils Afoot, driven by Mr Gibson, the appellant, which was trailing Heavenly Flare, and he was required to take substantial evasive action and move very wide on the track.

7. They then proceeded towards the 400 metres where the subject aspect of interference is said to have taken place. In moving from the 600 to 400, Heavenly Flare was driven at least two wide of the marker pegs, Stormfront remained down towards the marker pegs and Evils Afoot had been moved quite wide – three or four cart-widths wider on the track.

8. As they approached the final turn, and at or about the 400 metre mark, it is said that the appellant caused interference. It is necessary to examine the characteristics of Heavenly Flare at or about that point consistent with its characteristics in the past. It is the appellant's unsupported evidence that in trials Heavenly Flare has shown a tendency to break stride and gallop. As it is said, there is nothing to support that. It is evidence which does not assist him. Because if he had knowledge that this horse had a tendency to break stride as it does, so much greater was the onus upon him as an experienced driver to ensure that he did not occasion pressure to that horse which was untoward and might cause it to break and gallop. It is the stewards' evidence that the horse does not have that tendency. Miss Dart was not asked about the tendency of her horse at the stewards' inquiry.

9. At the inquiry, following their usual course, the stewards asked each of the three drivers what happened, before the video was shown. Miss Dart conceded that her horse lost its legs around the turn and she had appealed for room and all that was occasioned by outside pressure. She felt that Mr Hedges was attempting to relieve the pressure from the inside at that stage as best he could and, indeed, that was Mr Hedges' evidence, on the basis, to quote him, his horse started to "knock up around the final turn". I think on reflection that might be a rather generous assessment of the status of his horse's running at that time in the race. Be that as it may, he was aware of yelling to his outside and, knowing that there was pressure, attempted to move down a little bit to try and relieve that pressure.

10. Mr Gibson, before the video was shown and before he had a chance to go away and refresh from further viewing of the race images, said this: he was aware that Miss Dart's horse was to his inside, he was chasing his mare up, and he said this:

"my mare's just sort of ducked in enough and there wasn't an awful lot of room there, and just ducked in enough to hamper Miss Dart's horse a fraction. I yelled out to Jess to basically let her know that my horse was ducking in a fraction and, yeah, that's about as much as I can say, sir." He went on to say he was "on the right rein".

11. The video was shown. The appellant then was at pains to point out, while conceding as he did that the video "clearly shows that my mare was ducking down and I was trying to straighten her up, sir." He also was at

pains to point out that at various times leading up to that incident he was attempting to relieve the pressure by preventing his horse from ducking in by moving its head out.

12. Mr Rando, who was the Chairman of Stewards and in the stewards' tower, conceded that from his position in the tower he could form no observations relevant to the race. As a result of his viewing of the dvd of the race and the evidence that was taken at the stewards' inquiry, he gave his evidence today on the basis that, in his opinion as a cadet steward of three years' experience, the video shows that at or about the relevant time the appellant's horse was moved from a three-wide position to about a two-and-a-half wide position, it moved its inside wheel nearer to the legs of Heavenly Flare, that in his opinion Heavenly Flare, whilst it may have had a tendency to turn out, did not do so and maintained a straight line at the relevant time. That at that point – and this is at the stage where Mr Gibson is proceeding faster than Miss Dart – Evils Afoot has moved down and before it was sufficiently clear it has caused Heavenly Flare to gallop.

13. It is Mr Rando's evidence that Heavenly Flare did not contribute to its own breaking, that it did not run rough prior to the breaking, and that the breaking was occasioned by Mr Gibson failing to give sufficient room and failing, importantly, not to give sufficient room because he failed to take evasive action by a more determined effort to move his horse back up the track. It is to be noted at that point there was nothing to prevent Mr Gibson moving up the track, there were no horses to his outside.

14. The evidence before the inquiry of the stewards was that the pressure was occasioned, that there was yelling out to relieve that pressure and that Heavenly Flare galloped because of that pressure, which it is said was not relieved. That was the stewards' opinion formed. Whilst not transcribed, but reflected in the addition to the transcript, it is the opinion Mr Rando has expressed today. The issue is whether those opinions remain reasonable.

15. The evidence is quite clear that the racing was tight, there was pressure from the outside, that each of Mr Gibson and Miss Dart yelled out in relation to that tightening and that pressure. There is no doubt from the video and Mr Gibson's evidence that he was leaning in because he was aware that there was a possibility there might be contact and that would then enable him to retain control if that did occur.

16. Contrary to his evidence that he is of the opinion that the horse Evils Afoot maintained his line at all relevant times – and he said it was depicted on the video by looking at the horse prints left by the particular horse three wide but in front – it is not supported by the totality of the evidence. It clearly shows, in the Tribunal's opinion, that Evils Afoot moved down. Indeed, he does not dispute it ducked down. And it is the Tribunal's opinion that that

ducking down was at the critical time which occasioned Heavenly Flare to break.

17. It is the Tribunal's opinion, contrary to his evidence, that the video clearly demonstrates that at the critical time he took no effort to move Evils Afoot back up the track and, contrary to his evidence, it does not depict him moving the horse's head up or the use of a demonstrative action of the right rein to relieve that pressure. Whilst he may have done so 20 or 30 metres earlier, he did not do so at the critical time.

18. The Tribunal does not accept the further fact that the horse Heavenly Flare was racing in a rough fashion prior to the pressure becoming too much for it and occasioning Heavenly Flare to break and gallop. It is acknowledged there was no contact. But the particulars are that he made insufficient effort. The appellant does not, by his evidence – and he carries no burden – establish that it was the characteristics of Heavenly Flare or the failures of Miss Dart that were the contributing factors. The Tribunal finds that the contributing factor, the substantial issue in this matter, was the appellant's failure at the critical time as just described. He was not fully past when the breaking of Heavenly Flare's stride occurred, and that was occasioned by the pressure which he failed to relieve. That is the opinion of the stewards. That is the opinion of the Tribunal.

19. The Tribunal is, consistent with McCarthy's case, of the opinion that the respondent has established that that opinion of the stewards is reasonably held on the totality of the evidence and that the appellant had the requisite blameworthiness to be in breach of the interference rule.

20. The appeal against the finding that the rule was breached is dismissed.

SUBMISSIONS MADE IN RELATION TO PENALTY

21. I grant leave to the appellant to withdraw his appeal on penalty.

SUBMISSIONS MADE IN RELATION TO APPEAL DEPOSIT

22. I order the appeal deposit forfeited.
