

**RACING APPEALS
TRIBUNAL
NEW SOUTH WALES**

**TRIBUNAL MR D B ARMATI
ASSESSOR MR W ELLIS**

EX TEMPORE DECISION

MONDAY 25 OCTOBER 2021

APPELLANT JAMES MCPHERSON

RESPONDENT HRNSW

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

DECISION:

- 1. Appeal dismissed**
- 2. Licence suspended for 15 days**
- 3. Appeal deposit forfeited**

1. The appellant appeals against a decision of the stewards of 6 July 2021 to impose upon him a period of suspension of his licence to drive for 10 days.
2. The charge against him was under Rule 163(1)(a)(iii), which relevantly is as follows:

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

The stewards particularised the breach as follows:

“... when you were the driver of Imapest, the stewards feel that you shifted that runner out near the 600 metres and as a result there was contact to Millwood Cleopatra, and that runner has been checked and broke.”

3. When confronted with that allegation before the stewards, the appellant pleaded guilty and the stewards proceeded to impose penalty, which was based upon a starting point for a breach of the rule on a plea of guilty of 28 days with a 25 percent discount for the plea of guilty of 7 days to lead to a suspension of 21 days. However, as the stewards believed that a 21-day suspension would have been excessive for the incident in question, they further reduced the period of suspension to 10 days.
4. By his notice of appeal, the appellant has pleaded not guilty. The appellant has today been assisted by Mr Daniel Jack. The appellant did not appear at the hearing and no explanation for his absence other than he is possibly at work has been given. The matter has then proceeded on the basis of it being defended. The prospect of a higher penalty was explained.
5. The case for the stewards has been the transcript of the inquiry and the video images. No evidence in addition was led for the appellant.
6. The case is one which focuses upon the lead up to the 600 metres. At that point the drive of the appellant comes under observation. It might be pointed out at this stage the video is not that clear but does enable a consideration of what the drivers said to the stewards and what the images depict as enabling a conclusion to be drawn.
7. The appellant has moved out from an inward position, to describe it loosely, to go to at least three wide and over a period of time, possibly up to four seconds, has moved wider. The extent to which that period of four seconds involved a constant move is difficult to discern.
8. The description of Mr Hallcroft, who was driving Millwood Cleopatra, is that with 700 metres to go he got pushed four wide, as he turned into the back straight:

“McPherson came out and made contact with my horse’s front leg and galloped”.

9. There is no doubt that there was a contact. There is no doubt that Millwood Cleopatra galloped. The question is whether that was occasioned by interference.

10. Firstly, it is the fact that Mr Hallcroft was entitled to maintain his line. He was not obliged to ease up the track further to accommodate Mr McPherson or give Mr McPherson a better opportunity to finish in a better position than Mr Hallcroft’s drive. Mr McPherson was, of course, entitled under the rules to push wider, but he could only do so if he did so within all of the other rules. And the rule here he is said to have breached, of course, is that in doing so he interfered.

11. It is apparent that another horse of interest – it does not need naming – was stopping pretty quickly and it was necessary for Mr McPherson to do something. It appears he had two options. One was, as he described to the stewards:

“stay back and pull back on him extremely hard and he goes back with me”,

or do that which he did, which was to continue to move up. And he moved up certainly beyond the three wide and his final part of that move was not over the entirety of the four seconds, it was a move that had partially ended.

12. When he did so, the positioning of the wheels of Mr McPherson’s sulky as against the legs of the horse Millwood Cleopatra become apparent on the video and as he moved up further, Mr Hallcroft being entitled to maintain the line on Millwood Cleopatra, that there was contact between the wheel and the near foreleg of Millwood Cleopatra.

13. In the circumstances, the Tribunal concludes that Mr McPherson should not have continued to move up as he did that he had an alternative option available he should have taken, he was therefore blameworthy, he should not have continued to drive in the way he did, and in doing so he occasioned interference to Millwood Cleopatra, and it is in the terms as particularised.

14. The Tribunal finds the charge proven.

15. The appeal against the breach of the rule is dismissed.

SUBMISSIONS MADE IN RELATION TO PENALTY

16. The issue for determination is penalty.

17. The Penalty Guidelines provide a starting point of 28 days for this particular breach. There has been no submission that his driving record in

recent times or over the period of his career should entitle him to any discount from that starting point. The record need not be read out, but over the period of the last 12 months there have been a number of suspensions and reprimands in respect of the subject rule.

18. The issue is whether that 28-day starting point is appropriate.

19. The stewards in their determination reduced the actual penalty they considered to be appropriate by 11 days and they did so on the basis that they considered that a formula approach would lead to excessive penalty for the incident. The Tribunal in its reasons for finding the rule breached reflected upon the fact that the options which were available to the appellant were twofold and the one he took the Tribunal determined was incorrect.

20. The extent of the interference need not be examined more closely. More the fact that the incident occurred because there was a horse slowing very quickly in front of the appellant. He had two options. One was, as it were, to stop his runner with severe work on the reins and the other was to move out. In moving out, he has done it in a way that caused the interference found against him.

21. In those circumstances, the Tribunal is of the opinion also that there can be a reduction in the appropriate penalty by reason of the nature of the failure – the blameworthiness – of the appellant on this occasion.

22. Before the stewards, the appellant received a discount of 25 percent for a plea of guilty. He is not entitled to that discount on this appeal. The reason for that is that he pleaded not guilty on appeal and it was necessary for a determination to be made. The Tribunal has reflected that a 25 percent discount would be given for a plea of guilty before the stewards and before the Tribunal and when there is cooperation with the stewards. In this case, the whole of that formula was not met.

23. From a starting point of 28 days, there would be a discount of seven days if he had pleaded guilty. The Tribunal has determined that there was some utilitarian value to the stewards, particularly during a busy meeting, of the admission of the breach before them and they were less troubled. There will therefore be a minor discount given for that plea before them.

24. The Tribunal determines in the circumstances that there be a starting point for this breach of 17 days. There will then be a two-day discount – percentages are not required – for the plea that he entered before the stewards. That leaves a period of suspension of 15 days. The Tribunal notes that that is a greater period of time than that which he was subject to, and as he was not present, the giving of a Parker warning earlier was not available.

25. In the circumstances, therefore, the part of the appeal against severity of penalty is dismissed.

26. The order of the Tribunal is that the licence of the appellant is suspended for a period of 15 days.

APPEAL DEPOSIT

27. There being no application, the Tribunal orders the appeal deposit forfeited.
