

**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)**

**SEVERITY APPEAL**

**DECISION:**

- 1. Appeal dismissed**
- 2. Appeal deposit forfeited**

1. This is a severity appeal by licensed driver Mr James McPherson against the decision of the stewards of 9 July 2021 to impose upon him a period of suspension of 14 days.

2. That arose as a result of a charge under Rule 163(1)(a)(iii) as follows:

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

The stewards particularised the breach as follows:

“In race 5 today when you drove Isn'tthatright, the stewards feel that you have shifted that runner out approaching the 400 metres and as a result there was contact to Red and that runner was checked and raced roughly and losing ground.”

3. Before the stewards the appellant pleaded guilty and he has maintained that plea on appeal. The evidence has comprised the transcript of the stewards' inquiry, the DVD of the race images and the appellant's offence history. The appellant was not present but represented by Mr Daniel Jack.

4. The penalty guidelines provide a starting point of 21 days for the facts as alleged. There is a submission – the Tribunal considers it relatively faint – that for interference matters there might be some lesser starting point. The simple fact is that he has pleaded guilty, he has put himself within the guidelines, the Tribunal sees no reason not to adopt them for consideration.

5. The issue is, therefore, should there be some reduction in that starting point by reason of the incident itself.

6. The two horses involved, the other one is the drive of Mr Walker, the horse Red. That horse has a history of running roughly. It was somewhat erratic before and after the incident. The stewards were satisfied, and the Tribunal is satisfied, that at or about the relevant times the horse was not going erratically, that Mr Walker was in the process of driving that horse up and that as he did so, Mr McPherson's horse has come out – come out wider – he has been yelled at by Mr Walker in an appeal for room but Mr McPherson's drive was simply described as, as he himself said:

“I sort of come off underneath him and pushed him out and took his run. That simply is it.”

7. The Tribunal is satisfied, despite Mr McPherson's statement to the stewards that there was no contact, that the evidence of Mr Walker, who would be in a better position to feel a form of contact from his sulky position, is such that there was contact. The effect of it was to cause Mr Walker's horse, Red, to run roughly.

8. It is, therefore, the Tribunal sees no reason why the starting point of 21 days should not be applied, and it does so.

9. He has pleaded guilty at an early stage. He is entitled to a seven-day discount for that. It does not need further examination. The Tribunal agrees with the stewards that his driving history, which need not be read out, which contains numerous matters under this rule in the last 12 months, is such that there should be no further discount for a good driving record.

10. The Tribunal agrees with the stewards completely that a period of suspension of 14 days is appropriate for the interference occasioned on this occasion.

11. Accordingly, the appeal against severity is dismissed.

12. There being no application for a refund, the Tribunal orders the appeal deposit forfeited.

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