

**RACING APPEALS  
TRIBUNAL  
NEW SOUTH WALES**

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

**EX TEMPORE DECISION**

**FRIDAY 13 APRIL 2018**

**LICENSEE ROBERT MORRIS**

**AUSTRALIAN HARNESS RACING RULE  
168(1)(b)**

**DECISION:**

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

1. Licensed driver Mr Robert Morris has appealed against the decision of the stewards of 3 March 2018 to impose upon him a period of suspension of his licence to drive for a period of 21 days.

2. The allegation relates to a breach of Rule 168(1)(b), which was set out as follows:

“A person shall not before, during or after a race drive in a manner which is in the opinion of the Stewards reckless.”

The particulars were that:

“being tonight in race nine when you were the driver of Bettor To Be Tricky, the stewards feel you have driven that runner in a reckless manner in that you failed to provide sufficient room to Mr Harpley driving Harps and from the 1200 metres to near the 1000 metres and then again from approaching the 600 metres to the 400 metres and then leaving the 400 metres until approaching the 200 metres.”

3. When confronted with that allegation, Mr Morris pleaded not guilty, he was subsequently found to have breached the rule and penalised. On his appeal to this Tribunal he has maintained that he did not breach the rule and has also appealed on the issue of severity of penalty.

4. The evidence has comprised the transcript and race vision, together with the subsequent stewards' report and, in addition, vision of two drives by Mr Morris at Penrith on 23 November 2017 and 8 February 2018. In addition, Mr Jasprizza, one of the stewards on duty on that evening, and the appellant have given oral evidence.

5. The allegation is one of reckless. Reckless is not defined in the rules. Mr Morris kindly advanced a definition in the course of his case, being one which reasonably accurately reflects what reckless means in the context of this particular rule, the rules generally and the welfare and integrity requirements in respect of harness racing. The Tribunal is satisfied that whichever of various sources of the meaning of the word reckless, and without turning to case law, that for this particular matter it is necessary for the respondent to establish in this de novo hearing that the drive of the appellant showed no regard for danger or for the consequences of his actions. Or, as it might be differently, but not dissimilarly expressed, that he did not care about danger or the effect his behaviour would have on other people.

6. The race was at Wagga, an 800 metre track. The horse driven by the appellant had just come across from New Zealand where it had a habit of hanging in, and accordingly in New Zealand wore certain gear. In this

particular race, being raced for the first time under Ms Turner's training and as its first race by the appellant, the horse had slightly different gear on.

7. The appellant is an experienced driver, having enjoyed success with many drives. The other relevant horse in the race was Harps, driven by Mr Harpley, who has had some 35 years of experience. Each of them is sufficiently experienced that their respective drives, but more importantly, obviously, the appellant's drive, are to be assessed on the basis that they enjoy the top grade of licence, are experienced drivers and are expected to drive in a manner with that experience.

8. The race essentially became a two-horse race. The issues particularised by the stewards are that essentially on the three occasions set out that the appellant failed to give sufficient room to Mr Harpley. There was nothing about the commencement of the race. They proceeded past steward Mr Jasprizza's tower on three occasions. The first time they went past, at or around the 2000 metre mark in this 2165 metre race, nothing of any untoward nature occurred. It first occurred when they went past him on the second occasion.

9. The issue is that, to summarise the evidence, Mr Morris was on the outside of Mr Harpley at all relevant times, that they raced very tightly, that eventually Mr Morris' horse prevailed and won what might be described as a very good and very exciting race. The issue is that they essentially raced on a number of occasions wheel to wheel, Mr Morris' horse being on the outside, Mr Harpley's horse being down on the marker pegs. That it is apparent Mr Harpley did not give up to Mr Morris when Mr Morris came up alongside him. There is some suggestion in Mr Harpley's evidence to the stewards at their inquiry that Mr Morris was aggrieved by that and therefore to be implied that Mr Morris then drove in a way which failed to respect Mr Harpley's rights.

10. Mr Harpley's evidence and its assessment is not assisted by some gross exaggerations that he engaged in when Mr Morris was not present and which formed the commencement of the inquiry. For example, he said he appealed for room numerous times, "he kept driving his horse on the top of my horse, the back leg of my horse was hitting his cart for the whole last 1600", and matters of that nature. Once Mr Morris was present in the inquiry, he maintained the constancy of the contact, but those other matters seemed to fall away.

11. Rather than go through this race second by second and analyse it, the Tribunal proposes to deal with the key points which have motivated the stewards. It is apparent that they formed an adverse opinion at their inquiry. Mr Jasprizza gave detailed evidence of why he remained of the opinion that he expressed and maintained it after he was cross-examined.

12. Mr Jasprizza is a steward of two years' standing, he has substantial experience with horses. He was in the tower at the end of the back straight and able to observe quite clearly the actions of the two drivers as they proceeded on the back straight towards him and past him on the occasions outlined.

13. The gravamen of his evidence is the potential for an adverse effect. To put it in the terms of reckless, the potential for danger or for adverse consequences. It is said that that arises because Mr Morris shifted down, that he drove wheel to wheel, and he drove very tightly, and with those three circumstances in mind, on a number of occasions he failed to relieve that pressure by moving back up.

14. As to the shifting down, it is apparent from the evidence of Mr Harpley to the inquiry, and Mr Jasprizza, that that did occur. It is not in essence challenged substantially by Mr Morris.

15. A viewing of the DVD clearly shows a moving down occasioning Mr Harpley's drive to be put down towards the marker pegs. It is said as they passed the 400 down to the 200, which was difficult to discern on the vision, and essentially therefore difficult for Mr Jasprizza to observe, but based upon Mr Harpley's evidence, that that shift down occurred again and on that occasion Mr Harpley informed the stewards that contact was made with a marker peg. It is difficult to discern that from a viewing of the video and was not observed by Mr Jasprizza, and nor could he identify it from the video in the witness box.

16. It is said that they raced wheel to wheel and that had the potential for danger. There is no doubt that there was a rubbing and that it occurred on a number of occasions. Mr Harpley described it in the actual inquiry when Mr Morris was present that it happened at least 20 times. Mr Morris conceded that it happened for a distance of about 15 metres at or about the 1000 metres and for 22 metres at or about the 200. Suffice it to say that there was wheel to wheel contact.

17. The third point is that they raced very tightly. Mr Jasprizza was of the opinion, consistent with what he observed at Wagga generally, that leaving the distance of about half a metre between the two wheels would be more appropriate driving. There is no doubt – and the appellant does not dispute it – that he drove in a fashion which was very, very tight. It is apparent from a viewing of the DVD that for substantial periods as particularised the wheels were, if not touching or rubbing, virtually together.

18. What then was the effect of that type of driving? Firstly, was it that he was seeking an intentional outcome? Firstly, his knowledge that his horse had in New Zealand hung in and, secondly, his own evidence about his knowledge prior to this race, and in his usual pre-race preparation, that Harps, Mr Harpley's horse, had on other occasions broken, shifted in by

reason of Mr Harpley's driving, hung out and broken. Can it be implied that the effect of that knowledge upon Mr Morris' drive was that he intentionally set out to occasion pressure throughout the race on Harps and Mr Harpley on the basis that he could eliminate the second favourite, while he drove the first favourite, by causing it to break, gallop or otherwise go out of the race? At the end of the day, the Tribunal, on the evidence it has, cannot come to that conclusion.

19. What other effect, therefore, needs to be analysed? Firstly, there is no doubt that Mr Harpley called out. There is no doubt that Mr Harpley was concerned by the drive of Mr Morris. It is apparent on the video, as he gave evidence to the inquiry, that he was looking down at the wheels, he was looking at Mr Morris and that he was exchanging words with him. To avoid offending those who might be delicate in reading this transcript of reasons for decision, it is apparent that Mr Harpley had strong words to say to Mr Morris.

20. A clerk of the course, Mr Wilson, was called to give evidence to the stewards' inquiry and he heard Mr Harpley call out: "Give me room. Give me room", to which the response was, expletives deleted: "this is where I want to be". Mr Harpley said he called for room. Mr Morris challenges Mr Wilson on the basis that he was some 15 metres away and could not have heard what was actually said. He did not suggest that to him at the stewards' inquiry and Mr Wilson was not available to be questioned here.

21. Mr Morris said that what in fact was expressed was not about a call for room but more an abuse about Mr Morris generally. That part of the abuse need not be read into these reasons for decision. But critically, in his evidence Mr Morris said that amongst the tirade of abuse and foul language Mr Harpley said the words, "Get off." There is no doubt, therefore, that Mr Harpley was of the opinion that Mr Morris should move away from him, to use a neutral term.

22. A further effect was that on one occasion Mr Harpley was forced down towards the marker pegs for a short period of time, but in respect of that it is apparent that the reaction of Mr Morris was to take a form of evasive action with the horse's head turned outwards and a movement of the hand. There was the third instance when Mr Harpley was forced down to the marker pegs and an apparent contact took place.

23. But, importantly, it is the Tribunal's opinion – and it was the evidence of Mr Jasprizza – that the effect of Mr Morris' drive was not to actually impede the progress of Harps, nor the driving of Mr Harpley. At no stage did Mr Harpley stop driving or do other than urge his horse to maintain its position and potentially to win. There was, therefore, no actual effect. There was no evasive action. He did not stop driving. He was not required, as Mr Morris described it, to yank his horse out. He was not forced over the marker pegs.

24. What was the potential, therefore, of any effect of that drive? It was Mr Jasprizza's evidence that the occasioning of pressure could occasion impeding which, as just said, he conceded did not occur here, or, by reason of that pressure, cause another horse to gallop or to break stride or potentially to fall or not to race truly in addition to, of course, any impact upon the driver of that other horse who might be caused, with those potential effects in mind, to take the type of evasive action just described.

25. There is no doubt in the Tribunal's opinion that if the pressure is such as to lead to the potential effects identified, that the duty on Mr Morris was to steer off. In other words, not to race as tightly as is alleged against him. It is apparent from the evidence that he gave to the inquiry and here, and on the viewing of the DVD, that on a number of occasions he did steer off, that over periods of time his horse was racing with its head turned out. It is to be noted that is the opinion of Mr Jasprizza that the actions taken by the appellant were not enough.

26. This case, therefore, must be determined in the absence of any actual adverse impact on impeding or the potential for it. There is no doubt that the appellant's drive was a very tight one. He does not dispute it. There is no doubt that very tight driving is not an unusual consequence of racing, particularly having regard to the circumstances of this race with the favourite and second favourite going hammer and tongs against each other and racing each other right out until the last few hundred metres when the appellant's horse went through to win.

27. This is an opinion on the stewards case and evidence has been given. As the Tribunal said in McCarthy on 24 January 2014, it is the function of the Tribunal to determine for itself whether the opinion of the stewards is reasonably held on the basis of the totality of the evidence and then to determine that it is reasonable unless no reasonable steward could have come to it. The Tribunal has subsequently in a number of decisions, out of fairness to stewards, indicated that a conclusion that no reasonable steward could have come to it is a reflection not of the personal characters or abilities of the steward, but the conclusion which they drew.

28. Here, the Tribunal is satisfied that the appellant drove in a very tight fashion and that on occasions it might be said that that was occasioning a pressure upon Mr Harpley and his horse which might have had a potential adverse effect. But the way in which this race unfolded, in particular, the way in which Mr Harpley continued to drive and notwithstanding his protestations both during the race and afterwards, that it did not occasion that level of potentiality that it led to the type of danger which is required to be established in respect of conduct which is reckless, that it led to the type of conduct which could be said to have had those consequences of danger.

29. Therefore, in the Tribunal's opinion, it cannot be assessed as conduct which showed no care by Mr Morris that he was occasioning a danger or that he was, by his driving, engaging in behaviour which was without regard for the potential danger to Mr Harpley and Harps.

30. In those circumstances, the Tribunal does not share the opinion formed by the stewards at their inquiry, nor by the steward Mr Jasprizza in his evidence today.

31. The Tribunal has come to the conclusion that the respondent has failed to establish the ingredients of reckless.

32. The appeal is upheld.

33. The appeal having been successful, I order the appeal deposit refunded.

-----