

**RACING APPEALS
TRIBUNAL
NEW SOUTH WALES**

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

EX TEMPORE DECISION

TUESDAY 7 MAY 2019

APPELLANT RODNEY BLYTHE

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

DECISION:

- 1. Appeal dismissed**
- 2. Penalty of 14 days' suspension of licence imposed**
- 3. Appeal deposit forfeited**

1. The appellant, a licensed driver, appeals against a decision of the stewards of 29 April 2019 to suspend his licence to drive for a period of 14 days.

2. The breach alleged against him is contrary to Rule 163(1)(a)(iii) in the following terms:

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

The stewards particularised the breach as follows:

“at the Goulburn harness race meeting conducted on Monday, 29 April 2019, in race 2, the First National Real Estate Goulburn Pace, the stewards are alleging that you, Rodney Blythe, the driver of Monterei Duke, have from a point leaving the 300 metres failed to make sufficient effort to prevent your runner from shifting up the track under pressure and as a result the movement of Monterei Duke outwards has caused Better Than Grange to alter its line – its racing line – be moved further up the track by its driver and as a result it has been taken out toward the running line of Misterhindmarsh and subsequently Better Than Grange and Misterhindmarsh have locked wheels and become severely checked as a result.”

3. When confronted with that allegation at the stewards’ inquiry the appellant pleaded not guilty. By his appeal, he has maintained that he did not breach the rule.

4. The evidence has comprised the transcript, the videos of the race and the stewards’ report.

5. The stewards did not call the appellant in to an inquiry at the outset, they not having observed the matter between the drivers Day and Picker. The fact is that the three relevant horses named in the particulars were approaching the final turn with the appellant’s horse leading but tiring. As they approached the final turn, the horses of Day and Picker, moving at a considerable speed, came to the outside of the horse driven by the appellant and the sulkies of Day and Picker locked, such that they were forced to stop driving and taken out of the race. The video clearly depicts that at the speed at which they were travelling at the position that was in the race, that each of them would in all probability have gone on to fight out the finish, with the horse Monterei Duke, in all probability, despite it tiring, running third. The effect of that, therefore, was that Monterei Duke went on and the other two horses were taken out of the race.

5. The stewards called in Day and Picker as a result of what they observed and each of Day and Picker were questioned at the outset of the inquiry.

6. Critically, Day, who was driving the middle of the three horses in question, said – and said on three occasions – in relation to Mr Blythe’s runner:

“it kept shooting up the track a bit,

And later:

forced me out onto Mr Picker and in turn that’s how we got locked up”,

And later:

“Mr Picker was giving me enough room... I never appealed once to Mr Picker because he wasn’t coming down at me.

And later:

It was more getting carried up in - onto Mr Blythe.”

7. Mr Picker was questioned. He said:

My his horse didn’t seem to be under any pressure and hanging in or wanting to run down the track or anything and all of a sudden he was squeezed up and ... we were very tangled.”

8. The evidence given in the absence of the appellant at the stewards’ inquiry was then, at the request of the stewards, repeated in the following terms.

9. Mr Day describing himself in a one-wide position making good ground on the leader with Mr Picker to his outside. He described:

“we were getting to Mr Blythe. Mr Blythe’s horse has come up the track and that’s taken my racing room a bit and me and Mr Picker got very tight and locked wheels”.

10. Mr Picker repeated that he:

“was still nice and even and travelling quite well at the time”.

11. The appellant was then questioned in respect of his involvement. From the outset, he indicated he did not know what had happened. He described how his horse had got tired in the straight but at the outset stated this:

“I’m not saying he didn’t come off the track a little bit.”

12. He described how Monterey Duke had got leg tired or leg weary in the straight, and he was entitled to do so, and started to take short steps. And then again he said:

“he maybe wandered up the track a little bit, well, you know, when he gets tired, he gets tired, I suppose.”

13. He thought he may have, to quote:

“come off maybe a cart off the fence, like, he kind of run off the track a little bit”.

14. Importantly, he said this:

“I didn’t think I was anywhere near Mr Picker and Mr Day at the time.”

15. Earlier in the inquiry he described to the stewards how he had been:

“trying to pull it back and pulling on his inside rein and get him back down the track to hold his line”.

16. The appellant went on to describe how he had probably come up a bit but had pulled him back. He says to the Tribunal it was maybe “two to three inches”. He says, however, after the incident he was out maybe three-quarters of a cart.

17. He was at pains to point out to the stewards that he did not interfere with the two horses on the outside. And also, his second key point, that they had drawn in front of him at the time they locked. And that at the time he had been pulling the left rein. Importantly, that was done, as he said in his evidence to the stewards:

“I would have niggled on his inside rein to just get him back down the track. But I was nowhere near Neil and Dennis”.

18. Importantly, he pointed out to the stewards and emphasised to the Tribunal that each of Day and Picker held their line, they did not have to pull off to get around him. At this point, however, Mr Day again stated in the inquiry:

“My inside wheel was going to get your outside wheel and at that stage you were a beaten horse. Like, we were getting to you very quickly and you’ve wandered up the track. I’ve had to – I’ve had to come wider to – so I didn’t get hooked up with you, and that’s how I’ve ended up hooked up with Dennis.”

19. The stewards pointed out to the appellant at the inquiry that as well as the movement of the left rein, he was flicking the horse to try and get it go as quickly as possible. That was not denied. But he again emphasised he was pulling down on the rein.

20. After the breach allegation had been put to him and he entered his plea of not guilty, he again said:

“my horse might have wandered up the track a little bit, but I didn’t cause the interference”,
and that in any event he was trying his hardest to keep him in a straight line. As to whether or not he was driving his horse out and could correct it, he said:

“I can still correct the horse as I’m driving him”.

21. The stewards then considered it and, pursuant to the provisions of Rule 163(5), formed an opinion that the rule had been breached. As this is an opinion of the stewards case, and there is no fresh evidence, it is for the Tribunal to determine whether it is satisfied that the opinion of the stewards was reasonably open to them.

22. The position of the respondent, via the Chief Steward at the event, Mr Paul, has not changed. The position is that the appellant shifted out and that in doing so he caused the interference and that that interference in fact arose because he did not make a sufficient effort to prevent Monterey Duke from doing so.

23. Again, the appellant has emphasised in his submissions that neither of the other two drivers stopped driving and that the locking of the wheels took place after the event and that any movement up was marginally off the marker pegs and insufficient to have caused them any trouble at all. In essence, he said:

“the incident was not my fault”.

24. The video is not absolutely complete in its damnation of the appellant. As is so often the case, additional cameras or other images may well have made the matter much clearer.

25. The Tribunal has had the benefit of viewing the DVD and in this matter sits with Assessor Mr Ellis, with whom substantial discussions have taken place in respect of the matter and he has given expert advice to the Tribunal. As expressed to the appellant, it is for the Tribunal to make the decision unencumbered by the views of the Assessor but taking those views into account.

26. There are two key pieces of evidence. The first is that of the driver Mr Day and the second is the image.

27. The images show, contrary to the view of the appellant, that there was a movement of a greater nature up the track prior to the incident than he was prepared to concede.

28. There is corroboration in that by the statements of Mr Day, made on several occasions. To paraphrase: that the appellant came up the track and forced him on to Mr Picker because he did not have enough room and was squeezed for room. That squeezing for room was corroborated by Mr Picker.

29. The fact that the wheels locked after the movement up the track and after they had started to move past him does not absolve the appellant from any responsibility. The reason for that is that the locking of the wheels occurred certainly after they had moved past the appropriate point on Mr Blythe's sulky, but that that was caused by the fact that Mr Day was forced to move up. Mr Day was forced to move up because the appellant's horse had moved up.

30. The appellant had taken steps, prior to those other two drivers passing him, by not less than two movements of the left rein, to straighten his tiring horse. That movement of his left hand corroborates the fact, in any event, that his horse was moving up and he was required to take corrective action. The mischief that the stewards identified, and which was put to the Tribunal today, was that those efforts were insufficient.

31. The appellant, an experienced licensed driver, aware that his horse was tiring, aware that the possibility of moving up the track could occur, and the fact that it did, required him to make an effort sufficient to ensure that he did not move up and interfere. He took effort but the Tribunal shares the opinion adopted by the stewards and finds it was an opinion reasonably open to them, that those efforts he did make were insufficient to prevent the horse moving up, it was the horse moving up that caused Mr Day to move up and that is what subsequently led to the locking of the wheels.

32. In the circumstances, the opinion of the stewards was reasonably open to them. The Tribunal is also satisfied that the particulars as set out against him of insufficient effort to prevent the interference are established.

33. The breach of the rule is found proven.

34. The appeal against that finding is dismissed.

SUBMISSIONS MADE IN RELATION TO PENALTY

35. The next issue for determination is penalty, the Tribunal having found that the appeal on the breach of the rule was unsuccessful.

36. The Penalty Guidelines, as has been submitted today, are not tramlines. However, as the Tribunal expresses, to give certainty to drivers, regulators, in particular, the stewards, the industry at large, it does not see any reason in matters such as this to digress from them. They provide that level of understanding, calculation and certainty.

37. For this particular matter, a 28-day starting point is provided. There is no aggravation contained in the matter that might be considered so that a heavier penalty is appropriate.

38. The objective seriousness of the matter must be assessed. In that regard, the failure was one which involved some attempts, as the stewards adequately determined, to prevent the interference which has been found. The effect of it, however, was to take out completely from the race two horses which, on all of the facts that were apparent from the viewing of the material, were entitled to expect that they would race to either first or second position, and neither of them completed the race with any prospect of that because they were taken out of it completely. The Tribunal gives the matter some element of seriousness, particularly so far as the wagering public is concerned.

39. The personal circumstances of the appellant are that his driving history is somewhat spasmodic in that there are long periods when he has not driven. In fairness, and applying again the guideline-type-related matters, it has been 12 months since he was last suspended under this rule. In fact, it was on 6 February 2018. The Tribunal notes from his history that the number of occasions on which he has been suspended or reprimanded for a breach of this rule is not insubstantial. He has not had a 300-drive position; indeed, his number of drives is unknown, but on the material before the stewards he drives once or twice a week, he drives for particular owners, not, as it were, for other trainers and owners at large.

40. The issues, therefore, for him as to any other reductions are that there has been no admission of the breach, no plea of guilty. He does not get a 25 percent or some lesser discount from that 28-day starting point.

41. The guidelines provide he gets a 10-day discount for not breaching the rule in the last 12 months. That would appear to the Tribunal to be generous to him, having regard to the limited number of drives compared to others with whom the Tribunal deals for breach of this subject rule. However, the stewards thought it was fair to give it to him.

42. The stewards also, when looking at the matter on an objective basis, took into account that he had made some efforts to prevent the matter

occurring. As the Tribunal has said, on an objective assessment of seriousness, that is also available.

43. The appellant makes no submission at all in respect of penalty. To quote him, he will cop whatever the Tribunal gives him. That does not provide any additional facts on which the Tribunal can consider the matter.

44. The Tribunal considers that the stewards were more than generous and fair in their determination. The Tribunal does not propose to disturb that. It does not consider a lesser period to be appropriate.

45. There will be a suspension of the licence to drive for 14 days.

46. The appeal against penalty is dismissed.

SUBMISSIONS ON APPEAL DEPOSIT

47. The Tribunal orders the appeal deposit forfeited.
