

**NEW SOUTH WALES
HARNESS RACING
APPEAL PANEL**

APPEAL PANEL MEMBERS

Hon W Haylen KC

Mr J Murphy

Mr W Picken

1 MARCH 2024

APPELLANT TOM ISON

RESPONDENT HRNSW

**AUSTRALIAN HARNESS RACING RULES
149(2)**

DECISION

The Appeal Panel determines that Mr Ison's Appeal against conviction and penalty is dismissed and affirms the penalty of 28 days suspension.

1. On 4 January 2024 Mr Tom Ison was the driver of the horse Seamark, the favourite in race 4 at Tamworth over 1609m. In the same race was the horse Chal Be, driven by Mr Anthony Varga. Chal Be started at odds around the \$26 mark. After the race concluded the Stewards opened an inquiry, expressing their concerns at the tactics adopted by both drivers from the early stages of the race and in the back straight.
2. Mr Varga told stewards that his instructions from the trainer of the horse were that they had barrier 2 and might have a shot at holding the lead. Further, he was told "just hold the lead at all costs. He's a lot better horse in front at home in track work." Mr Varga pointed out that Mr Ison on Seamark was going to be outside Chal Be and he was a hard puller and that they were both going to be racing silly. However, the trainer replied that this was their only opportunity as they had drawn barrier 2, so they had to "give it a shot". These were the instructions given by the trainer. Just before Mr Varga took the horse onto the track he again said to the trainer that it was going to look silly if both horses were going hard.
3. Shortly after the start the two horses contested the lead but Chal Be was able to hold out Seamark. After the horses rounded the corner after the winning post for the first time Mr Ison asked if Mr Varga was holding and he replied he was holding and turned the whip. Mr Ison then said, "You serious". The two horses continued to battle for the lead for a considerable distance, with Seamark unable to take the lead. Around the 400m or 500m Chal Be weakened significantly and finished a long way from the placegetters. The Stewards noted that the first quarter of the race was covered in 27.5 seconds and 28.4 for the second quarter. In later evidence these times were described by Stewards as close to the fastest times recorded at the track over the last 2 years covering 391 races over 1600m.
4. Although Mr Varga pointed out that he was driving to instructions, the Stewards were of the view that he was obliged to consider the fast tempo and the effect of continuing at that pace and so finishing well back in the field. He had ample opportunity to use his own initiative to reduce the speed and improve Chal Be's chances of finishing stronger than it did, by restraining. Mr Varga was charged with a breach of AHRR 149 (2), "A person shall not drive in a manner which in the opinion of the stewards is unacceptable." Mr Varga pleaded guilty to that charge. The particulars of his case were different to those faced by Mr Ison, being focussed on driving instructions, driving without initiative or proper restraint and placing Chal Be under pressure resulting in the horse weakening from the 400m, being uncompetitive and not being given full opportunity to finish in its best possible position. Mr Varga pleaded guilty and his driving licence was suspended for 28 days. Mr Varga did not appeal this decision.
5. Mr Ison's case was somewhat different to that of Mr Varga. In evidence to the Stewards he stated that the plan was to lead the race and that Chal Be would lead from the 2 and should just hand over. Around the corner he asked Mr Varga if he was holding and he replied yes. Mr Ison then asked him if he was serious. They got into the back straight and went for a hundred metres down the back straight and he could not get across Mr Varga. He then restrained and stayed outside Chal Be until around the 800m the horse wanted to get up and race Chal Be. He probably put Chal Be under pressure about the 600m then went past the leader at about the 500m. Mr Ison thought Mr Vega was bluffing about leading and had done so before, so the bluff was called. He challenged for about 600m before he restrained. Mr Ison agreed that he had applied the whip to the horse while trying to take the lead but was unsuccessful in doing so. Seamark did not finish the race strongly and was beaten by 20 odd metres. The Stewards asked Mr Ison that if he could not get to the lead it would be reasonable to ease the tempo, and either sit outside Chal Be or take a spot behind

that horse. Mr Ison understood that they were about 20m in front of the field at that time. He also stated that the horses had slowed down and coming into the home straight his horse grabbed the bit again and so he decided that they would just keep going and that he did not have much choice from there onwards. During the Inquiry Mr Ison stated that this was a really good horse that had performed well when pretty fit, but he had to take it home to get him a bit fitter, so he was not quite ready. He admitted making a mistake running in this race. The Stewards put to him that he had raced for a fairly long distance whilst under vigorous driving when the horse on his inside appeared to be allowed to stride and did not appear to be under vigorous driving. In those circumstances, it was asked, could he have decided earlier to take a hold? Mr Ison replied that he made that decision in the back straight. He later admitted that he could have made that decision earlier. He did not want to get behind Chal Be because it was a very slow horse and a slug and was obviously getting in his way.

6. The Stewards hearing resumed In January 2024. Mr Ison accepted that his driving with vigour in attempting to lead contributed to the fast tempo spoken of earlier. It was later put to him that driving in that way was irresponsible, however he disagreed because they were out there to race. He agreed that he must drive to achieve the best position but that may mean driving aggressively to try and lead and win. He also disagreed that the horse had a bad day because of the way it was driven.

7. After taking the evidence of the driver, Mr Ison was charged with a breach of AHRR149(2), that is it was an unacceptable drive. The particulars were that in this race he drove in a manner that was unacceptable when, after driving with purpose to obtain the lead after the start, continued to drive with an unsuccessful attempt to obtain the lead from Chal Be for approximately 400m, whereby he used sustained vigour, including applying the whip for some distance in the back straight on the first occasion, resulting in Seamark being fully extended for an excessive period and contributing to an extraordinary recording of early sectional times, then Seamark weakening over the concluding stages and not being given full opportunity to obtain its best position at the finish. Mr Ison pleaded guilty to that charge as particularised.

8. In determining the penalty, the Stewards considered all the circumstances, both aggravating and mitigating. He was described as a highly competitive, highly successful professional trainer/driver and his promotion of the industry and his input into the industry had to be recognised. Having regard to the penalty guidelines, the penalty should commence with a period of 10 weeks but that was considered to be excessive in the present circumstances. Four weeks were deducted in recognition for his good record and two weeks were allowed for his guilty plea. That left a suspension of 28 days. The Stewards went on to note that his actions were blameworthy because he failed to avail himself of the options to enhance the chances of Seamark, and blameworthy to the extent where a casual observer might be forced to question his judgment and express alarm at his tactics.

9. During the hearing before this Panel, the Stewards were asked if there were similar cases that may shed light on the manner in which this provision might be approached. A few cases were mentioned as possibilities but none were produced and that result probably indicates that the provision is not regularly considered. However, the reasoning of the Stewards in this case appeared to cover the essential requirements of the rule.

10. Since the hearing of this case, the Panel's attention has been drawn to the decision of the Appeal Panel of Racing NSW in the case of Licensed jockey Mr Regan Bayliss (2 June 2023). The rule in question was AR 129, Running and Handling, and sub rule (2) provided as follows: "a rider must take all reasonable and permissible measures throughout the race to

ensure that the rider's horse is given full opportunity to win or to obtain the best possible place in the field." In this case the rider had been given riding instructions just prior to the race from a co-owner of the horse. Essentially the instructions were to slap the horse out of the gate and get 4-5 lengths in front and then put a length on the field every 200m. The jockey was to ramp her up at the 800 and go for home and needed to put a big margin on the field so they would not catch her. Video of the race showed that by the 800m mark the earlier 4 lengths lead had increased to about 14 lengths.

11. The Racing Appeal Panel, at para 9 of the decision, noted that the leading appeal reasons concerning this rule remained those of Mr T E F Hughes QC (then Principal Member) in the Appeal of Munce (5 June 2003). Mr Hughes said that a rider should not be found to be in breach of the rule unless a Panel is "comfortably satisfied that the person charged was guilty of conduct that, in all the relevant circumstances, fell below the level of objective judgment reasonably to be expected of a jockey in the position of the person charged. There are, no doubt, many matters that would fall within the description of relevant circumstances." Those matters included: the seniority and experience of the rider charged; the competitive pressure they were under in the race; and, whether they had to make a sudden decision between alternative courses of action. The Panel noted that these factors were inclusive, not exclusive. The Panel in Munce also noted that the rule was not designed to find jockeys in breach of the section, who make errors of judgment unless those errors were culpable by reference. It was later stated by that Panel, " A determination as to whether conduct of a rider breaches the rule requires the application of judgment, common sense, and a reasonable consideration of all the facts that are relevant to a particular error in deciding whether that error is a culpable one."

12. While the Rules of Harness Racing are not in the same terms as laid down in the Rules of Thoroughbred Racing, the factors considered in the Munce case have relevance in the operation of AHRR 149, Part 2. In this case the Stewards were correct in bringing the charge as particularised against Mr Ison. As the Stewards stated, being a trainer/ driver Mr Ison had to adapt to the changing conditions regardless of any pre-race plans. He had options available that would have allowed him to sit outside and or back from Chal Be. When unable to cross Chal Be he was aggressive with the whip for a significant period but was still not able to cross. He was driving the race favourite and those who supported the horse were entitled to think that their wager was lost due to his driving tactics as described by the Stewards.

13. Having regard to all the evidence, the Appeal Panel determines that Mr Ison's Appeal against conviction and penalty is dismissed and affirms the penalty of 28 days suspension.

Hon Wayne Haylen KC – Principal Member

Mr J Murphy – Panel Member

Mr W Picken OAM – Panel Member

1 March 2024