RACING APPEALS TRIBUNAL NEW SOUTH WALES

TRIBUNAL MR D B ARMATI
ASSESSOR MR W ELLIS

EX TEMPORE DECISION

WEDNESDAY 10 JUNE 2020

APPELLANT CAMERON HART

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

DECISION:

1. Appeal dismissed
2. Penalty of 23 days' suspension of licence imposed
3. Appeal deposit forfeited

1. The appellant, licensed trainer Mr Hart, appeals against a decision of the stewards of 2 April 2020 to suspend his licence to drive for a period of 21 days for a breach of Rule 163(1)(a)(iii).

2. The stewards relied upon that provision as follows:

> "163(1)(a)(iii) A driver shall not (a) cause or contribute to any (iii) interference."

The stewards particularised the charge as follows:

> "At the Menangle harness racing meeting conducted on 2 April 2020 in race 1 on the said program the stewards are alleging that leaving the 200 metres you, Cameron Hart, the driver of Flying Scribe, have permitted your runner to shift out from inside the line of Wha Hae to the outside of that runner when insufficiently clear of Sight To See, which was racing to your outside, driven by Ms Rixon. As a result of your movement up the track Flying Scribe was bumped and contacted Sight To See and subsequently that runner has been severely checked, lost its rightful running and broke gait at that point of the race and in turn Our Stella Rose, which was racing to its outside, was also hampered out of this incident."

3. Before the stewards the appellant pleaded guilty to that breach and was subject to penalty. By his notice of appeal he has not admitted a breach of the rule and the first issue for determination is whether the rule has been breached as particularised.

4. The evidence has comprised the transcript of the proceedings before the stewards, the race footage images and veterinary reports of Dr Argyle of Wollondilly Equine of 1 May 2020 and the veterinary incident and injury report form of the subject horse on the day. In addition, the Chairman of Stewards on the evening, Deputy Chief Steward Paul, has given evidence, as has the appellant and licensed driver Mr Morris. Mr Morris has placed a letter in evidence as well.

5. The issue is a narrow one. Until the final 200 metres nothing untoward has occurred. The race meeting itself was conducted on a miserable and wet night, to adopt Mr Morris' evidence. There is no doubt the track was wet. No driver complained to the stewards before race 1 in which the subject incident took place that the track was not safe for racing. And the stewards, having conducted their inspection, formed the opinion that the track was safe for racing. The video images, which are before the Tribunal, show that the track was wet. They do not appear to show a substantial movement of track material from the hooves of the horses or from the sulky wheel such as to create a screen or other fog-type problem for the drivers. Mr Morris, a highly experienced driver, also drove in race 1 and he gave

evidence of the condition of the track being ordinary by reason of those issues. He drove in this race and later races. He found that in the course of driving his goggles could fog up and vision be impaired. In the appellant's case, he drove in this race with clear goggles and says that his vision was affected, he says, up to 70 percent.

6. The horses approached the final turn and three horses were involved in this matter, the first the horse being driven by Mr Rattray, the second is a horse closer to the rails and behind Mr Rattray's horse driven by the appellant, and outside the appellant's horse, a horse driven by Ms Rixon. Horses' names are not further necessary, the actions will be described in the drivers' names.

7. The horse driven by Mr Rattray moved out from a position a few wide from the marker pegs and out to a position after this incident finished of about four widths. The stewards accept that Mr Rattray's drive caused his horse to move wider and continued to do so during the subject incident. Mr Hart and Ms Rixon moved from a position inside and to the rear of Mr Rattray's drive and out and across, such that by the 200 metres Ms Rixon had moved from a position to the rear of Mr Rattray's drive and to its inside across the rear of that horse and driver and to a more outside position. Mr Hart's drive virtually mirrored that move across. He moved across from a position closer to the marker pegs around behind Mr Rattray and as Mr Rattray moved across, the appellant continued to move with him. The appellant says he was driving by watching Mr Rattray's helmet and he was not sure of the line that Mr Rattray was taking, therefore the line that he was taking.

8. As a result of Mr Hart continuing to move across, impact took place with Ms Rixon. As a result of that, that horse was checked and galloped and in fact became injured. In addition, as described in the particulars, another horse, Our Stella Rose, which was to the outside of Ms Rixon, was also hampered by this incident.

9. The issue is was the move across by Mr Hart such that he has breached the rule by causing interference?

9. Mr Paul has pointed out that Mr Hart was entitled to move wider and he can attempt to do so in the circumstances in which he found himself. There was a caveat on that: he can only do so with significant care. The issue is, allowing for the fact he was entitled to do what he was doing, did he fail to display that significant care and in the opinion of the stewards he did so fail?

10. The evidence of the appellant himself, both to the stewards and to the appeal, contained a number of statements which are telling. He said to the stewards: "My judgment was probably out that much and I've got Ms Rixon." He said: "I felt I really could sort of slip through without any interference. I

was probably a fraction out." After giving that evidence he went on to say: "I was getting a bit tight on Ms Rixon", and he then went on to say, "and I got to check my horse back down the track." Also, he was about to give evidence about his clear glasses, which presumably he was going to go on and talk about some difficulty before the stewards, but he did not really get back to that at all before the stewards. He said how it happened quickly, he didn't realise it, and he was shifting out but not in an abrupt fashion. It is not suggested he did.

11. Mr Morris gave some evidence in his letter that the slippery nature of the track exacerbated the movement of the gig and he made contact. That may be something which happens, but there is no evidence from the appellant that that happened, and it is not apparent, independent of that evidence being given, of it occurring on the video. That part of Mr Morris' evidence is simply not accepted. However, there was limited vision and it was, of course, for a driver of the experience of Mr Hart, in the Tribunal's opinion, to have driven in the knowledge of that limited vision, to effect the manoeuvre that was required of him, ensuring he used significant care. So much greater is the need for significant care when the vision is affected to the extent that he described.

12. Before the Tribunal he again said he thought there was enough room when he shifted. He does not dispute that he shifted up the track. But he said, when asked, "There was not enough room?", the answer, "Yes." Having conceded he was steering wider, he also conceded there was contact and that he took Ms Rixon up the track. He was entitled to do that but he was not entitled to come into contact with her.

13. What then exculpates him from that problem? His grounds of appeal raised the issue of poor visibility and raised the issue that Ms Rixon did not call out. Ms Rixon is a driver of limited experience. She was not asked that question or reason for it before the stewards and has not given evidence to the Tribunal. It is speculative why she did not. It cannot assist the appellant. Indeed, the appellant himself describes that part of the reason for the movement that he engaged in was the drive by Mr Rattray. Yet he did not call out to Mr Rattray for room or that he was being squeezed by Mr Rattray. Of course, the necessity for calling out when a horse is being moved wider on the track with room outside it diminishes from when being pressed on to the marker pegs, or matters of that nature, or being pressed more substantially between two horses.

14. The Tribunal has already dealt with the issue of Mr Rattray moving wider. It is not an issue that he did. The question is, however, the need to focus upon whether the appellant, Mr Hart, continued to go wider in circumstances that took him into contact with Ms Rixon or whether he should have checked sooner than he did. He gave evidence and pointed to the position on the video images where he said he checked. That check, if

any, was very marginal and, in any event, was after the incident had occurred. It was not of assistance to him. His check was not designed to, nor did it effect an avoidance of the contact which he was proceeding to cause.

15. Those then are the issues that he has raised. None of those matters, in the Tribunal's opinion, detract from the fact that he was required to exercise a significant care, accentuated by the lack of vision which he knew about, to ensure that in engaging in the legal manoeuvre which he was doing that he did not cause interference. He has caused interference and in the Tribunal's opinion that is contrary to the provision of the rule.

16. The Tribunal is satisfied by the respondent that the opinion formed by the stewards on the night, expressed by Mr Paul with all of his experience from the observation tower, confirmed by him in his opinions expressed to the inquiry and confirmed by each of the extremely senior stewards at the inquiry as to the opinion they formed, reinforced by the opinion expressed by Mr Paul in his evidence today, that it was an interference contrary to the rule and it was caused by the appellant.

17. The appeal against the finding of the breach of the rule is dismissed.

SUBMISSIONS MADE IN RELATION TO PENALTY

18. On the matter of penalty, the nature of the breach here is one in which the penalty guidelines pick up the fact that for a 163(1)(a)(iii) where a horse is checked and broken in the final 200 metres, a starting point of 35 days. For Mr Hart's benefit, the Tribunal will say that it is not bound to follow the penalty guidelines, because they are just that, they are guidelines. But, Mr Hart, the Tribunal has determined over the years since these guidelines were introduced a long time ago that it should look to them and apply them as appropriately to the individual facts and circumstances of every case, because otherwise there is no certainty for licensed people or the regulators, in particular the stewards, as to what likely outcomes are going to come from certain types of conduct.

19. Having regard to the nature of the breach as the Tribunal has found it, but also noting as it must on issues of safety and welfare that a horse was injured, and whilst that did not lead to a more severe penalty and does not mean a more severe penalty must be imposed, it does mean that there should not be other reductions because of a lack of safety or welfare concerns. In those circumstances, a starting point of 35 days.

20. It is conceded by the respondent in its submissions today that the appellant is entitled to a 10-day discount from that starting point for his driving history, which falls within the 300 drives in the 12 months type of issue. There is a submission made that the appellant has had 177 drives,

and that is not disagreed with, since the breach. Those 177 drives, however, will be a matter for a credit in the future, should he have to fall under this rule and any recounting start again. The Tribunal's opinion whilst it is a reflection of the fact that the appellant is not a serial offender or careless driver by reason of his record, that that will not lead to any further discount.

21. The other matter that the Tribunal looks at is this, that the stewards gave Mr Hart a 25 percent discount for a plea of guilty before them. As has been indicated to him before this hearing, at the commencement of the hearing and indicated to him now, he is not entitled to that 25 percent because he reversed his plea. The Tribunal has reflected – and that is why there was a slightly longer discussion with the Assessor – that he did plead guilty to the stewards and of course at all times he has cooperated and handled himself appropriately, that that reduced the time required by the stewards to make their determination.

22. A 25 percent discount is given for a plea of guilty at all times because of acceptance of wrongdoing, as long as there is cooperation and proper behaviour before the stewards travelling with it. That will not be given to him. But the Tribunal has determined it will give him a further two days' discount from its determination by reason of the fact that the stewards were less troubled in the issues they had to determine.

23. The simple maths is this: the starting point is 35 days, there will be a reduction of 10 days for his record and two days off for his plea of guilty before the stewards. That reduces the penalty of 35 days, minus 12 days, to 23 days. That in fact is longer than the period of the stewards' order, but that is, as the appellant understands, by reason of his change of plea.

24. The appeal against the penalty imposed is dismissed and the appellant's licence is suspended for a period of 23 days. Calculation of that will depend upon the issues of the deferral of the commencement of the suspension and the fact that Mr Hart has been on a stay. That is a matter for calculation as to the commencement and completion date of that suspension between the appellant and the stewards.

SUBMISSIONS MADE IN RELATION TO APPEAL DEPOSIT

25. The issue is whether the appeal deposit should be refunded or something in between. This appeal was against both the finding of the breach and severity. Each ground of the appeal has been dismissed. The issue raised is financial hardship. That is a matter which applies equally, in the Tribunal's opinion, to the regulator as it does to the individual driver.

26. In the circumstances, and whilst there is substantial financial hardship, and that is understood, the Tribunal orders the appeal deposit forfeited.
