

RACING APPEALS TRIBUNAL NEW SOUTH WALES

TRIBUNAL: MS S DOWLING SC

ASSESSOR: MR W ELLIS

APPELLANT: RICHARD WILLIAMS

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

RESERVED DECISION

DATE OF HEARING: 30 NOVEMBER 2020

DATE OF DECISION: 9 DECEMBER 2020

1. The appellant, Mr Richard Williams, appeals against a decision of the stewards of 22 October 2020 to suspend his licence to drive for a period of 21 days for a breach of Australian Harness Racing Rule 163(1)(a)(iii).
2. On 27 October 2020, with the consent of Harness Racing NSW, the decision of the Stewards was stayed pending the outcome of the appeal.
3. Australian Harness Racing Rule 163(1)(a)(iii) which provides:

“163(1) A driver shall not

(a) cause or contribute to any

...
(iii) interference.”
4. The incident in question occurred during race 2 at Tamworth Paceway on 22 October 2020. The stewards particularised the charge as follows:

“We believe that your driving has been the main contributing factor to Skedaddle Shannon galloping, Mr Williams. We believe you should be charged pursuant to Rule 163(1)(a)(iii), and that rule states: “A driver shall not cause or contribute to any interference.” We believe that you have crossed down on the track and placed undue pressure on Skedaddle Shannon, forcing that horse inside the marker pegs and as a result that gelding has galloped.”
5. Before the stewards, the appellant pleaded not guilty to that breach and has maintained that plea on this appeal.
6. The evidence on appeal for the appellant comprised the oral evidence of Mr Williams. The evidence for the respondent comprised the oral evidence of Mr Clarke, steward and chief starter with Harness Racing NSW; transcript of the stewards’ inquiry on 20 October 2020 (Exhibit A); vision of the race from 3 different angles (Exhibit B); the stewards’ report (Exhibit C); the race results (Exhibit D); and two screen shots from the vision of the race (Exhibit E).
7. The tribunal was assisted by Mr Bill Ellis, an assessor appointed under s 8A of the *Racing Appeals Tribunal Act 1983*.

8. At the hearing of the appeal the stewards maintained that there had been a breach of Harness Racing Rule 163(1)(a)(iii) in the terms particularised.
9. The issue for consideration is whether Mr Williams, driving Lovelaine, placed undue pressure on Skedaddle Shannon, driven by Mr Elder, by crossing down the track and not allowing Skedaddle Shannon sufficient racing room, forcing that horse inside the marker pegs and as a result, that horse galloped.
10. The incident occurred on the first turn. It is pertinent to note that Mr Clarke gave unchallenged evidence that the first turn is widely regarded as the most important and potentially dangerous moment in a race, involving as it does a transition from the straight to a curve. Skedaddle Shannon, the race favourite, had begun well from barrier 1 and was leading in the race. Lovelaine, driven by Mr Williams, began from barrier 4 and drove forward, gaining an advantage of about three-quarters of a length over Skedaddle Shannon. It was at this point that Lovelaine moved down the track, towards the inside where Skedaddle Shannon was racing. There was no contact between the horses or their sulkies.
11. The question is, was the move by Mr Williams such that he has breached rule 163(1)(a)(ii) by causing interference?
12. This is a civil disciplinary matter and it is for the Tribunal to be satisfied of the relevant matters to a comfortable degree, based on the evidence and having regard to the gravity of the allegation laid against the appellant and the likely consequences on his livelihood of an adverse finding.
13. The evidence of Mr Elder, driver of Skedaddle Shannon, to the stewards was that his horse came out of barrier 1 and Mr Williams was out wide, there was a corner coming up and Mr Williams' horse "sort of shifted down a bit and mine might have got out a bit too". He said "it just got a bit tight and then it hit a marker peg". He described Mr Williams' horse as "out wide and sort of coming across".
14. The evidence of Mr Williams to the stewards was that he saw Skedaddle Shannon "sort of rolling out a little bit" so he "put a bit more pressure on". He did not think that Skedaddle Shannon would start galloping. He went on to say that he sought to take advantage of Lovelaine not handling the initial pressure, so he pushed forward. He

accepted that “it did get tight” and that he put pressure on. He believed that Lovelaine galloped because of pressure but denied that there had been interference.

15. In written submissions to the appeal, Mr Williams stated that he did not correct his horse as it never entered Skedaddle Shannon’s running line. He stated that Skedaddle Shannon became unbalanced “purely due to the speed at release point”. He maintained his position that Skedaddle Shannon had started to pace roughly and was hanging out. He went on to state that he believed the horse galloped due to his first start on the tight track mixed with some heavy speed pressure to his outside and his intractable gait.
16. He gave similar evidence to the appeal, maintaining that he saw Skedaddle Shannon rough “a couple of times”, and that it did get tight. He said the horse galloped of its own accord because it did not handle the speed pressure. Mr Williams said that he did give a metre of space between his horse and Skedaddle Shannon. He denied any interference or that his tactics were responsible for Skedaddle Shannon galloping, but agreed that tightening could be considered interference.
17. Mr Clarke gave evidence on behalf of the stewards. He submitted that Mr Williams moved down and caused the tightening that resulted in the rough pace and caused Skedaddle Shannon to gallop. In his view, at no stage was Mr Williams clear enough to shift down, and the tightening was caused by that action. He referred to Australian Harness Racing Rule 165:

165. (1) From the start through the first turn, and until reaching the next straight, a driver shall -

(a) maintain with the inside wheel of the sulky a course which is at least 30cm wider on the track than the course being made good by the outside wheel of the sulky of the horse that is racing in the next position closer to the inside running line;

(b) not move the driver’s horse towards the inside running line unless the rear of the driver’s sulky is at least one metre clear of the extended front legs of the horse racing in the next position closer to the inside running line.

(2) A driver who fails to comply with any provision of this rule is guilty of an offence.

18. Mr Clarke’s view was that Mr Williams did not meet the requirements of that rule and that his failure to meet those requirements caused interference.

19. It was common ground at both the stewards' inquiry and the appeal that there was no contact between the horses, the sulkies, or the drivers. Mr Williams agreed with the stewards that it was tight after he moved across. On his view, however, that tightness could not have been said to constitute interference.
20. The question to be determined is whether the way in which Mr Williams raced did cause interference. That is, at what point does pressure that may reasonably be expected to be applied in a race cross the line into interference?
21. Mr Williams was required to exercise care in ensuring that, in seeking to apply pressure to his rivals in the race, he did not cause interference. In the Tribunal's view, Mr Williams conduct did amount to interference in that his move down the track at the first turn placed undue pressure on Skedaddle Shannon, interfering with the horse and causing it to gallop. That is contrary to the provision of rule 163(1)(a)(iii).
22. In any race, the approach to the first turn is dangerous, with horses closing in after the start gate. That is why rule 165 exists. Mr Williams' submission that Skedaddle Shannon galloped of its own accord is not supported by the vision of the race, which shows that Mr Williams was never really clear to move down in the way he did. The vision of the race shows Mr Williams' wheels were very close to Skedaddle Shannon's legs. While there was no physical contact, that does not mean that there was no interference. Mr Williams caused interference with Mr Elder's race plan, altering his line without physical contact at a dangerous time of the race.
23. The Tribunal is satisfied by the evidence led in the appeal that the opinion formed by the stewards on the night, expressed then by the chairman of stewards, and expressed at the appeal by Mr Clarke, is correct. That is, that the conduct in question constituted interference contrary to rule 163(1)(a)(iii) and it was caused by the appellant.
24. The appeal against the finding of the breach of the rule is dismissed.

Penalty

25. The penalty imposed by the stewards was 21 days suspension.
26. At the hearing of the appeal, by consent, Mr Williams was granted leave to add a sentence appeal.
27. The respondent made submissions in support of a longer penalty. In support of that submission the respondent pointed out that the interference occurred at the first turn and was accordingly, more serious than if it had occurred later in the race. It was submitted that the interference showed a high degree of carelessness and resulted in

two horses highly placed in the betting being taken out of contention. The respondent referred to the appellant's disciplinary history which includes a total of 9 suspensions over 400 races.

28. The appellant submitted that his record is not bad given the number of drives per year and submitted that in recent times his record has much improved.
29. On the matter of penalty, the nature of the breach here is one in which the penalty guidelines pick up - for a 163(1)(a)(iii) offence where a horse is tightened on the first turn, the penalty is a suspension of 28 days. The Tribunal is not bound to follow the penalty guidelines, because they are guidelines and not fixed rules.
30. As noted above after being found guilty at the stewards inquiry, Mr Williams was suspended from driving for a period of 21 days.
31. Having regard to the nature of the breach as the Tribunal has found it, and taking into account Mr Williams' record and the effect of any penalty on his livelihood, the Tribunal believes that an appropriate penalty is to suspend Mr Williams' driving licence for a period of **21 days**.

Orders:

1. The conviction appeal is dismissed.
2. The sentence appeal is dismissed.
3. The appellant's harness driver licence is suspended for 21 days commencing **on 9 December 2020**.
4. Submissions as to the refund or forfeiture of the appeal deposit are to be filed with the Secretary, Harness Racing NSW by **15 December 2020**.