

**NEW SOUTH WALES
HARNESS RACING
APPEAL PANEL**

APPEAL PANEL MEMBERS

Hon. W Haylen KC

W Picken OAM

G Campbell OAM

MONDAY 10 JULY 2023

APPELLANT GRANT FORREST

RESPONDENT HRNSW

AUSTRALIAN HARNESS RACING RULES

168(1)(a)

DECISION

- 1. Appeal dismissed. Penalty of 7 day suspension imposed by the Stewards is confirmed.**

1. On 1 July 2023 Harness racing NSW Stewards opened an inquiry into the check received by AFFAIRE DE COVER in Race 7 at Menangle Park, being a Group 2 Final for Four and Five year old horses. Mr Grant Forrest was the driver of SHEETWEB WEAVER and was questioned by the Stewards regarding the circumstances where that horse shifted ground sharply on leaving the 200 metres point of the race. The interference to AFFAIRE DE COVER occurred as Mr Forrest lent forward to release the deafeners by hand and as he was looking downwards.
2. Under questioning from the Stewards Mr Forrest did not challenge these facts but denied that his movement to release the deafeners by hand was the cause of the sharp movement of his horse and the interference that followed. He pointed to the fact that the horse had never reacted in that fashion in the past when the deafeners were being released and suggested that the horse may have baulked at a boot lying on the track a number of metres in front of it.
3. After further discussion the Stewards charged Mr Forrest under the provisions of AHRR 168(1)(a), " A person shall not before, during or after a race drive in a manner which in the opinion of the Stewards is...careless". The particulars of the charge were that at a point shortly after leaving the 300 metres, as the driver of SHEETWEB WEAVER, Mr Forrest leant down to release the deafeners, when he did not have proper control of his horse and in the process of releasing the deafeners, he failed to properly control the horse and subsequently the horse shifted out relatively abruptly and in doing so caused AFFAIRE DE COVER, which was racing on its outside, to be checked away rather severely at that stage, becoming unbalanced. Mr Forrest entered a not guilty plea.
4. In his defence to this charge Mr Forrest firstly stated that he understood that he could not pull the deafeners with his feet and that he had to do it using both hands. The Stewards pointed out that the rules allowed a driver to use his feet to release deafeners although the rules did not allow a driver to take his foot in a downward motion. Drivers could also use their hands for this purpose although most drivers appeared to use their feet. In further discussion the Stewards accepted that when hands were used for the release, there could be a brief moment when the horse was not under full control: the obligation laid with the driver to maintain proper control of the horse's head when activating the gear but in this case Mr Forrest did it with one hand. Further, a driver was to ensure that there was equal pressure on both sides of the horse's mouth to ensure that it did not shift in or out. Importantly, Mr Forrest replied that when he was able to get both reins in each hand, he had been able to straighten his horse. The Stewards also asked where Mr Forrest was looking when he went for the deafeners, and was that a downward look? Mr Forrest replied that he was looking at the cord that he was going to pull. He agreed that he had taken his eyes off the horse and was looking down and to his left. He also agreed that the horse straightened when he had full control of the reins. The Stewards concluded that there was a change in the direction of the horse's head, that turns to the outside at the time Mr Forrest leant down to activate the deafeners, and it continued while the horse shifted out and into the running of AFFAIRE DE COVER.
5. In reaching their decision on penalty, the Stewards noted that Mr Forrest had pleaded not guilty and so certain discounts were not available. It was accepted that his 13 year driving record was good and that he was driving more frequently in the last two or three seasons. In that context the Stewards imposed a 7 day suspension of his licence to drive.

6. On Appeal most of these arguments were again canvassed by Mr Forrest. He was clearly concerned about the finding of careless driving and pointed to the fact that in his 13 year career he had never faced such an allegation. Properly, the Stewards recognised his good record but some discounts were not available due to his not guilty plea. Having regard to the nature of a careless driving charge, it is clear that the Stewards imposed a penalty at the lower level of those available. Having closely examined the video replays of the race and the evidence given by Mr Forrest, the Appeal Panel is comfortably satisfied that the careless driving charge is made out. His own evidence before the Stewards accepted that he did not have the necessary level of control over his horse when he reached down for the deafeners, that his head was down and to the left at the same time, and that the horse straightened when he was able to take hold of both reins. The Panel is unable to accept that the cause, or a contributing factor to the sharp movement of the horse into the path of AFFAIRE DE COVER, was the presence of a boot on the track. On any view of the video, there is no evidence of the horse reacting as it did because of a boot that was a distance in front of it.
7. There are two further matters that the Appeal Panel wishes to address. Firstly, Mr Forrest relied on 2 letters of opinion provided by very experienced industry participants concerning control of the horse while pulling the ear plugs. While there was no objection to the tender of these documents the Panel was concerned that the authors were not available for cross examination and so there was an unfairness in those untested opinions being taken into account.
8. Lastly, the charge in this case was made under AHRR 168 (1)(a). That rule operates on the basis of the Stewards opinion that a person has driven in a careless manner. Such a case does not rest solely on the opinion of the Stewards: there must be found sufficient evidence to reach a finding of guilt. In this case, the Panel is comfortably satisfied that there was an amount of evidence before the Stewards to support their decision that the offence was committed. On Appeal, the Panel, exercising its jurisdiction, confirms the decision made by the Stewards.

Hon Wayne Haylen KC – Principal Member
Mr W.Picken OAM – Member
Mr G. Campbell OAM – Member

11 July 2023