

Appeal decision

Date: 14 July 2014

Code of racing: Harness

Appeal panel: Judge W Carter (chair), Mr B Miller and Mr P James.

Appearances: Mr S Neaves, counsel, appeared for driver Danni-Elle McMullen.
Ms K Wolsey, stipendiary steward, appeared on behalf of the stewards.

Decision being appealed: Suspension of licence to drive in races for a period of four weeks – AR149(2).

Appeal result: Appeal dismissed.

Extract of proceedings – in the matter of the Lunchbox Lodge Winter Spelling Pace over 2138 metres at Albion Park on 9 June 2014. Driver: Danni-Elle McMullen

THE CHAIRMAN: On Monday 9 June 2014 the appellant drove Falcon Vista in Race 8 at Albion Park. The stewards opened an inquiry into the running and handling of the horse and after inquiry charged the appellant with a breach of Rule 149(2) of the Australian Harness Racing Rules. That rule provides:

“A person shall not drive in a manner which, in the opinion of the stewards, is unacceptable.”

She was found guilty by the stewards' panel and her licence to drive in races was suspended for four weeks. The appellant is an A-grade driver and the stewards when imposing penalty took into account that this was her first offence under this rule and that she had "a good record otherwise".

She has appealed against her conviction.

The stewards summarised the reasons for the opinion that the drive was unacceptable, as follows:

"You have driven in a manner unacceptable in that between the 300 and 200 metres you failed to ease or attempt to ease Left In Command, which was racing to your outside, wider on the track when there was ample opportunity to do so and which would have afforded you clear running from that point onwards.

In failing to take this opportunity you were then significantly held up for clear running behind tiring horses until approximately 50 metres after entering the home straight at which time your horse then finished strongly to finish in third place . . . "

For the appellant it was submitted that, having chosen to hold her position behind runners closer to the pegs, she was entitled to do so for the reasons that she might reasonably expect a run to come in the sprint lane, which ultimately occurred but at some distance significantly closer to the finish. At the worst for the appellant, so it was submitted, she made an error of judgement which, if objectively assessed, was not blameworthy.

Having considered the available evidence, including the race film and the helpful submissions from both sides, we are comfortably satisfied that the appellant's drive was unacceptable.

The appellant is an experienced and competent A-grade driver and the circumstances of the race between the 300 and 200 metres and on the turn were such that the clear and most desirable option was for her to have eased out wider on the track where she would have been afforded clear running to the finish inside Left In Command driven by Mr Neilsen. At the same time she would have maintained momentum and so significantly enhanced the horse's chance in the race. Rather she chose to remain behind tiring horses and thereby had lost significant momentum when a run did eventually come for her on the inside, but much closer to the finish.

The appellant at the relevant part of the race had two options – to remain behind runners in the hope that a run might come or ease wider on the track where clear running was assured, a move which was obviously available and the one which ought to have been taken by a driver of the appellant's standing and competence.

In our view, the stewards were rightly of the opinion that the appellant's drive was unacceptable and our objective assessment of her drive is that it was culpable to such a degree that the appeal must be dismissed.

The order of the board is that the appeal be dismissed.

Further right of appeal information: The appellant and the stewards may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **14 days of the date of this decision**. Information in relation to appeals to QCAT may be obtained by telephone on (07) 3247 3302 or via the Internet at www.qcat.qld.gov.au