3 February 2023

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**ROBERT WALTERS**

**Date of hearing:** 27 January 2023

**Panel:** Justice Shane Marshall (Deputy Chairperson) and Ms Maree Payne.

**Appearances:** Mr Adrian Crowther appeared on behalf of the Stewards.

Mr Robert Walters represented himself.

Mr Ben Yole appeared as a witness.

Mr Mark Pitt appeared as a witness.

**Charge:** Australian Harness Racing Rule (“AHRR”) 162(1)(www)(c) states:

1. A driver shall not –

(www) allow his horse to shift ground in a manner which:

(c) advantages another horse.

**Particulars of charge:** The particulars of the charge related to Machavelli shifting ground outwards from approximately the 700 metres resulting in Border Cross, which had raced on the back of Machavelli throughout the race, then being advantaged by gaining a run to the inside of Machavelli and finishing ahead of that runner. Mr Walters reserved his plea to the charge and was found guilty as charged by Stewards. In determining penalty Stewards took into consideration the following factors:

• Mr Walters reserved plea.

• Mr Walters driving frequency and prior offence record.

• The level of advantage gained by Border Cross.

• The level of culpability which was deemed by Stewards to be high.

• Relevant penalty precedents.

• That the penalty acts as both a specific and general deterrent. • The detrimental effect that an offence of this nature may have upon the harness racing industry.

Accordingly, Mr Walters licence to drive in races was suspended for a period of five months which was ordered to commence at midnight on the 2nd November, consecutive to a suspension currently being served by Mr Walters for a separate matter.

**Plea:** Not Guilty

**DECISION**

1. Mr Robert Walters is a licensed harness racing driver.
2. On 31 May 2022, Mr Walters drove the horse “Machavelli” in Race 9 at Echuca. Machavelli at all times was trained by prominent Tasmanian harness racing trainer, Mr Ben Yole.
3. Machavelli was number one in the race, starting from the pole position and started second favourite in the event. Another Mr Yole trained runner, “Border Cross”, was the favourite in the race. Border Cross started on the inside of the second line of runners and was number 7 in the event.
4. Border Cross won the race. Machavelli came second. The Stewards report for the event read as follows, so far as is presently relevant:

“Stewards opened an inquiry into the circumstances of the winner, Border Cross (M. Pitt) gaining a run to the inside of Machavelli (R. Walters) in the back straight on the final occasion. After taking initial evidence from R Walters (Machavelli) the inquiry was adjourned to allow Stewards to examine betting data from the race. A post-race veterinary examination of Machavelli revealed no apparent abnormalities”.

1. In a supplementary report dated 27 October 2022 the Stewards noted that wagering data had failed to reveal any concerns relevant to driving conduct in the race. The Stewards said that they had reviewed “the previous racing form history” of Machavelli, the initial evidence given on the night of the race and further evidence given by Mr Walters at the resumption of the inquiry on 25 October 2022. The supplementary report states that, after considering all the evidence before them, the Stewards charged Mr Walters under Australian Harness Racing Rule (“AHRR”) 162(1)(www)(c). That sub-rule provides that:

“A driver shall not –

allow his horse to shift ground in a manner which:

advantages another horse”.

1. The supplementary report states that:

“The particulars of the charge related to Machavelli shifting ground outwards from approximately the 700 metres resulting in Border Cross, which had raced on the back of Machavelli throughout the race, then being advantaged by gaining a run to the inside of Machavelli and finishing ahead of that horse”.

1. The Stewards invited Mr Walters to enter a plea. He said that he was reserving his plea. It appears that the Stewards treated that indication as a plea of not guilty. The Stewards were satisfied that the charge was sustained and found Mr Walters guilty. The reasons for that decision were unstated. The Stewards then invited Mr Walters to make submissions on the question of penalty. He declined to do so. Stewards asked him if he derived all his income from harness racing and he said that he did and that 35% to 40% came from driving. The Stewards imposed a penalty of 5 months suspension.
2. On 27 October 2022 Mr Walters filed an appeal with the Tribunal Registrar. The appeal appears to be against both the guilty finding and the severity of the sentence. It has operated as a stay.
3. In hearing the appeal, the Tribunal had regard to the evidence provided by Mr Walters to the Stewards; examined sections of the race replay; and had regard to extra evidence given by the parties before us, being the evidence of Mr Walters, Mr Yole and Mr Pitt.
4. The appeal notice drew attention to Machavelli’s racing manners. Mr Walters said, as he did before the Stewards, that the mare had a tendency to lay in on bends and lay out in the straights. After the race the trainer made gear changes on Mr Walters suggestion in order to try and stop the horse shift out in the straight. Mr Yole confirmed that in his evidence.
5. Mr Walters acknowledged that Machavelli shifted out from the 700m mark in back straight. However, he gave evidence to the effect that the shift was not pronounced until the blinkers were activated at the 550 metre mark and he locked stays with another runner at the 540 metre mark. Mr Walters also considered that burrs used in the horses gear were resented by the horse and led to the shifting out.
6. Mr Pitt gave evidence that he did not try to move to the inside of Machavelli until the 550 metre mark, when the stays were locked. He was not in a position to view the vision of the race, but vision shown to the Tribunal showed him commencing to take an inside run before the 550 metre mark.
7. The Tribunal does not accept that the burrs were the cause of the outward drift. There is no evidence of the burrs being a cause of concern in any other race by Machavelli in its long racing career before or after this race. We also consider that the activation of the blinkers and the locking of the stays was not the cause of a shift off the pegs sufficient to present Border Cross with an inside run. It is irrelevant that Border Cross may have availed itself of the sprint lane after the 550 metre mark, because the offence is made out on the basis of not having affected the result of the race by presenting another horse with an advantage. We also note that there was no pronounced drifting out in the back straight earlier in the same race. In conclusion the Tribunal considers that the decision of the Stewards was reasonably open to them. The Stewards were entitled to form the view that Mr Walters did not take sufficient action to ensure that Machavelli did not drift as far as she did off the pegs before the activation of the blinkers and the locking of the stays.
8. We dismiss the appeal against the finding of guilt in relation to the charge under AHRR 162(1)(www)(c) and will now hear submissions on penalty.

**PENALTY**

1. On 27 January 2023, the Tribunal dismissed an appeal by Mr Walters from a decision of the Stewards to find him guilty of breaching Australian Harness Racing Rule 162(1)(www)(c). After delivering its decision on the question of whether the appeal from the guilty finding should be rejected or allowed (“the liability decision”), the Tribunal heard submissions on the question of penalty.
2. The effect of the liability decision, briefly stated, is that the Tribunal considered that from the 700 metre mark in the event in question until about the 550 metre mark, Mr Walters allowed his horse to drift out from the pegs while racing in the lead on the inside of the field and presented a stablemate with an advantage in obtaining an inside run to race to the lead. He knew that the stablemate was behind him.
3. As Mr Walters acknowledged, the second favourite stablemate drifting out to allow the favourite stablemate to take the lead is not a good look for harness racing. One could imagine that any person who had wagered money on Mr Walters horse would have been absolutely furious. It is not to the point that the winner may have availed itself of the sprint lane in the straight if it had been presented. The taking of that opening placed the winner in a very strong position at that point.
4. The relevant sub rule has been in its current form for about 4 years. Previous iterations of similar rules confined the offending conduct to tactics in the final straight and not, as here, in the back straight. Similar conduct was also apprehended in the past in more general rules regarding improper driving.
5. Since the introduction of the sub-rule there have been 3 decisions of racing Stewards in Victoria which have dealt with the question of penalty. There has been no decision at the level of this Tribunal in any Australian jurisdiction dealing with AHRR 162(1)(www)(c). We are informed by these decisions, but in no way bound by the approach taken in them. For all intents and purposes on the question of penalty for an offence under this Rule, the Tribunal is in unchartered territory. Limited assistance can be gained from an old decision of the Racing Appeals Tribunal in the mater of Devic (23 May 2007). Devic was an appeal against a 6 month disqualification for breaches of a Rule dealing with careless or other inappropriate driving. However, there were similarities between this matter and Devic, in that the driver concerned allowed his horse to shift from the peg line, allowing a stablemate to secure on inside run. Nevertheless, breaches of the Rule in question and the penalty imposed reflected a range of circumstances which included conduct which offended the Rule. It is noted that in Devic the 6 months disqualification was reduced to 6 months suspension.
6. The Stewards’ decisions in three matters in Victoria in recent times, including this one, vary from 5 months suspension to a matter of a few weeks suspension. We are not appraised of all the circumstances in the cases where penalties were counted in weeks rather than months and as shown above, the decisions of the Stewards are of little precedent value to the Tribunal, which has an appellate function in relation to them.
7. It was not necessary for the purposes of our liability decision to make a finding about whether Mr Walters deliberately drove his horse away from the pegs from the 700 metre mark. The evidence was not conclusive on that point and the penalty to be assessed does not proceed on the basis that the conduct was proved. It was sufficient that a lack of corrective action was taken when it was needed to stop the outward drift of Machavelli.
8. In setting a penalty in this matter we have had regard to the following:
9. The seriousness of the charge.
10. The fact that stablemates were involved in giving and taking advantage.
11. General deterrence.
12. Specific deterrence.
13. Denunciation of the offending conduct.
14. The importance of probity in harness racing.
15. Maintaining public confidence in the sport.
16. The not guilty plea.
17. The lack of significant relevant prior offending conduct by Mr Walters and;
18. The financial consequences for Mr Walters.
19. In all the circumstances we consider that a penalty of 4 months suspension is appropriate. We allow the appeal on penalty. We set aside the suspension of 5 months and in lieu of that penalty we impose a suspension of 4 months to at midnight on Sunday, 5 February 2023.

Mark Howard

Registrar, Victorian Racing Tribunal