25 May 2021

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**ANTHONY BUTT**

**Date of hearing:** 19 May 2021 and 21 May 2021

**Panel:** Magistrate John Doherty (Deputy Chairperson) and Mr Josh Bornstein.

**Appearances:** Mr Brett Day appeared on behalf of the Stewards.

Mr Anthony Butt represented himself.

**Charge:** Australian Harness Racing Rule (“AHRR”) 149(2) states:

 A person shall not drive in a manner which in the opinion of the Stewards is unacceptable.

**Particulars of charges:** Anthony Butt, driver of “Alpine Stride”, was questioned regarding the tactics adopted on the gelding. After consideration of all the evidence tendered, including the results of the post-race veterinary and endoscopic examination of Alpine Stride which revealed the gelding to be displaying no significant findings other than Grade 1 Mucous, which the officiating veterinarian advised had little or no effect on performance, Mr Butt was issued with a charge under Rule 149(2).

The particulars of the charge being that after Alpine Stride had been three wide without cover from the start of the race up until obtaining the position outside the leader at approximately the 1800m he drove in an unacceptable manner by:

1. Allowing Alpine Stride to continue to progress forward and challenge Mister Wickham for the lead up until approximately the 1600m which contributed to the extremely fast lead time of 41.85 seconds being recorded, which was 4.41 seconds faster than the five-year average for races conducted at Tabcorp Park Melton, and 0.35 seconds slower than the fastest ever lead time for this track;
2. After unsuccessfully challenging Mister Wickham for the lead he failed to noticeably restrain Alpine Stride and continued to race on equal terms with Mister Wickham for the majority of distance between the 1600m and 1200m which contributed to the fast first quarter of 28.37 seconds being recorded, which was 2.65 seconds faster than the five-year average for this track;
3. As a result of the tactics he adopted it contributed to the race being run at a speed up until the 1200m which was 7.06 seconds faster than the five-year average for races conducted at this track and contributed to Alpine Stride being placed under pressure approaching the 800m and tiring badly to finish in last placing beaten 141.7m.

Mr Butt pleaded not guilty to the charge as issued and requested an adjournment to allow him to present further evidence. Stewards granted the adjournment and ordered that the inquiry reconvene at 1.00 pm on Monday, 1 February 2021.

At the reconvening of the inquiry, Mr Butt produced a report from stable veterinarian Dr Virginia Brosnan advising that Alpine Stride was found to be displaying colitis on 31 January 2021 and 1 February 2021. Evidence was taken from HRV Veterinary Consultant Dr Richard Cust who advised when examined post-race Alpine Stride was not displaying any signs of colitis or any related condition.

Upon consideration of this evidence, and further evidence which was tendered by Mr Butt, Stewards found him guilty of the charge as issued.

In assessing penalty, Stewards considered the relevant factors as outlined within the HRV Stewards Minimum Penalty Guidelines placing weight on Mr Butt’s clear record under this or any associated rule over close to 40 years, his high driving frequency and the high consequential effects of any period of suspension with the current feature racing. Stewards were also mindful of the degree of culpability and the effect the tactics adopted had on the overall chances of Alpine Stride and Mister Wickham. Stewards accordingly imposed a four week suspension of Mr Butt’s licence to drive in races which was ordered to commence midnight 6 February 2021.

**Plea:** Not guilty

**DECISION**

This is an appeal by Mr Anthony Butt in relation to a decision by Harness Racing Victoria (“HRV”) Stewards to find him guilty of breaching Australian Harness Racing Rule (“AHRR”) 149(2), which states a person shall not drive in a manner which in the opinion of the Stewards is unacceptable. The drive in question was on “Alpine Stride” in Race 6 at Melton on 30 January 2021.

The particulars to support the charge are as follows:

Alpine Stride had been three wide without cover from the start of the race up until obtaining the position outside the leader at approximately the 1800m. He drove in an unacceptable manner by:

1. Allowing Alpine Stride to continue to progress forward and challenge Mister Wickham for the lead up until approximately the 1600m, which contributed to the extremely fast lead time of 41.85 seconds being recorded, which was 4.41 seconds faster than the five-year average for races conducted at Tabcorp Park Melton, and 0.35 seconds slower than the fastest ever lead time for this track;
2. After unsuccessfully challenging Mister Wickham for the lead, he failed to noticeably restrain Alpine Stride and continued to race on equal terms with Mister Wickham for the majority of distance between the 1600m and 1200m, which contributed to the fast first quarter of 28.37 seconds being recorded, which was 2.65 seconds faster than the five-year average for this track;
3. This contributed to the race being run at a speed up until the 1200m which was 7.06 seconds faster than the five-year average for races conducted at this track and contributed to Alpine Stride being placed under pressure approaching the 800m and tiring badly to finish in last placing beaten 141.7m.

An inquiry was commenced on 30 January 2021 and was adjourned to 1 February 2021 when, after hearing further evidence, Stewards found Mr Butt guilty of the alleged charge, and suspended his driving licence for four weeks. It is against that finding of guilt and penalty imposed that Mr Butt now appeals to this Tribunal.

The appeal brief provided to the Tribunal by HRV Stewards contains the following:

1. Transcript of the HRV Stewards inquiry on 30 January 2021 and 1 February 2021.
2. Race Results – Melton, 30 January 2021.
3. Career Racing Performances – Alpine Stride and Mister Wickham.
4. Sessional Times – Melton 2240m 30 June 2016 – 30 January 2021.
5. Veterinary Incident and Injury Report Form – Alpine Stride 30 January 2021.
6. Exhibit 1 – HRV Form Analysis.
7. Exhibit 2 – Form Analysis.
8. Exhibit 3 – Garrards Equine Veterinary Practice Clinical Report – Alpine Stride 1 February 2021.
9. Exhibit 4 – Stable Treatment Records – Alpine Stride 31 January and 1 February 2021.
10. Career Driving Performance Statistics – Anthony Butt.

Furthermore, the Tribunal has been aided by observing video footage of the race – by submissions of Mr Brett Day, Chairman of the HRV Stewards, who observed the race with HRV Steward, Mr Shane Larkins – and by evidence and submissions (written and oral) made by Mr Butt.

The race in question commenced at a fast pace. It was a group two race with open class horses and experienced drivers. Pre-race form analysis suggested that Alpine Stride may find the lead with Mister Wickham (inside Alpine Stride) eventually handing up the lead to either Alpine Stride or another favoured horse. HRV Stewards agreed that such an outcome was possible. Certainly, Mr Butt thought it was. He had previously trained Mister Wickham and because it was an experienced “sit sprint” horse, he thought that he would try to get past it into the lead.

At approximately the 1800m point of the race, Mr Butt issued his challenge for the lead. It was not successful. The challenge persisted for between 150m and 200m approximately to about the 1600m point of the race. It is plain that, to that point the race had been run at a very fast pace, although, there is no electrical signage to confirm what that pace was until the winning post is reached. However, in our opinion, the drivers Mr Chris Svanosio (Mister Wickham) and Mr Butt (Alpine Stride) must have appreciated the fast pace.

HRV Stewards took particular exception to the alleged failure to exercise noticeable restraint after Mr Butt gave up his challenge for the lead around the 1600m mark. Restraint, in the opinion of the Stewards, was needed to give Alpine Stride a “breather”. Alpine Stride was running on equal terms outside Mister Wickham, an experienced campaigner and, according to his driver, Mr Svanosio, in good form.

The Tribunal agrees that, by not exercising noticeable restraint, Mr Butt contributed to the race being conducted at a significantly fast pace up until the 1200m mark of the race and contributed to Alpine Stride tiring badly. That much can be seen from the race footage and is in line with the observations of the Stewards. In previous racing, Alpine Stride could be restrained without choking down despite being a big, strong horse.

Post race, Alpine Stride was subject to a veterinary and endoscopic examination by Dr Richard Cust. Apart from grade one mucous being present, no other significant clinical findings were observed. Dr Cust was doubtful whether the presence of grade one mucous had any effect on Alpine Stride’s performance. The following day, stable staff reported Alpine Stride as unwell and Dr Virginia Brosnan concluded on that day that the horse was suffering from Colitis and that condition could have contributed to the horse’s performance on 30 January 2021. It is noted that the findings of Dr Brosnan were not present upon Dr Cust’s examination two days earlier. If it could have affected the performance, it is the opinion of the Stewards that that is a matter for consideration on penalty should the charge against Mr Butt be sustained. In the event, the Tribunal is comfortably satisfied with Dr Cust’s findings on race day, acknowledging, as Dr Cust has, that Colitis can be observed as early as the day after race day or sometimes post race.

The subject race had been fast from the commencement. Alpine Stride was positioned three wide rounding the first turn. There is no issue with Mr Butt’s challenge to lead. However, the pace was fast and after conceding that he could not find the lead, Mr Butt failed to make a noticeable effort to restrain Alpine Stride so as to give it some respite from the continuing fast pace.

The Tribunal is comfortably satisfied that the charge is made out.

**PENALTY**

In relation to penalty, it is the decision of the Tribunal to impose a three week suspension of Mr Butt’s driving licence effective immediately. In the course of this hearing, the Tribunal has become aware that Mr Butt received a three week driving suspension for an infringement last night. That penalty has not yet been appealed. It may be. It may not be. It is entirely speculative as of today. This hearing, which has concluded today, represents the end of a process of natural justice. To seek to add the penalty issued today as a cumulative penalty to be added onto the penalty issued yesterday, and which may be the subject of another appeal by Mr Butt, seems at odds with principles of fairness and good conscience. If an appeal was to be lodged in respect of yesterday’s suspension, it is not known how long it would be before the matter is listed for hearing. If such an appeal was successful on the merits, that would lead to a situation where today’s penalty, which has been imposed, would be effectively commencing potentially many months after it was meant to commence. Such a potential outcome is undesirable.

Finally, in deciding penalty, HRV has submitted that the Tribunal consider the Minimum Penalty Guidelines, which were developed in consultation with the Harness Racing Trainers and Drivers. Although not bound by them, the Guidelines serve as a useful tool with respect to what industry participants can expect a range of penalties to be. In the instant case, a three week suspension is at the bottom end of the range. It, of course, does not factor in matters that may mitigate in favour of Mr Butt. In our view, he is not someone to whom specific deterrence considerations may apply. He has never been charged with an unacceptable drive in over 35 years of driving. His driving record is excellent and he is acknowledged in the Harness Racing Industry as a leading driver. General deterrence considerations do apply. In any event, after considering both the submissions of the Stewards and Mr Butt, the Tribunal is of the view, as earlier stated, that Mr Butt’s driving licence be suspended for three weeks commencing immediately.

Kathleen Scully
Assistant Registrar, Victorian Racing Tribunal