8 September 2022

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**BRAD CHISHOLM**

**Date of hearing:** 7 September 2022

**Panel:** Magistrate John Doherty (Deputy Chairperson) and Judge Marilyn Harbison.

**Appearances:** Mr Scott Gillespie appeared on behalf of the Stewards.

Mr Anthony Butt represented Mr Brad Chisholm.

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

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

**Particulars of charge:** Brad Chisholm, driver of Nancy Kay was questioned regarding the tactics adopted on the filly. After consideration of all the evidence tendered, including the results of the post-race veterinary examination of Nancy Kay which revealed the filly to be displaying no abnormalities, Mr Chisholm was issued with a charge under Rule 149(2).

The particulars of the charge being that after Nancy Kay had obtained the lead soon after the start, he drove in an unacceptable manner by:

(1) Allowing Nancy Kay to hold the lead while being challenged by Alf’s Girl from the 1400m to approximately the 1000m which contributed to the extremely fast first quarter of 26.46 seconds being recorded, which was 2.5 seconds faster than the three-year average for all races conducted at Maryborough;

(2) He failed to noticeably restrain Nancy Kay to allow the filly some respite during the above mentioned section of the race;

(3) As a result of the tactics he adopted it contributed to Nancy Kay being placed under pressure approaching the 600m and tiring badly to finish in 6th placing (last) beaten 98m.

Mr Chisholm pleaded not guilty to the charge.  On consideration of the evidence, Stewards found him guilty of the charge issued.

In assessing penalty Stewards considered the relevant factors as outlined within the HRV Stewards Minimum Penalty Guidelines placing weight on Mr Chisholm previous clear record under this particular rule or any associated rule and his driving frequency. Stewards were also mindful of the degree of culpability and the effect the tactics adopted had on the overall chances of Nancy Kay. Stewards accordingly imposed a 4 week suspension of Mr Chisholm’s licence to drive in races which was ordered to commence midnight 28 May 2022.

**Plea:** Not Guilty

**DECISION**

Mr Brad Chisholm is appealing against the decision of the Stewards that he breached Rule 149(2) – that is, that he drove in a manner which, in the opinion of the Stewards, was unacceptable. The charge arose out of the running of Race 2 over 1690 metres at Maryborough on 19 May 2022.

We have had the benefit of considering the evidence by way of Stewards inquiry, video footage of the race and submissions made by both parties including track times at Maryborough, trial results and past decisions concerning Rule 149.

In this case, the Stewards consider Mr Chisholm’s drive unacceptable. In the recent VRT case of Mifsud (22 July 2020), Judge John Bowman, the chairperson of this Tribunal, when considering the meaning of the Rule 149(2) said: A useful test in this regard is whether the knowledgeable harness racing spectator might be expected to exclaim words to the effect of ‘what on earth is he doing’ or ‘my goodness, look at that’, see the New South Wales decision of McMullen.

In this present case, Mr Chisholm was driving a horse Nancy Kay which was on debut, having had some good trial form. Mr Chisholm was confident that he could lead and had been instructed to do so. It was third favourite in the event. Alf’s Girl driven by Mr Romanidis had poor trial form and had not sought to lead previously. It was the outsider of the field and at a price of at least 70 to 1.

When the race commenced, Mr Chisholm found the lead and was then surprised to see Alf’s Girl begin to challenge for the lead. Mr Chisholm was not disposed to hand up the lead to Mr Romanidis that is despite Mr Romanidis urgings to do so. Mr Chisholm did not want to be left trailing a horse that he thought could not win.

Mr Chisholm did not appear to be urging his horse on to keep the lead and the first quarter was run at a quarter time of 26.4 seconds. It is after the first quarter that Stewards were concerned that the race for the lead still continued with Mr Romanidis still the aggressor effectively reining and whipping his horse to try to take the lead. Whilst this was happening, Mr Chisholm did not appear to be doing anything overt to urge his horse to maintain the lead. The reality is that Alf’s Girl did not have the speed to cross Nancy Kay and this next part of the race was run at 4.5 seconds slower than the first quarter. If an error of judgement was made by Mr Chisholm, it was because he was placed in an unenviable position by Mr Romanidis’ aggressive and unacceptable driving. In our view, any error of Mr Chisholm could not be considered culpable, nor would it fail the test in McMullen.

In these circumstances, the appeal is upheld and the charge is dismissed.

Mark Howard  
Registrar, Victorian Racing Tribunal