11 May 2021

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**DARBY MCGUIGAN**

**Date of hearing:** 20 April 2021

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

**Appearances:** Mr Michael Ross appeared on behalf of the Stewards.

Mr Darby McGuigan represented himself.

**Charge:** Australian Harness Racing Rule (“AHRR”) 163(1)(b)(i) states:

(1) A driver shall not –

(b) subject to rule 164

(i) make another horse cover more ground than necessary.

AHRR 165(1)(b) states:

(1) From the start through the first turn, and until reaching the next straight, a driver shall -

(b) not move the driver’s horse towards the inside running line unless the rear of the driver’s sulky is at least one metre clear of the extended front legs of the horse racing in the next position closer to the inside running line.

**Particulars of charges: Charge 1**

 Darby McGuigan, driver of “Rocknroll Eyes”, was found guilty of a charge under Rule 163(1)(b)(i), in that at approximately the 1500m when completing his move three wide he did so when insufficiently clear of “Struve” resulting in that horse being forced four wide until the 1300m and Rocknroll Eyes obtaining the position outside the leader ahead of Struve. In assessing penalty Stewards took into account the relevant considerations as outlined within the HRV Stewards Minimum Penalty Guidelines placing particular weight on Mr McGuigan’s good prior offence record and his high driving frequency, however were mindful of the degree of interference involved with Struve obliged to race wider than necessary for a significant distance. Stewards accordingly imposed a 10 day suspension of Mr McGuigan’s licence to drive in races with the commencement date to be advised.

 **Charge 2**

 Stewards inquired into an incident racing into the first turn and took evidence from Darby McGuigan (“Aunty Ethal”), and William Drury (“Call Me Everit”). Mr Darby McGuigan was found guilty of a charge under the provisions of Rule 165(1)(b). The particulars of the charge being that he permitted his drive to shift in when insufficiently clear of Call Me Everit racing into the first turn resulting in that gelding being tightened for racing room, having to be checked and breaking gait as a result. Mr Darby McGuigan had his licence to drive in races suspended for a period of 2 weeks to commence midnight 10 February 2021. In assessing penalty Stewards took into account Mr McGuigan’s overall good driving record, the frequency in which he drives and that the interference was in the low range and that Mr McGuigan had corrected his drive afterwards resulting in Aunty Ethal being checked herself and breaking gait. As a result of Call Me Everit checking racing into the first turn Do Ya Wanna Donna, which was trailing, was inconvenienced.

**Plea:** Guilty to all charges

**DECISION**

In respect of two appeals before the Victorian Racing Tribunal (“VRT”), Mr Darby McGuigan has entered pleas of guilty to each charge.

Appeal 1 relates to a charge under Australian Harness Racing Rule (“AHRR”) 163(1)(b)(i) following an inquiry into Mr McGuigan’s drive on “Rocknroll Eyes” in Race 5 at the Melton Harness Racing meeting on 5 December 2020. After a finding of guilty, Mr McGuigan’s driving licence was suspended for 10 days.

Appeal 2 relates to Mr McGuigan’s drive on “Aunty Ethal” in Race 4 at the Horsham Harness Racing meeting on 1 February 2021, where the Stewards found Mr McGuigan in breach of AHRR 165(1)(b) and suspended his driving licence for two weeks.

The facts supporting each charge are agreed between the Appellant, Mr McGuigan, and the Harness Racing Victoria (“HRV”) Stewards. The Appellant does not require any evidence to be tendered in relation to the Rule breaches alleged against him.

Mr McGuigan agrees and accepts that the penalties now suggested by HRV Stewards to this Tribunal are appropriate under the circumstances and that does not wish to make any submissions in relation to the penalties suggested by HRV Stewards.

The Stewards have recommended that, due to Mr McGuigan now pleading guilty to each charge, the penalties originally imposed be adjusted as follows:

Appeal 1 (Melton Appeal): ten days suspension of driving licence be reduced to seven days effective from midnight Saturday, 1 May 2021.

Appeal 2 (Horsham Appeal): 14 days suspension of driving licence be reduced to ten days effective from midnight Saturday, 8 May 2021.

After hearing from HRV Stewards and Mr McGuigan, it is noted that both parties have proposed that the agreed facts of each appeal be adopted by this Tribunal as its binding decision.

In all the circumstances, this Tribunal accepts the agreed submissions of each party and the appropriateness of the new penalties suggested to the Tribunal.

It is the decision of this Tribunal that the penalties, as proposed, be endorsed as its final determination of each appeal, with the commencement dates as outlined earlier in this decision.

Kathleen Scully
Assistant Registrar, Victorian Racing Tribunal