7 April 2020

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**MR DARBY MCGUIGAN**

**Date of hearing:** 26 March 2020

**Panel:** Judge John Bowman (Chairperson) and Judge Graeme Hicks (Deputy Chairperson).

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

Mr Robert Walters appeared on behalf of Mr McGuigan.

**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 charge:** After working three wide in the early and middle stages during a faster than average lead time, Mr McGuigan then continued to press forward in an attempt to gain the position outside the leader when that position was not reasonably available to him, a course of action which in the opinion of Stewards was unacceptable and detrimental to the finishing position of Lady Flora.  Mr McGuigan pleaded not guilty to the charge however after giving due consideration to all the evidence Mr Mcguigan was found guilty. In determining penalty Stewards considered Mr McGuigan’s driving record under the rule, level of culpability, his driving frequency and HRV Minimum penalty guidelines.  Mr McGuigan’s licence to drive in races was suspended for a period of 3 weeks with a commencement date to be advised.

**Plea:** Not Guilty

**DECISION**

Mr Darby McGuigan, you have pleaded ‘Not Guilty’ to a breach of Rule 149(2). It concerns your drive of Lady Flora in Race 4 over 2150 metres at Wedderburn on 19 January 2020. The Stewards have alleged that you drove in an unacceptable manner.

The essence of the charge is this, Wedderburn is a tight track of 804 metres in circumference. Lady Flora began from gate 5. After travelling a short distance, it was apparent that Lady Flora would be trapped three wide. You pushed up. Stateswoman driven by James Herbertson, was ahead of you one off the pegs. As you commenced a forward move, it moved out and crossed into the breeze. Apparently, you formed the belief that you could get around it and Stateswoman would then be eased back to be one out, one back.

However, Mr Herbertson did not do this. Stateswoman maintained its position on the outside of the leader, trapping you three wide. This pattern continued for a considerable distance. Where the Stewards were particularly critical of your drive was that, when entering the back straight for the last time and having effectively been three wide for the trip, you made another attempt to get past Stateswoman. Lady Flora in fact got slightly ahead of Stateswoman and the horse on the rails, but the effort told and Lady Flora dropped out shortly thereafter. She finished last, 63.5 metres from the winner.

It may be that you were the victim of circumstances. However, we agree with the Stewards that making a second challenge when it was quite clear that Mr Herbertson was not going to be letting you in and when you had been three wide for the trip was driving in an unacceptable manner.

We would add that we attach no significance to the condition of the horse after the race. Whilst it did blow for a period and its respiratory rate remained at 84 for a period, the examining veterinary surgeon, Dr Hargraves, specifically stated that the horse’s recovery showed no significant abnormality.

In summary, we are comfortably satisfied that the charge has been made out. We shall hear from the parties on the question of penalty.

**PENALTY**

This is a somewhat unusual case. As we have said, to some extent you, Mr McGuigan, were the victim of circumstances. You thought Mr Herbertson would drive in a certain fashion, which many drivers might have expected. Mr Herbertson, as is his right, did not. That did not justify your making the second attempt to get past him. However, as we have said, this was a somewhat unusual set of circumstances.

We bear in mind that you are a concession driver. You have been driving for 3½ years and have had in excess of 2,000 drives and you have an excellent record. Further, driving is your only source of income.

You did not plead guilty. We appreciate what is contained in the minimum penalty guidelines and whilst we certainly take heed of those guidelines, they are just that and do not bind us.

In the very unusual circumstances of this case, we are prepared to uphold the appeal and reduce the penalty to 2 weeks.

Mark Howard  
Registrar, Victorian Racing Tribunal