7 April 2020

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**MR JAMES HERBERTSON**

**Date of hearing:** 25 March 2020

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

**Appearances:** Mr Kylie Harrison appeared on behalf of the Stewards.

Mr Daniel Jack appeared on behalf of Mr Herbertson.

**Charge:** Australian Harness Racing Rule (AHRR) 168(1)(e) states “A person shall not before, during or after a race drive in a manner which is in the opinion of the Stewards: improper”.

**Particulars of charges:** Mr Herbertson was charged pursuant to Rule 168(1)(e), improper driving at Kilmore on 5 December 2019. The particulars of the charge were that when driving out Mr Herbertson had used his whip with a prodding action. Mr Herbertson pleaded not guilty to the charge, however after giving due consideration to all of the evidence he was found guilty of the charge. The penalty phase of the Inquiry was concluded at Tabcorp Park, Melton, on 6 December. In determining penalty Stewards were mindful of Mr Herbertson’s driving record, not guilty plea, relevant penalty precedents, the serious nature of improper driving and that any penalty act as both a specific and general deterrent. A fine of $1000 was imposed.

Mr Herbertson in driving Stateswoman at Ballarat on 8 January 2020 in Race 1, in the home straight on the final occasion you have used your whip in a manner which in the opinion of the Stewards is an action – has been used with an action which has resulted in the whip being used between the horse’s hind legs which in the opinion of the Stewards is improper. A fine of $1000 was imposed.

**Pleas:** Charge 1 – Guilty

Charge 2 - Guilty

**DECISION**

Mr James Herbertson, you have pleaded guilty to two breaches of AR 168(1)(e). The first charge relates to your use of the whip when driving ‘Phil Monty’ at Kilmore on 5 December 2019. Essentially, the charge relates to improper whip use in that you allegedly used a jabbing or prodding motion with the whip between the horse’s legs in the concluding stages of the event. Mr Daniel Jack, assisting you, has suggested that a fine of $500 is the appropriate penalty for the first offence. That is not contested by the Stewards. We are also of the view that this is an appropriate fine for a first offence.

The second charge relates to a similar offence when you were driving ‘Stateswoman’ at Ballarat on 8 January 2020. This second offence was basically done by you, in order to prove a point as at that time you were maintaining that there was nothing improper or rule breaking about your whip style. By now pleading guilty, you are quite properly acknowledging that you had breached the Rule. However, to continue with the same style to prove a point was not a sensible or proper approach. The Stewards fined you $1000 for the offence.

We have taken into account what Mr Jack has said on your behalf, as well as acknowledging the points made by Ms Harrison on behalf of the Stewards, including that what occurred was at a time when animal welfare was quite rightly in the spotlight.

The bottom line is that we think that a decreased fine for that offence on 8 January 2020 is warranted. However, we also appreciate that we are in or approaching tough economic times without precedent in our lifetimes. You are a particularly promising young driver, but the financial forecast for everyone is looking increasingly bleak for most people.

In the circumstances, we are of the we are of the view that a fine for the offence on 8 January 2020 of $750 is appropriate, making a total of $1250.

Mark Howard  
Registrar, Victorian Racing Tribunal