12 June 2020

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**MR JAYDEN BREWIN**

**Date of hearing:** 3 June 2020

**Panel:** Magistrate John Doherty (Deputy Chairperson).

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

Mr Lance Justice appeared on behalf of Mr Brewin.

**Charge:** Australian Harness Racing Rule (AHRR) 163(1)(a)(i) states that “a driver shall not cause or contribute to any crossing”.

**Particulars of charge:** Stewards charged Mr Brewin pursuant to Rule 163(1)(a)(i) for crossing. The particulars of the charge being that as Mr Brewin directed Perspective to the one out line he was insufficiently clear of Winkanditsover as he shifted inwards resulting in Winkanditsover losing its rightful racing position. Mr Brewins licence to drive in races was suspended for a period of 10 days. In assessing penalty Stewards took into account Mr Brewin’s not guilty plea and good driving record, the incident which involved crossing which was considered low-range and the HRV Minimum Penalty Guidelines.

**Plea:** Not Guilty

**DECISION**

Jayden Brewin has been charged by HRV stewards with a breach of AHRR 163(1)(a)(i), which states that a driver shall not cause or contribute to any crossing. The particulars of the charge are that he was the driver of Perspective in Race 8, the Boort Pacing Cup, held on 1 March 2020. He had directed Perspective inwards when not sufficiently clear of Ryan Duffy’s horse, Winkanditsover, resulting in crossing Duffy when he has he wasn’t clear to do so.

Mr Brewin has pleaded not guilty to the charge and has appealed to this Tribunal, following the imposition of the 10-day suspension imposed on him on 1 March 2020 by Stewards as a result of a finding of guilt against him.

This Tribunal has had the benefit of viewing video footage of the incident leading to the charge of a transcript of conversation recorded by the Stewards on the day and of submissions about the evidence this morning. The Tribunal also has the race book results and racing performances of the two horses involved in the alleged breach.

Effectively, there are two competing hypotheses by drivers Duffy and Brewin.

The incident took place rounding the turn out of the straight on the first occasion and approximately halfway around the turn. Duffy was racing to the inside of Brewin. Duffy maintained that he was following Brad Chisholm’s horse, Our Jimmie, which was racing half off the fence with Duffy in the racing line, one out, two back. In answer to a question from the Stewards, on the transcript Duffy was not sure whether Brewin’s horse came down, or Mr Chisholm’s came up or [Mr Duffy’s] shifted up (paragraph 35, page 2 of transcript).

Brewin maintains that Duffy was headed to the inside and that he felt he had the running line and that he was in that position before Duffy’s horse galloped. In the Tribunal’s opinion that may well be correct. It is clear from the video that Brewin is clear of Duffy’s horse well before Duffy’s horse starts to gallop.

Duffy maintains that there was contact between his horse and Brewin’s wheel. Brewin says there was not. If there was, it did not cause Duffy’s horse to gallop immediately – it galloped when Brewin was well clear of it.

Boort is a tight track and although there is video footage, it is not ideal. At the critical time we only have the drivers opinions about where they were. Certainly, leaving the home straight, Duffy was away from the peg line, but, in evidence in the transcript, Duffy was not sure whether his horse shifted up or Brewin’s had come down.

At all times Brewin has maintained that after leaving the home straight, Duffy had shifted down, with Brewin then being in the running line. The Tribunal is not in a position to prefer either of the two hypotheses about what happened. As a result, I could not be comfortably satisfied that the charge against Mr Brewin has been made out.

In that situation the charge must be dismissed and the appeal is upheld.

Mark Howard  
Registrar, Victorian Racing Tribunal