24 June 2020

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**MR JIM MORRISSEY**

**Date of hearing:** 18 June 2020

**Panel:** Judge John Bowman (Chairperson) and Dr Andrew Gould.

**Appearances:** Mr Shane Larkins appeared on behalf of the Stewards.

Mr Jim Morrissey represented himself.

**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:** Jim Morrissey (Our Doreen Days) pleaded guilty to a charge under AHRR 149(2) for driving in a manner which in the opinion of the stewards was unacceptable, in that after racing three wide during the initial stages, approaching and leaving the 1250m mark he elected to progress forward three wide in an attempt to obtain the position outside the leader in advance of Cassiopeia when it became clearly apparent that the driver of that horse was not intent to hand up his position. Stewards were satisfied that due to the manner in which Our Doreen Days was unable to improve its position, that there was an opportunity for Mr Morrissey to restrain to allow his horse some respite rather than continuing to persist for a position which was clearly not attainable. The licence to drive in races of Mr Morrissey was suspended for four weeks to commence midnight tonight. In assessing penalty stewards considered the Harness Racing Victoria (HRV) Minimum Penalty Guidelines, the driver’s long-standing clear record, the current minimum frequency with which Mr Morrissey is driving and the degree of culpability which was determined toward the low end of the scale.

**Plea:** Not Guilty

**DECISION**

Mr Jim Morrissey, you are pleading ‘not guilty’ to a breach of Rule 149(2). The Stewards case is as follows.

In Race 1 at Charlton on 29 March 2020 you were driving Our Doreen Days. The horse had drawn Gate 5 behind the mobile start. It was at long odds. This was a comparatively short race over 1609 metres.

It is alleged by the Stewards that, when three wide after a short distance, you remained the only horse 3 wide and on entering the home straight with a lap to go, you shook the reins of the horse and turned your whip around, but failed to make substantial ground. Your horse remained 3 wide in an apparent endeavour to get to the death seat, which was occupied by Cassiopeia, driven by Mr Wayne Hayes. It is alleged that, prior to entering the home straight on that occasion, Mr Hayes had looked over his shoulder at you and made it clear that he would not be surrendering the position on the outside of the leader. Nevertheless, you pressed on being effectively the only horse 3 wide, but your horse was not able to press Cassiopeia and after continuing around the turn out of the straight, you then eased back from the 3 wide position to the rear of the field. Our Doreen Days ultimately ran last.

Your argument is that your instructions were to press forward from the gate as, at its last start, the horse had been eased to the rear of the field after the start and had ran a distant last. It was to be raced in a forward position on this occasion and that was what you endeavoured to do. You also argue that you were not going to simply comply with the indication from Mr Hayes that he was not going to surrender the death seat and indeed signalling during a race is a breach of Rule 162. Further, your horse ran a much faster time than previously.

We have viewed the video many times. We are of the opinion that the charge of driving in a manner which, in the opinion of the Stewards is unacceptable, has been made out.

Regardless of whether or not the horse ran a faster time, the manner in which it was driven gave it little or no chance of winning or finishing in the best possible position. There is no criticism of you being caught 3 wide immediately after the start. However, you are a very experienced driver. Charlton is a comparatively tight turning track and not of great length. You persisted in the 3 wide position after it became apparent that the position outside the leader was not going to be surrendered to you without a battle. You shook the rein and turned the whip in your hand when it was quite apparent that you were not going to get the position outside the leader and that you were going to continue to be caught 3 wide. You had every opportunity to ease back shortly after the start, but continued to sit 3 wide on the home turn and certainly in the home straight on the first occasion. You did not ease back. You continued to sit 3 wide, even urging your horse forward a little. Inevitably, and too late to conserve much energy, it had to be eased to the rear and it finished there.

We are comfortably satisfied that the Stewards case has been proven. This was an unacceptable drive from a very experienced driver. The charge is proven. We shall hear from the parties on the question of penalty.

**PENALTY**

The penalty imposed by the Stewards in this matter was 4 weeks suspension. That was on the basis of a plea of guilty, although you had raised various arguments with the Stewards.

In the case of *Jayden Barker [3 March 2020]*, this Tribunal made the observation that participants can not expect to get the benefit of a discount for a guilty plea, then appeal, before the Tribunal change the plea to ‘not guilty’, be found ‘guilty’ again and continue to get the benefit of the discount.

Mr Larkin has brought this to our attention and seeks an increased penalty of 5 weeks suspension. You, Mr Morrissey, have said that there was some time pressure before the Stewards at Charlton because of the coronavirus, which is understandable.

In the circumstances, we are not going to impose an increased penalty. However, we say this. We want to emphasise, clearly, that the industry must be aware that the reduction of penalty for a guilty plea may well disappear if there is a plea on appeal of ‘not guilty’ and an ultimate finding of guilt. **There will be no further warnings issued.**

Four weeks suspension will remain the penalty in this particular case but the unsuccessful change of plea in future cases could well result in that reduction for the guilty plea being removed.

A change of plea for purely tactical purposes will not be tolerated. The benefit of a genuine plea of guilty should not be lost.

The bottom line is 4 weeks suspension.

Mark Howard
Registrar, Victorian Racing Tribunal