31 March 2022

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**JOSHUA AIKEN**

**Date of hearing:** 9 March 2022

**Panel:** Judge John Bowman (Chairperson) and Ms Maree Payne.

**Appearances:** Mr Brett Day appeared on behalf of the Stewards.

Mr Joshua Aiken represented himself.

**Charge:** Australian Harness Racing Rule (“AHRR”) 163(1)(a)(iii) states:

1. A driver shall not -

(a) cause or contribute to any

(iii) interference.

**Particulars of charge:** Josh Aiken, driver of Malcolms Rhythm, pleaded guilty to a charge under Rule 163(1)(a)(iii) for causing interference in that approaching the 100m he directed Malcolms Rhythm out in an attempt to ease General Dodge wider, however when doing so caused General Dodge to be checked and shift out resulting in Mach Dan and Wolf Stride being checked and himself being dislodged from the sulky which resulted in Pacifico Dream being checked and Malcolms Rhythm failing to finish. In assessing penalty Stewards considered the relevant factors as outlined within the *HRV Stewards Minimum Penalty Guidelines* placing weight on Mr Aiken’s guilty plea, the high degree of interference and the Group 1 status of this race. Stewards further were mindful in assessing penalty that the post-race veterinary examinations of the horses directly involved did not reveal any abnormality and that Mr Aiken had been passed fit to fulfill his remaining engagements. Stewards accordingly imposed a 6 week suspension of Mr Aiken’s licence to drive in races and a fine of $500. This suspension was ordered to commence at midnight on 18 October 2021.

**Plea:** Guilty

**DECISION**

Mr Joshua Aiken, you are appealing against the severity of the penalty imposed by Stewards following the running of the Group 1 Victoria Cup at Bendigo on 9 October 2021. The penalty was imposed for a breach of Australian Harness Racing Rule (“AHRR”) 163(1)(a)(iii), namely that you caused or contributed to interference. At all times you have pleaded guilty to the charge.

The circumstances of the offence are as follows. In the Victoria Cup, you were driving Malcolm’s Rhythm. The other horse immediately involved was General Dodge, driven by Mr Jason Lee. There was also resultant interference to Pacific Dream, Wolf Stride and Mach Dan.

The incident occurred at approximately the 100 metre mark in the home straight on the final lap. You were travelling one off the rail swinging for home. Mr Lee was to your outside, so that you were effectively trapped behind the sulky immediately ahead of you and with Mr Lee, as stated, to your outside. You appeared to be travelling better than him. You made a sharp move to your outside, your sulky came into contact with Mr Lee’s sulky, but it was more than wheel to wheel contact. Your outside wheel rose up above his wheel, causing a spectacular fall. Your horse remained on its feet, but the sulky was flipped in the air. You were dislodged, flung in the air, and almost miraculously landed on your feet some distance behind the horse, which was still pulling the upturned sulky. Interference was caused to the horses mentioned, initially to General Dodge and Pacific Dream.

Your explanation to the Stewards, and indeed to the Tribunal, was that what occurred was somewhat freakish in that, in that in the circumstances, you were entitled to engage in wheel to wheel contact to push out, but somehow your wheel went above that of Mr Lee’s sulky and the fall resulted.

As stated, at the Stewards enquiry you pleaded guilty, but with the above explanation and of other circumstances. The penalty imposed was suspension for six weeks and a $500 fine. You are appealing against the severity of that penalty.

Mr Day, on behalf of the Stewards, drew our attention to several matters. This was a most prestigious Group 1 race. A notice had been sent out four days prior to its running, warning participants that they may well receive a penalty over and above that in the guidelines for relevant offences. This was a prestigious race, which ended in some chaos. The fall was spectacular, with another driver, Mr Duggan, being partially dislodged from the sulky of Pacific Dream. Happily, no injury was done to any of the drivers and horses involved. Mr Day submitted that there was a high degree of carelessness.

You have argued that this was a most unlucky and freakish accident that occurred when you were attempting a proper and legal wheel-to-wheel manoeuvre. You have also pointed out the considerably lower penalties given to another driver in the race for a similar type of incident and in an another race, also a Group 1 race, on another occasion.

When initially interviewing you on the night, Mr Day referred to your level of carelessness, but also did say the following:

“We accept what you put forward that nine times out of ten such a manoeuvre would not necessarily result in these circumstances but these circumstances are certainly unique”.

However, he also pointed out that it was 110 drives since your last suspension, for 10 days, on 29 May 2021. There would be no discount available on this occasion.

We bear in mind that you are a full time professional driver. Obviously suspensions impact on your income. We also take into account your guilty plea, as well as the nature and prestige of the race and the chaos that was caused. We also bear in mind the unique circumstances, as described above.

We are of the view that you were certainly unlucky, but you took a chance in a very prestigious event. Weighing up all these matters, we are of the view that the penalty should be reduced to one of five weeks suspension and without the fine of $500 which had also been imposed. It is removed.

We repeat that the appeal is upheld. The penalty is reduced to five weeks suspension.

Mark Howard
Registrar, Victorian Racing Tribunal