16 April 2020

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**MR KYAL COSTELLO**

**Date of hearing:** 15 April 2020

**Panel:** Judge John Bowman (Chairperson) and Magistrate John Doherty (Deputy Chairperson).

**Appearances:** Mr Nicholas Murray appeared on behalf of the Stewards.

Mr Lance Justice appeared on behalf of Mr Costello.

**Charge:** Australian Harness Racing Rule (AHRR) 149(1) states “A driver shall take all reasonable and permissible measures during the course of a race to ensure that the horse driven by that driver is given full opportunity to win or obtain the best possible placing in the field”.

**Particulars of charge:** Kyle Costello, driver of Systamatic, pleaded guilty to a charge under Rule 149(1). The particulars of the charge being that approaching the 400m, it was both reasonable and permissible for Mr Costello to remain in a position in the one wide line following Clarenden Dazzler, however Mr Costello elected to direct Systamatic back to the inside of horses which on a track with no sprint lane resulted in Systamatic being held up for a clear run, failing to have the opportunity to a clear and unimpeded run, which resulted in Systamatic not being able to be fully tested when finishing in 4th place. In assessing penalty in accordance with the Minimum Penalty Guidelines, Stewards took into account Mr Costello’s guilty plea, that this was his first offence under the applicable rule, his relative inexperience in race driving and the high degree of culpability assessed in this set of circumstances, in that the decision of Mr Costello was a low percentage maneuver at a critical point of the race.  A subsequent veterinary examination of Systamatic revealed no apparent abnormalities. Mr Costello’s licence to drive in races was suspended for a period of 4 weeks to commence midnight 6 February 2020.

**Plea:** Plea reserved

**DECISION**

Mr Kyal Costello, you have reserved your plea to the charges of a breach of Rule 149(1). It relates to your drive on Systematic in Race 3 at Mildura on 31 January 2020, the race being over 2190 metres. Accordingly, we shall treat it as a plea of ‘not guilty’ and require the Stewards to prove their case. Mr Lance Justice assisted you and spoke on your behalf.

The charge could be summarised as being that, approaching the 400 metre mark on the last occasion, you were running forth and one off the marker pegs. There was no horse on your inside. There was a sizeable and increasing gap back to the fifth and sixth horses. In the back straight, Clarenden Dazzler, driven by Mr Douglas was directly ahead of you, also one off the marker pegs. Forward of him was Pat the Pony, driven by Ms Torney, and to her inside was Rainbow Racer, driven by Mr McCallum. There had been a very considerable amount of early pace, pressure and contesting of the lead in the race.

Approaching the 400 metre mark, there was no pressure on you to change course. There was no horse to your inside and a sizeable gap to the rest of the field. Your horse had closed the gap to be immediately behind Mr Douglas. However, rather than following him into the straight and then pulling out, you opted to move back to the marker pegs behind a horse that had been under a large amount of pressure. We would also emphasise that there is no sprint lane at Mildura. Thus, you were held up for most of the straight behind a horse that had been under pressure and was weakening. When you did get out, you finished strongly to be beaten narrowly for third behind Mr McCallum’s horse.

Whether you would have won if you had followed Mr Douglas’ horse and pulled out in the straight may be debateable, but it is apparent that you would have run a place and might well have won. The fact that your horse was at big odds is largely irrelevant. You were going well at the 400 metre mark when you made the decision to go to the marker pegs and your horse continued to be full of running in the straight.

In our opinion, you did not take all reasonable and permissible measures and give your horse full opportunity to obtain the best possible placing. We were referred to what was said by Judge Goran in the Appeal of Honan, a decision of the New South Wales Trotting Appeals Tribunal on 26 October 1983, a decision to which reference is often made in cases of this nature.

In particular we would refer to the following passage:

Each case will turn upon its own merits, but overall if in taking into account all the circumstances the actions of the driver are unreasonable then he may be considered in breach of this particular Rule.

We consider that your actions were unreasonable and in any event our decision is that a breach of Rule 149(1) has been proven.

**PENALTY**

In all the circumstances, we agree with the Stewards that a penalty of 4 weeks suspension is appropriate. You did originally plead guilty, but ultimately reserved your plea, effectively putting the Stewards to their proof. A change of plea can affect penalty. Despite that, Mr Murray on behalf of the Stewards did not seek any alteration to the penalty imposed when you did plead guilty. In the circumstances, it is the penalty which we will impose. The appeal is dismissed.

Mark Howard  
Registrar, Victorian Racing Tribunal