14 February 2020

**DECISION**

**RACING VICTORIA**

**and**

**MR MARTIN HARLEY**

**Date of hearing:** 12 February 2020

**Panel:** Judge John Bowman (Chairperson), Magistrate John Doherty (Deputy Chairperson) and Mr Robert Abrahams.

**Appearances:** Mr Wade Hadley appeared on behalf of the Stewards.

Mr Paul O’Sullivan represented Mr Harley at the hearing.

**Charge:** Australian Rule (AR) 129(2) states a rider must take all reasonable and permissible measures throughout the race to ensure that the rider’s horse is given full opportunity to win or to obtain the best possible place in the field.

**Particulars of charge:**

1. You are, and were at all relevant times, a jockey licensed by Racing Victoria.
2. On 21 January 2020, you rode Yatta Izu (the horse/your mount) in Race 5, the Harcourts Werribee Fillies and Mares Benchmark 64 Handicap over 1400 metres at Spendthrift Australia Park (the race).
3. Your ride of the horse in the race was contrary to AR129(2) for the following reasons:
   1. Between approximately the 1000 metre and the 600 metre marks of the race you vigorously rode your mount forward at a fast tempo whilst racing in a wide position outside of the leaders. By riding your mount vigorously in the manner in which you did from the 1000 metre to the 600 metre marks you failed to provide the horse with adequate respite where in the opinion of the stewards it was reasonable and permissible to do so.
   2. By failing to provide your mount with appropriate respite, the horse was not given full opportunity to win or obtain the best possible place in the field.
4. Yatta Izu placed third of five starters in the race and was beaten by approximately two and a quarter lengths.

**Plea:** Not Guilty

**DECISION**

Mr Martin Harley, you have pleaded ‘not guilty’ to a breach of AR129(2). This concerns your ride on ‘Yatta Izu’ in Race 5 over 1400 metres at Werribee on 21 January 2020. There were 5 horses in the field. Your horse ran third, beaten approximately two and half lengths.

The basis of the charge is that, between the 1000 and the 600 metre mark you rode your mount vigorously and at a fast tempo whilst racing in a wide position, outside the two leaders. By doing this, you failed to provide the horse with adequate respite, when, in the opinion of the stewards, it was reasonable and permissible so to do.

There is no argument but that your instructions, from trainer Mr Brian McGrath and from co-owner Mr Jim McGrath, were to push forward from the start. The case of the stewards effectively boils down to the assertion that you attempted to do this, were caught three wide, then gave up on getting in and should have given the horse a breather for a considerable distance. Your assertion is that when you could not get across ‘one out one back’, you sat three wide but the pace slackened and you made another attempt to get past Dylan Dunn, who was inside you, and allow your horse to go to the front and sit outside the leader, ridden by Beau Mertens. When you again rode your horse vigorously for 150 metres, you in fact got ahead of Dylan Dunn, but not 2 lengths clear. He then kicked up again, so that you remained posted three wide.

We have viewed the video many times. This is a serious charge. We cannot be comfortably satisfied that it has been made out. It is certainly not a pretty ride, being posted three wide in a field of five for a considerable distance and with a second effort commencing at about the 1000 metre mark to get across in front of Dylan Dunn. We can understand why the stewards took an interest in it. You yourself referred to how ugly a ride it may have looked, and you were conscious of this at the time, whilst also being conscious of your instructions and the racing style of the filly, which you had previously ridden.

We agree that the nature of this charge involves something over and above a mere error of judgement. We are not entirely convinced that what happened was even an error of judgement. We see it more as you being a victim of circumstances, which included an apparent determination of the jockeys to keep you out three wide. That is no criticism of them. They are entitled to engage in tactical battles.

However, the bottom line is that as unattractive as the ride may have looked, you were the victim of circumstances, rather than there being a failure on your part to take all reasonable and permissible measures to ensure that your horse was given full opportunity.

The Briginshaw test has not been satisfied and the charge is dismissed.

Mark Howard  
Registrar, Victorian Racing Tribunal