10 August 2021

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**OLIVIA WEIDENBACH**

**Date of hearing:** 15 July 2021

**Panel:** Magistrate John Doherty (Deputy Chairperson) and Ms Heidi Keighran.

**Appearances:** Mr Adrian Crowther appeared on behalf of the Stewards.

Mr Anthony Butt represented Ms Olivia Weidenbach.

**Charge:** Australian Harness Racing Rule 149(2) states “A person shall not drive in a manner which in the opinion of the stewards is unacceptable”.

**Particulars of charge:** The particulars of the charge were that Ms Weidenbach continued to apply pressure to the leader and did not avail her drive any respite during the run, a course of action which in the opinion of Stewards was unacceptable in that she persisted in racing on  level terms  with and in advance of the leader  Tidal Surge when  there was no realistic possibility of her gaining the lead, and given the exposed form of her drive, tactics which were detrimental to her own drives finishing position and that of Tidal Surge.

**Plea:** Guilty

**DECISION**

Ms Olivia Weidenbach has pleaded “not guilty” to breaching Australasian harness racing rule 149(2) by reason of her drive on Major Comment in race 5 at the Shepparton harness race meeting held on Friday, 9 April 2021.

The particulars of the charge are that, as the driver of Major Comment, she worked forward three wide in the early stages of the race and took up a position outside the leader. After being made aware that the lead was not available by Ms Abby Turnbull, the driver aboard the $1.30 favourite Title Surge, she continued to race on level terms with the leader throughout the middle stages of the race. She also applied pressure to that runner in the back straight. It is alleged that she has not given her horse any respite during the race.

We have heard submissions from Mr Crowther on behalf of the stewards and from Mr Butt representing Ms Weidenbach. We have watched replays of the race many times.

During the Stewards inquiry on Friday, 9 April 2021, Ms Weidenbach stated that Major Comment is a one pace horse. She let him go forward as he is a horse that cannot be grabbed at the start, if he is, he gets upset so you just let him go at his own pace. Ms Weidenbach stated that she was instructed by connections to go forward and that when previously he has been restrained his performances were very poor.

We note that on the two previous occasions that the horse had raced, he was able to be restrained.

Though instructions on the day of the race are relevant, in the end it is the driver’s responsibility to drive the horse appropriately.

In our opinion, when Ms Turnbull told Ms Weidenbach that she was not going to give up the lead, she could have just sat, there giving her horse some respite. Ms Weidenbach admitted at the Stewards inquiry that she could have sat back. After racing three wide early, Ms Weidenbach not only sat outside the leader, but headed the leader. In our opinion, there was no effort to restrain the horse. The third quarter was run at 27.7 seconds and Ms Weidenbach admitted at the Stewards enquiry that she was responsible for quickening the pace.

Though it is understandable, considering the past form of the horse, that a new tactic was put in place, it is still the responsibility of the driver to drive in an appropriate manner. In this case, we are of the opinion that, by not giving to her horse some respite during the race, she did not do so.

An appeal involving Rule 149(2) can only succeed and the conviction consequently be overturned if it can be established that the Stewards could not reasonably have reached their ultimate conclusion that Ms Weidenbach drove in an unacceptable manner. We are not persuaded the Stewards fell into any error in their ultimate conclusion and we dismiss the appeal.

**PENALTY**

Ms Weidenbach is a young accomplished driver, who has driven in over 400 races with considerable success.

We have taken into account her plea of not guilty and that she has one prior offence.

Though the minimum penalty guidelines are not mandatory, they are still nevertheless relevant in arriving at an appropriate penalty.

The starting point for offences under this rule is a six-week suspension with a minimum of three week suspension. She is entitled to a discount due to the fact that she has had more than 200 drives since your last offence. As to our assessment of her culpability, we view it as being in the mid range.

In all circumstances we impose a penalty of 4 weeks suspension.

Mark Howard
Registrar, Victorian Racing Tribunal