25 July 2022

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**PATRICK FRANKLIN**

**Date of hearing:** 22 July 2022

**Panel:** Justice Shane Marshall (Deputy Chairperson) and Mr Greg Childs.

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

Mr Anthony Butt represented Mr Patrick Franklin.

Mr Patrick Franklin attended the hearing.

**Charge:** Australian Harness Racing Rule (“AHRR”) 168(1)(b) states:

(1) A person shall not before, during or after a race drive in a manner which is in the opinion of the Stewards:

(b) reckless.

**Particulars of charge:** Stewards inquired into an incident racing toward the first turn in which “Captain Maastricht” was checked and broke and in turn “Mauries Bonus” was checked and contacted marker pegs. After taking evidence from drivers Cody Crossland (Mauries Bonus), Chris Alford (Captain Maastricht) and Patrick Franklin (“Speed Dating”) and based on the official race replays and their own observations, Stewards charged Mr Franklin pursuant to Rule 168(1)(b), reckless driving, for directing his drive down the track in an abrupt manner when never clear of the runners drawn to his inside which both suffered interference as a direct result of his shift. Mr Franklin pleaded guilty to the charge. In determining penalty Stewards considered Mr Franklin’s immediate guilty plea, the high level of culpability in this instance, his driving record in relation to interference related matters, his relative infrequency of driving, the fact that the incident occurred when racing towards the first turn and HRV Minimum Penalty guidelines. Mr Franklin’s licence to drive in races was suspended for a period of 10 weeks.

**Plea:** Not Guilty

**DECISION**

1. Mr Patrick Franklin is a licensed harness racing driver. On 26 April 2022 he drove a horse called “Speed Dating” in Race 8 at Shepparton.
2. Mr Franklin’s horse was at position six at the mobile start. Mr Cody Crossland drove a horse that was at position one and Mr Chris Alford drove a horse at position two. These three horses pushed forward in a more advanced fashion from the mobile start than the others in the race. Mr Crossland’s horse began fast and held the inside. Mr Alford’s horse was initially slightly headed by Mr Crossland’s horse but drew level shortly afterward. Mr Franklin’s drove his horse sharply towards the other two fast starting horses. It is not in dispute that he caused interference to Mr Alford’s horse. The question before the Tribunal is whether it was open to the Stewards to accept the guilty plea of Mr Franklin that the interference arose from reckless driving rather than careless driving.
3. In our view, the Stewards were entitled to form the opinion that the driving was reckless. The major aspect of the recklessness was Mr Franklin continuing to press across Mr Alford’s horse notwithstanding that Mr Alford was calling out for room. The other aspect of the recklessness is the sharp angle taken by Mr Franklin in driving his horse hard to cross Mr Alford’s horse. We do not consider that Mr Alford’s change of mind in driving harder towards the lead than he originally intended made any material difference because the margin between his horse and Mr Crossland’s did not vary significantly during the running of the race until the occurrence of the interference.
4. We consider that the Stewards were entitled to charge Mr Franklin with reckless driving and were entitled to form the opinion that he was guilty of the charge and accept his plea to that effect. However, in forming that view, we have not been affected in our decision by the change of plea.
5. We accept, that on appeal, Mr Franklin was entitled to change his plea after further consideration. In the result, we do not accept the submission made on his behalf that it was not open for the Stewards to find that the relevant driving was reckless. We will now hear the parties on the question of penalty.

**PENALTY**

1. Having considered the parties submissions on penalty, we take into account that the level of recklessness was in the high range. The usual starting point for a penalty for high range reckless driving is 12 weeks. We see no ameliorating factors in this matter available to be applied to reduce that penalty. The penalty of 12 weeks suspension is imposed. It shall commence at midnight on 22 July 2022 and conclude 12 weeks thereafter.

Kathleen Scully
Assistant Registrar, Victorian Racing Tribunal