20 May 2022

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**RUSSELL MAISNER**

**Date of hearing:** 16 May 2022

**Panel:** Justice Shane Marshall (Deputy Chairperson) and Mr Robert Abrahams.

**Appearances:** Mr Grant Adams appeared on behalf of the Stewards.

Mr Russell Maisner represented himself.

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

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

 (a) careless

**Particulars of charge:** Russell Maisner, the driver of “Brevity” was found guilty of a charge under AHRR 168(1)(a) for careless driving in that rounding the first turn he had permitted his horse to shift away from a marker peg position and as a result made contact with the near side sulky wheel of “Jets Art” resulting in Brevity breaking gait before dropping back resulting in Toby Ogara NZ, “Herehecomes” and “Believe In Forever” all being checked to various degrees but ultimately resulting in all three runners taking no further competitive part in the event. As a further consequence of this incident, Mr Maisner was dislodged from the sulky although having his foot caught up before being pulled up a short distance later. Mr Maisner had his licence to drive in races suspended for a period of 3 weeks which was ordered to commence at midnight on Monday 24 January 2022 and to expire on Tuesday 15 February 2022 on which day he may drive. When considering penalty Stewards took into account Mr Maisner’s not guilty plea, driving and offence record and the consequences of this incident. Mr Maisner was examined by the track paramedics following the event and was cleared of any injury.

**Plea:** Not Guilty

**DECISION**

1. Mr Russell Maisner is a licensed harness racing driver. In Race 3 at Shepparton on the day in question, he was the driver of the horse, “Brevity”.
2. After the race, Stewards of Harness Racing Victoria (“HRV”) interviewed Mr Maisner and charged him with an offence under Rule 168(1)(a) of the Australian Harness Racing Rules. That provision states as follows: -

“A person shall not before, during or after a race drive in a manner which is in the opinion of the Stewards [is] careless”.

Carelessness is not defined in the Rules so must be given its ordinary meaning as not taking due care or being inattentive.

1. Stewards’ attention was drawn to Brevity because when coming around the first turn of the race, Mr Maisner come out of the sulky and had his left foot stuck in the stirrups. Mr Maisner rectified his position in the sulky before commencing the second lap. At the time of the incident, Brevity appeared to strike the sulky of the horses racing immediately in front of and beside Brevity. Mr Maisner claimed that he was tightened and was trying to maintain his position. Mr Maisner claimed that the interference was caused by horses on his outside drifting in. He also said that the horse behind him clipped his sulky, helping to dislodge him.
2. Mr Maisner agreed with Stewards that his horse shifted out at least a little bit from the peg markers after viewing the replay of the race. The Stewards were concerned to know the cause of the drift. They then formally charged Mr Maisner with careless driving and conducted a hearing.
3. The particulars of the charge were essentially that rounding the first turn, near the apex of the turn, Mr Maisner allegedly allowed Brevity to shift out and make contact with the sulky to the outside thereby, causing a chain of interference.
4. Mr Maisner entered a not guilty pela. He claimed that he was entitled to hold his line and Brevity only shifted slightly. He described the shift as “the most minute of shifts”.
5. In their decision, the Stewards found that Brevity moved half a cart from the marker pegs rounding the first turn, at which point contact is made with the sulky’s of the horses outside, resulting in Brevity breaking stride, Mr Maisner being temporarily dislodged and a number of other runners being checked.
6. The Stewards found that Mr Maisner failed to make a sufficient effort to maintain his position on the marker pegs, which meant that he acted carelessly. Stewards imposed a three week suspension and, in so doing, took into account Mr Maisner’s many years of experience and good record.
7. Mr Maisner has appealed the finding of guilty. The question for us to determine, given the wording of the Rule, is whether the decision of the Stewards that Mr Maisner engaged in careless driving was one which was reasonably open to them. It is not up to us to review the decision with a complete re-examination of the circumstances. The Stewards decision stands, unless we form the view that it was not reasonably open to them.
8. To answer that question, we viewed the film of the race. The film showed a horse breaking stride while racing three wide when Mr Maisner was on the marker pegs. The horse breaking to the outside did not appear to cause any interference to those horses to the inside of that runner. The film does show Brevity to be half a cart from the marker pegs when interference occured as a result of Brevity shifting. In our view, the decision of the Stewards was reasonably open to them. We dismiss the appeal.
9. Mr Maisner informed the Tribunal that he did not wish to challenge the penalty if the appeal against careless driving was dismissed. The appeal is dismissed and the three week penalty stands. It shall commence at midnight on 1 June 2022.

Kathleen Scully
Assistant Registrar, Victorian Racing Tribunal