6 December 2019

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**MS TAYLA FRENCH**

**Date of hearing:** 29 November 2019

**Panel:** Judge John Bowman (Chairperson), Ms Maree Payne and Mr Greg Childs.

**Appearances:** Mr Michael Ross and Mr Shane Larkins appeared on behalf of the Stewards.

Ms Tayla French represented herself.

**Charge:** Australian Harness Racing Rule 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:** Ms Tayla French, driver of Trade Whispers, was found guilty of a charge under AHR Rule 149(1) for failing to take all reasonable and permissible measures from the start through to entering the back straight on the first occasion when there was a reasonable opportunity to obtain a trail on Ozzie Sunshine ($1.40 fav) or Eipper ($5.30 2nd fav) when both runners had gained a significant advantage over Trade Whispers shortly after the start. In failing to do so Ms French urged the gelding forward with the whip to maintain the lead and withstand the challenge of both runners recording a lead time which was 2.45 seconds quicker than the 5 year average and ultimately Trade Whispers being placed under pressure from the 1000m before yielding ground from the 600m to finish in last position beaten 77.3m. In the opinion of the Stewards the tactics adopted resulted in Trade Whispers not being afforded full opportunity to finish in its best possible placing.

**Plea:** Not Guilty

**DECISION**

Ms Tayla French, you are appealing against a decision of the Stewards delivered in relation to Race 1 over 2170 metres at Cobram on 11 November 2019. You were driving Trade Whispers, which had the inside running from the gate 1 position behind the mobile gate. Other horses relevant to this matter are the odds-on favorite, Ozzie Sunshine, from gate 2 and Eipper, the second favorite from gate 5. There were only 5 runners.

Following the running of the race the Stewards interviewed you and charged you with a breach of Rule 149(1), which requires drivers to 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.

The essence of the charge is this. Your horse began quite well from the pole. It is alleged that, shortly after the start, both Ozzie Sunshine and Eipper challenged you for the lead. It is asserted by the Stewards that there was a reasonable chance for you to restrain your horse and take a trail behind the two more favoured horses. Instead, you kicked up on the inside at the time of or shortly after passing the winning post the first time and after going what would appear to be about 80 metres. You regained the lead, having urged your horse along. Ozzie Sunshine dropped into second and Eipper into third. Ultimately, in the back straight for the final time Trade Whispers began to weaken noticeably and ultimately finished last, in excess of 70 metres behind the winner. Your driving is said to have been unreasonably detrimental to its chances.

Before turning to the video and the particulars of your driving, we would make the following observation. Some emphasis has been placed by Mr Sugars on your behalf on the fact that some mucus was subsequently discovered in the horse the following day. In the absence of appropriate expert evidence, we cannot be satisfied that this had anything to do with Trade Whispers finishing where it did and we will make no further references to that matter.

Turning to your drive, which lies at the centre of things, we have seen the video many times. We have also had the horse’s record placed before us.

It seems clear that this horse performs best when it leads. It has had some 13 starts, the run at Cobram being the most recent. It has had 1 win and 2 placings. On each of those occasions it has led. In this race of 5 starters it was again expected to lead. The pre-race analysis of Good Form showed it as the leader. In the racebook, the analyst described it as the potential leader. You had the pole position. Your instructions were to lead. The question is: was is unreasonable for you to persist for the lead when challenged after getting away smoothly?

Mr Ross, in his submission on behalf of the Stewards, placed emphasis on the fact that the two horses challenging you for the lead was the favorite and the second favorite. That does not seem to be of great relevance. Indeed, it might be said that you were placing greater pressure upon those horses by making them contest the lead, rather than just surrendering it.

The bottom line is that we consider that your pressing on to maintain the lead was a reasonable step to take. Indeed, Ozzie Sunshine the long odds on favorite was noticeably subject to a greater attempt to lead than was Trade Whispers, before its driver surrendered. Ozzie Sunshine was ultimately narrowly beaten. We repeat that you were driving a horse that had drawn the pole, and its best form was as a leader. We accept that your instructions were to lead. The form analysts expected you to lead. You did not burst away, driving hard to some extraordinary lead. You maintained the lead, with the favorite right behind you and the ultimate winner immediately behind it. Ultimately your horse compounded and we know that its only placings have been over a shorter trip.

A useful test in relation to what is unreasonable is set out in the New South Wales case of McMullen, where it was said as follows:

That sort of culpable action that is required to amount to a breach of this rule might be such that in normal circumstances a reasonable and knowledgeable harness racing spectator might be expected to exclaim with words to the effect, “What on earth is he doing?’ Or, ‘My goodness, look at that’, or some such exclamation.

That was not the situation here. Further, I would refer to the often quoted statement of Judge Goran in Honan.

A mere error of judgement is not a breach of the rule because a mere error of judgment may be reasonable in the circumstances. It is expected that drivers will at times make errors of judgment although, like Judges, it is expected that they will not make them too often. But an error of judgment which cannot be explained as such, one that is which is completely unreasonable, is caught by the rule.

It would appear that no Court could say that his efforts to win were dictated by anything other than a desire to do the best he could for his mare in those circumstances.

We are far from satisfied that what your drive or the relevant part of it, was completely unreasonable. Indeed, we are of the view that, given your horse, your instructions and the way the race panned out, the attempt to maintain the lead, from the pole position, was reasonable.

Accordingly, the appeal is upheld and the charge is dismissed.

Mark Howard  
Registrar, Victorian Racing Tribunal