17 May 2023

**STAY APPLICATION**

**HARNESS RACING VICTORIA**

**and**

**ROBERT WALTERS**

**Date of hearing:** 3 May 2023

**Panel:** Judge John Bowman (Chairperson).

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

Mr Robert Walters represented himself.

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

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

 (e) improper.

**Particulars of charge:** The particulars of the charge were twofold, firstly that  Mr Walters, as  the driver of Southern Gnp NZ, had  from the 300m after driver Ross Graham (Self Exclusion) had left  his pegline trailing position  and commenced to improve forward to the  outside of Southern Gnp NZ  and towards the back of Kitch Macray,  Mr Walters  then called out to Ms Youl,  the driver of his stablemate Kitch Macray on several occasions in regards to Mr Graham’s horse improving behind her. The second limb of the charge was   that after entering the home straight Mr Walters pulled his right rein on several occasions causing his drive Southern Gnp NZ to shift up the track into the running of Mr Graham’s drive Self Exclusion, which was racing between runners and improving forwards and about to progress past Southern Gnp NZ, resulting in Self Exclusion being inconvenienced.    Mr Walters pleaded not guilty to the charge however after giving due consideration to all of the evidence Stewards formed the opinion that Mr Walters driving actions were improper. In determining penalty Stewards took into consideration  published  HRV Minimum Penalty Guidelines,  that there were two limbs to the charge, Mr Walters not guilty plea, his driving frequency and offence record and the consequences of his actions. Mr Walters   licence to drive in races was suspended for a period of four months to commence at midnight 4 May 2023.

**Plea:** Not Guilty

**RULING**

Mr Robert Walters, you are seeking a Stay in relation to the operation of an order of the Stewards made on 26 April 2023.

This order concerns the running of Race 1 over 1710 metres at Ballarat on that day. Following a Stewards’ inquiry, you were charged with a breach of Rule 168(1)(e), which prohibits driving in a manner, which, in the opinion of the Stewards, is improper.

You were driving Southern Gnp, trained by Mr Ben Yole. Ms Taylor Youl was driving Kitch Macray, also trained by Mr Ben Yole. Mr Ross Graham was driving Self Exclusion. The incidents the subject of the Charge occurred on the last lap approaching the final turn and into the front straight.

At the time, you were just leading, with the stablemate driven by Ms Youl on your outside. Mr Graham was immediately behind Ms Youl. It would seem that Ms Youl was travelling better than you, and, as stated, on your outside with Mr Graham trailing her. Steward Mr Bick was located in the 200 metre mark tower. He states that he heard you call out to Ms Youl “Watch the one on your back” three times, also saying “careful” on one occasion. Mr Graham told the Stewards that he heard you tell Ms Youl to watch her back two or three times. You admitted that you said to Ms Youl “Watch your back” twice, but that was because Mr Graham was improving quickly and progressing on to the back of her wheel.

Mr Bick had no view of what happened next, but the allegation of Mr Graham is that you then “made sure I didn’t get as close as I should have”, adding that you had definitely pulled your horse up the track. This meant that Mr Graham was unable to get a run to the inside of the eventual winner – that is, to the inside of Ms Youl. At no stage did he shift down the track towards you before you shifted up. When you shifted up the track, there was no room for Mr Graham to go wider. You claimed that you were hitting the horse, which shifted up the track, but you pulled the horse back as soon as you touched Mr Graham’s wheel.

Mr Graham also stated that, when you reached your widest point, there was probably not enough room to go to your inside, but it was “touch and go”. He summed up the situation as being that you were in your true running line on the fence, but, shortly after, you shifted up the track “dramatically”.

The Stewards considered your actions in firstly calling to Ms Youl to watch her back and secondly pulling the right rein and shifting up the track into the running of Mr Graham’s drive as being improper within the meaning of AHRR 168(1)(e).

You pleaded not guilty to this charge. What the Stewards are alleging could be described as team driving to benefit Ms Youl, driving your stablemate. It was put by them that there was no proper reason for you to shift up the track in the manner that you did.

The Stewards imposed upon you a penalty of suspension of your licence to drive for a period of four months.

It is the operation of this penalty for which you seek a Stay, presumably anticipating an appeal.

The above is against the background of the fact that, at the time of the occurrence of the above, you were driving on a Stay. You had been before this Tribunal, constituted by Justice Shane Marshall and Ms Maree Payne, on 27 January 2023. On that occasion, you were found guilty of breaching AHRR 162(1)(www)(c) – that is, allowing your horse to shift ground in a manner which advantaged another horse. That is very similar to the second limb of the charge which you now face. Essentially you were found guilty of moving out to give another horse a run to your inside. The horse that you were driving was trained by Mr Yole. The horse to which you allegedly gave the advantage was also trained by Mr Yole. This Tribunal positively found that you presented the stablemate, which you knew to be behind you, with an inside run. Your horse was second favourite. The stablemate to which you allegedly gave the run was favourite. Ultimately, a penalty of four months suspension was imposed.

You appealed to VCAT. After a delay of some four to five weeks, VCAT granted you a Stay and fixed your appeal for hearing in the middle of this year. Hence, you have been driving.

I would point out the following. Firstly, appeals to VCAT are permissible only on the question of penalty – see the *Racing Act 1958*. In other words, any VCAT appeal can only be in relation to the penalty imposed by this Tribunal, not in relation to the correctness of the decision on liability. This is true of your existing appeal and the same will apply to any decision in relation to the present charge.

Secondly, at a time when the present appeal from the decision of the Stewards has not been finalised and is still on foot, you have been found guilty of a very similar offence, albeit pursuant to a different Rule.

Thirdly, the offence alleged is quite a serious one, and hence the penalty imposed by the Stewards. The offence smacks of team driving – calling out warnings and using the manoeuvring of one horse in order to advantage a stablemate. I appreciate that the penalty imposed may be varied at VCAT, but I am also of the opinion that the charge is of a concerning nature.

Fourthly, you have been found guilty of this offence occurring at a time when your appeal in relation to the penalty for the earlier offence has not been finalised and your driving has been on a Stay. It is not suggestive of a lesson learnt.

When all of the above is taken into account, I am not prepared to grant a Stay in relation to the penalty of four months suspension imposed by the Stewards.

Given the views set out above, I shall, if necessary, later hear argument as to whether I should disqualify myself from the ultimate hearing of this appeal. That is a matter for argument.

In summary, the application for a Stay is dismissed.

Mark Howard
Registrar, Victorian Racing Tribunal