22 August 2023

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**DAVID MURPHY**

**Date of hearing:** 16 August 2023

**Panel:** Justice Shane Marshall (Deputy Chairperson) and Dr June Smith.

**Appearances:** Mr Scott Gillespie appeared on behalf of the Stewards.

Mr David Murphy represented himself.

**Charge:** Australian Harness Racing Rule (“AHRR”) 165(1)(b) states:

(1) From the start through the first turn, and until reaching the next straight, a driver shall -

(b) not move the driver’s horse towards the inside running line unless the rear of the driver’s sulky is at least one metre clear of the extended front legs of the horse racing in the next position closer to the inside running line.

**Particulars of charge:** David Murphy, the driver of “Atego Shades”, was found guilty of a charge under Rule 165(1)(b) for shifting inwards on approach to the first turn without the required clearance over Roll With Ron resulting in that horse being checked and breaking gait, subsequently losing its rightful racing position. Mr Murphy had his licence to drive in races suspended for a period of three (3) weeks which was ordered to commence at midnight 21 April 2023. When considering penalty stewards were mindful of HRV Minimum Penalty Guidelines, Mr Murphy’s overall driving record in addition to the circumstances attached to this incident.

**Plea:** Guilty

**DECISION**

1. Mr David Murphy was charged by the Stewards of Harness Racing Victoria (“HRV”) with an offence under Australian Harness Racing Rule (“AHRR”) 165(1)(b) after Race 1 at Charlton on 12 April 2023.
2. During the course of the race, Stewards observed Mr Murphy apparently breach Rule 165(1)(b). Mr Murphy pleaded not guilty, but was found guilty and was given a three week suspension.
3. In coming to the view that three weeks was the appropriate penalty, the Stewards had regard to the level of interference and the level of carelessness involved, considering these to be mid range in both cases. The Stewards also had regard to penalty guidelines produced by HRV, which suggest that a two week suspension is the minimum penalty which should apply under the relevant Rule.
4. The Stewards had regard to Mr Murphy’s good record, but were unable to give him a discount for a guilty plea as he had pleaded not guilty at the hearing before the Stewards.
5. On appeal, Mr Murphy only challenges the severity of the penalty imposed. He no longer challenges the finding that he breached Rule 165(1)(b). He has now altered his plead to guilty. In light of that development, he and the Stewards now contend that the appropriate penalty should be two weeks suspension as their agreed position.
6. In matters not concerning criminal offences, the relevant law in Australia is that Courts and Tribunals are entitled to give considerable weight to agreements regarding penalty reached by the parties acting honestly and at arm’s length – see *Commonwealth of Australia v Director, Fair Work Building Industry Inspectorate* [2015] HCA 46. A Tribunal such as this one is not obliged to rubber stamp any such agreement, but must examine it to determine whether or not it is within the appropriate range for the offence on the applicable facts.
7. The Tribunal is satisfied, given the low to mid range interference and carelessness involved, that a penalty of two weeks suspension is appropriate in circumstances where the driver concerned has a good record and has now pleaded guilty.
8. The appeal against penalty is allowed. The penalty is reduced from three weeks to two weeks. The suspension shall commence at midnight on Saturday, 26 August 2023.

Kathleen Scully

Assistant Registrar, Victorian Racing Tribunal