8 September 2023

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**DECLAN MURPHY**

**Date of hearing:** 5 September 2023

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

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

Mr Lance Justice represented Mr Declan Murphy.

**Charge:** Australian Harness Racing Rule (“AHRR”) 156(3) states:

(3) A driver shall not use a whip in an unapproved manner.

**Particulars of charge:** Declan Murphy pleaded guilty to a charge pursuant to AHRR 156(3) for using his whip after crossing the finish line. Mr Murphy’s licence to drive in races was suspended for a period of seven days.

**Plea:** Guilty

**DECISION**

Mr Declan Murphy, you are pleading guilty to a breach of Australian Harness Racing Rule (“AHRR”) 156(3), which breach involves your drive of “Talent Agent” in Race 8 at Mildura on 11 August 2023. More specifically, what you are charged with is applying the whip to Talent Agent after it had passed the winning post at the finish of the race. You so applied the whip once. It is not suggested by Mr Crowther, on behalf of the Stewards, that there was any breach of Rule 156(3) in relation to your whip action. The illegality of the one strike was that it was past the winning post at the finish of the race.

Your explanation to the Stewards was that originally you thought that you had struck the horse just before the finishing line, essentially to see if the horse, which was running last, was trying. You said that you might have misjudged the finish line. Further, you said that you were not aware of this particular Rule. It would also appear that it was the shaft that was cracked with the whip and it was the sound of this that attracted the attention of Mr Crowther.

Mr Lance Justice, who appeared for you, submitted that this should be treated as a first offence. He referred to the fact that you are a young driver who was not particularly familiar with the Mildura track. He also argued that there is advertising signage around the actual finishing post or mirror and identifying the actual line can be difficult for a driver not overly familiar with the track.

Whilst this is your first breach of this particular sub-rule, your record generally in relation to AHRR 156 is not good, with some 13 offences to date. In my opinion, and despite the submission of Mr Justice, the prior offences are relevant. Further, the whip rule plays an important role in the image of harness racing.

Thus, you have a poor record. Your record generally makes it clear that you are a very promising young driver with an impressive strike rate. I also consider that, in the overall circumstances, you were a little unlucky, in that the sound of your one strike to the shaft of the sulky after the line attracted the attention of Mr Crowther.

However, I again emphasise the importance of the whip rule. It is a key provision in relation to the image of harness racing.

In all the circumstances, including your poor record, I am of the opinion that a period of suspension is warranted. However, I am of the view that your appeal should be upheld and that such a period should be reduced to one of five days.

This may sound a little like “tinkering”, but I have taken into account your inexperience, particularly at the Mildura track, your plea of guilty and the circumstances prevailing. I repeat that the appeal is allowed and the period of suspension is reduced to five days.

After consultation with the parties and bearing in mind your driving commitments, it is agreed by Mr Crowther and Mr Justice that the period of five days suspension should commence at midnight on Wednesday, 6 September 2023 and terminate at midnight on Monday, 11 September 2023.

Kathleen Scully

Assistant Registrar, Victorian Racing Tribunal