8 December 2023

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**EWA JUSTICE**

**Date of hearing:** 23 November2023

**Panel:** Justice Shane Marshall (Deputy Chairperson) and Mr Greg Childs.

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

Mr John Justice represented Ms Ewa Justice.

**Charge:** Australian Harness Racing Rule (“AHRR”) 163(1)(a)(iii) states:

(1) A driver shall not -

(a) cause or contribute to any

(iii) interference.

**Particulars:** Ms Justice pleaded guilty to a charge pursuant to Rule 163(1)(a)(iii) for causing interference. The particulars of the charge were that when racing towards the first turn Ms Justice had directed her drive down the track when not clear of “Show Me Heaven” causing that mare to be taken down onto marker pegs near the winning post and was then contacted by the inside sulky wheel of “El Boston”, checked and broke, with trailing runners also being checked as a consequence. In determining penalty, Stewards considered the relevant factors as outlined in HRV Minimum Penalty Guidelines indicating a starting point of a four week suspension for first turn related interference with mitigating factors being Ms Justice’s level of experience (241 previous race drives, clear interference record and guilty plea), balanced against aggravating factors including the level of carelessness which was assessed as high level with the extent of the interference being assessed as mid to high range. Accordingly, Ms Justice’s licence to drive in races was suspended for a period of 5 weeks with a commencement date to be advised.

**Plea:** Not Guilty

**DECISION**

1. Ms Ewa Justice is a licensed concessional harness racing drive. On 4 October 2023, she drove “El Boston” in Race 1 at Ballarat.
2. El Boston commenced the race quickly and established an early prominent position on the outside of “Show Me Heaven”, driven by Mr Zac Chappenden. The Stewards allege that, when approaching the first turn, El Boston shifted inwards when insufficiently clear of Show Me Heaven, causing that horse to travel down onto the marker pegs and be contacted by the inside wheel of El Boston’s sulky. Show Me Heaven then broke and the horses behind that mare were consequently checked.
3. The Stewards of Harness Racing Victoria (“HRV”) held an inquiry into the drive of Ms Justice after the race and accepted her guilty plea regarding a breach of Australian Harness Racing Rule (“AHRR”) 163(1)(a)(iii). That provision prohibits the causing of interferences in a race. Drivers have a duty of care to other drivers to be at least one metre clear of the front legs of the horse behind before moving across in front of that horse.
4. Ms Justice withdrew her guilty plea made before the Stewards and pleaded not guilty before the Tribunal. Her case, ably submitted by Mr John Justice, was that, prior to the interference occurring, she had established a lead of just over a metre from Show Me Heaven and maintained that lead until Mr Chappenden quickened his drive to be less than a metre behind and causing his horse to go onto the pegs.
5. We have had the advantage of multiple viewings of the relevant portion of the race and taken into account the submissions of Mr Justice, as well as those of Mr Crowther for the Stewards. We are comfortably satisfied that Ms Justice was at no stage a metre or more clear of Show Me Heaven in the straight leading up to the winning post.
6. Accordingly, we are of the opinion that the charge is made out and we will now hear the parties on the question of penalty.

**PENALTY**

1. On the question of penalty, we take into account the penalty guidelines, which suggest a minimum four weeks suspension for this type of offence regarding interference before the first turn. We also take into account that the interference was mid to high range. We consider contrary to the view of the Stewards, that the level of carelessness was not high range, but mid range. We do so having regard to our view that the required distance between the two horses was, at least on an occasion in the straight, a matter of degree. We further take into account that Ms Justice has a good record, with no prior offences in her approximately 13 months of driving in harness races. We, unlike the Stewards, are not able to give any discount for the plea given. We also take into account that the appeal was not a frivolous one and that the case put for Ms Justice, while not finding favour with the Tribunal, was unarguable.
2. Given all the matters referred to, it above is our opinion that the appropriate penalty is 5 weeks suspension, to commence at midnight on 27 November 2023. That is the same penalty as imposed by the Stewards, in which they gave a discount for the guilty plea, but assessed the carelessness as high range. We also add that, although we have had regard to the HRV Penalty Guidelines for the offence, we are not bound by them, but are informed by them.

Kathleen Scully

Assistant Registrar, Victorian Racing Tribunal