15 December 2023

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**JACKIE BARKER**

**Date of hearing:** 6 December 2023

**Panel:** Judge John Bowman (Chairperson) and Dr June Smith.

**Appearances:** Mr Grant Adams appeared on behalf of the Stewards.

Mr Lance Justice represented Ms Jackie Barker.

**Charge:** Australian Harness Racing Rule (“AHRR”) 163(1)(b)(ii) states:

(1) A driver shall not

(b) subject to Rule 164

(ii) impede the forward progress of a horse

**Particulars of charge:** Driver Jackie Barker pleaded guilty to a charge under Rule 163(1)(b)(ii) for permitting her runner to shift out near the 1100m resulting in the improving HAVEACHATbeing checked away from its wheel and impeding its forward progress. Ms Barker had her licence to drive in races suspended for a period of 7 days which was ordered to commence at midnight, Saturday 11 November 2023 and to expire on Sunday 19th November 2023 on which day she may drive. When considering penalty Stewards took into consideration Ms Barker’s guilty plea, driving and offence record and the circumstances attached to this incident.

**Plea:** Guilty

**DECISION**

Ms Jackie Barker is appealing against a decision of the Stewards in relation to her drive of Myshania in Race 1 at Maryborough on 2 November 2023.

After the race, the Stewards found her guilty of a breach of AHRR 163(1)(b)(ii) – impeding the progress of another horse. That horse was Haveachat, driven by Mr Josh Dickie. The incident occurred shortly after the horses entered the front straight and before receiving the bell. The penalty imposed was suspension for seven days. Ms Barker is appealing against the severity of that penalty. Before us, Ms Barker was represented by Mr Lance Justice. The Stewards were represented by Mr Grant Adams.

The essence of the Charge is that Ms Barker moved from a position in the two-wide lane, where her horse was running seventh. She moved out three wide. She appeared to have a quick look before so doing. Mr Dickie, who had been behind her, had already moved to the three wide lane. Ms Barker’s horse came out comparatively sharply when not clear of Mr Dickie. He had to take hold, pull the horse’s head to his right, and move briefly into the four wide lane. Haveachat did not gallop, and was able to be pulled back by Mr Dickie into the three wide lane. That is a summary of the interference.

We accept that Ms Barker has an excellent record in relation to this Rule – no offences recorded. However, this Rule has only been operative for approximately four years. Ms Barker has been driving since 2014. She has had a couple of breaches of Rules relating to driving offences, but it must be said that overall she has a very good record.

Mr Justice referred us to the recent decision of this Tribunal in the matter of Mr Jason Lee. For what Mr Justice described as a very similar offence, the penalty imposed on Mr Lee was suspension for four meetings. Mr Justice urged us to apply a similar penalty in this case. Mr Adams referred us to the penalty range set out in the Guidelines, the lowest figures of which is suspension for seven days, as had been imposed.

The Guidelines are an important consideration. Consistency of penalties is also very important.

To assist our consideration, and in an endeavour to maintain consistency, we have viewed the video in Lee. There are marked similarities to the present offence. However, the interference in the present case seemed to us to be greater than that in Mr Lee. The difference may not have been great, but Ms Barker had a quick look, moved out quite sharply, and caused Mr Dickie to take hold and quickly swing his horse’s head to the right, away from Ms Barker. The overall impression was of interference to a greater degree than that in Mr Lee, with the situation being saved by Mr Dickies very quick reaction.

Bearing all of the above in mind, including the desirability of consistency, we are of the view that the appeal should be allowed. However, given the comparison with the situation in Mr Lee’s case, we are not of the view that the penalty should be reduced to four days. In our opinion, the appropriate penalty should be reduced to five days. This may seem like splitting hairs to some extent, but we are of the view that the interference caused by Ms Barker was greater than that caused by Mr Lee.

Accordingly, the appeal is allowed and the penalty reduced by one of five days.

Mark Howard

Registrar, Victorian Racing Tribunal