8 December 2023

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**JASON LEE**

**Date of hearing:** 24 November2023

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

**Appearances:** Mr Nicholas Murray appeared on behalf of the Stewards.

Mr Lance Justice represented Mr Jason Lee.

**Charges:** 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.

AHRR 163(1)(b)(i) states:

(1) A driver shall not -

(b) subject to rule 164

(i) make another horse cover more ground than necessary.

**Particulars: Charge 1: AHRR 165(1)(b)**

Jason Lee was found guilty of a charge under Rule 165(1)(b). The particulars of the charge being that at the entrance to the first turn Mr Lee permitted “Joelita” to shift in when insufficiently clear of “Our Princess Di” (D Miles) causing that mare to be tightened for racing room and taken inwards which in turn caused “Lady Miki” (K Gath) to be checked by its driver when tightened for racing room and lose its rightful racing position. In assessing penalty in accordance with the HRV Minimum Penalty Guidelines, Stewards acknowledged Mr Lee’s good driving record, high driving frequency, low level of interference which was categorised as a first turn offence. Mr Lee’s licence to drive in races was suspended for 10 days to commence midnight 27 October 2023.

 **Charge 2: AHRR 163(1)(b)(i)**

 Jason Lee was found guilty of a charge under Rule 163(1)(b)(i) for making another horse cover more ground than necessary. The particulars of the charge being that passing the 1200m Mr Lee shifted wider and in completing a move into a three wide position was insufficiently clear of “Bitta Irish Luck” (J Herbertson) contributing to that mare being placed wider on the track than necessary into a four wide position. In assessing penalty in accordance with the HRV Minimum Penalty Guidelines, Stewards took into account Mr Lee’s good applicable record (last offence February 2022 / 650+ drives since), driving frequency and low level of inconvenience to the affected horse. Mr Lee’s licence to drive in races was suspended for 7 days to commence midnight 7 November 2023.

**Pleas:** Guilty

**DECISION**

1. Mr Jason Lee is a grade A harness racing driver. He appealed against the finding of guilty by the Stewards in relation to two racing incidents concerning him.
2. The first matter concerned his drive on the horse, “Joelita”, in Race 5 at Melton on 18 October 2023. The second matter concerned his drive on “Aldebaran Vera” in Race 5 at Maryborough on 29 October 2023.
3. In the Melton matter, Mr Lee was found guilty of transgression of Australian Harness Racing Rule (“AHRR”) 165(1)(b), which prohibits drivers from permitting their drive to shift in when insufficiently clear of another horse. The Stewards imposed a 10 day suspension.
4. Mr Lee originally appealed against the finding of guilty. On appeal, he withdrew the appeal against the guilty finding and has appealed only on the question of penalty. He has changed his not guilty plea before the Stewards to a plea of guilty before the Tribunal.
5. When the appeal against penalty came on for hearing, the parties relied on an agreed statement of facts and an agreed recommendation to the Tribunal on penalty. The parties emphasised the low level of interference involved, Mr Lee’s high driving frequency and relevant good record.
6. The Tribunal is not bound to give effect to agreed penalties between Stewards and industry participants. The Tribunal is entitled to give great weight to the views of the parties on penalty when jointly provided. Courts have long recognised that in matters not involving criminal offences, Tribunals are entitled to give effect to the views of the parties acting in good faith and at arm’s length, provided that the agreed penalties are within the appropriate range for the offence. In all the circumstances, we are confident that the agreed penalty of a suspension of seven days is within the appropriate range, especially having regard to the low level interference involved and the guilty plea before the Tribunal.
7. On the Melton matter, we allow the appeal on penalty and reduce the 10 day suspension to a seven day suspension.
8. The second matter concerns Mr Lee’s drive at Maryborough, as stated above. There, the Stewards and Mr Lee jointly point to the low level of inconvenience suffered by the affected horse. As with the Melton matter, they refer to Mr Lee's high driving frequency and his good record in relation to the applicable Rule.
9. The Rule in question is AHRR 163(1)(b)(i), which prohibits drivers from making another horse cover more ground than necessary. In this matter, the affected horse was briefly inconvenienced by having to travel four wide for a short period of time before taking a better position.
10. Before the Stewards, Mr Lee pleaded not guilty. He changed his plea to guilty before the Tribunal. As with the Melton matter, the parties provided the Tribunal with an agreed statement of facts and an agreed position on penalty. The only live matter before the Tribunal was the appeal on the gravity of the penalty imposed by the Stewards. The parties considered that the original seven day penalty should be reduced to one of four days. Having regard to the change of plea and the low level of inconvenience caused to the other horse, we consider that the agreed penalty is within the appropriate range of available penalties.
11. In all the circumstances, we consider it fair and just to allow the appeal against penalty and reduce the seven day suspension to a four day suspension.
12. The combined periods of suspension for the Melton and Maryborough matters is a total period of 11 days. The 11 day penalty shall commence at midnight on 25 November 2023.

Kathleen Scully

Assistant Registrar, Victorian Racing Tribunal