24 October 2024

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**ADRIAN PACE**

**Date of hearing:** 17 October 2024

**Date of decision:** 17 October 2024

**Panel:** Judge John Bowman (Chairperson) and Mr Greg Childs.

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

Mr Rick Jones represented Mr Adrian Pace.

**Charge:** Australian Harness Racing Rule (“AHRR”) 168(1)(b) states:

(1) A person shall not before, during or after a race drive in a manner which is in the opinion of the Stewards:-

(b) reckless.

**Particulars:** Stewards inquired into the reasons for “Techys Watching” (K Gath) breaking near the 400 metres. After hearing evidence from Ms Gath and from driver, Mr Adrian Pace (“Twisting By NZ”) and viewing the race vision, Mr Pace pleaded guilty to a charge pursuant to AHRR 168(1)(b). The particulars of the charge were that Mr Pace had steered up the track and driven his horse forward with its forelegs placed between the outside wheel of “Sir Nippa” which was weakening in front of him and the inside sulky wheel of Techys Watching which was three wide, half a length in advance of Twisting By NZ and improving to the outside of Sir Nippa when there was never a clear run to be taken, showing a lack of due regard for his own safety, that of his drive and for other horses and drivers around him. Twisting By NZ then made heavy contact with the sulky of Techys Watching which was checked outwards and broke as a consequence, losing its chance in the race. In determining penalty, Stewards took into consideration Mr Paces’ guilty plea, his driving experience and licence status (Driver A licence), his good record in relation to interference related matters, the status of the race being a qualifying heat of the Vicbred series, HRV Minimum Penalty guidelines which indicate a starting point of a 12 week suspension and a minimum of a six week suspension, relevant penalty precedents and the serious nature of reckless driving offences. A seven week suspension was imposed.

**Plea:** Not Guilty

**DECISION**

In this matter, you, Mr Adrian Pace, are appealing against a decision of the Stewards arising out of your drive of “Twisting By NZ” in Race 8 at Melton on 30 August 2024. The Stewards found you guilty of reckless driving pursuant to Australian Harness Racing Rule (“AHRR”) 168(1)(b). The other horse principally involved was “Techys Watching”, driven by Ms Kate Gath. “Sir Nippa”, driven by Mr David Murphy, played a lesser role.

In the hearing of this appeal, you were represented by Mr Rick Jones, with Mr Adrian Crowther representing the Stewards. Both cases were well presented and argued. In essence, you were maintaining that, whilst your driving in the vicinity of the 400 metre mark on the final lap may have been careless, it was not reckless.

Without going into the legal definitions and authorities at great lengths, the definition of “reckless” as contained in the Concise Oxford Dictionary is as follows: -

“Disregarding the consequences or danger”.

It is perhaps even more clearly defined in the English decision of Albert Reid and Co. v London and Rochester Trading Company Limited [1954] 2 Lloyds Report 463 as follows: -

“The term recklessly… means something more than mere negligence or inadvertence… it means deliberately running an unjustifiable risk”.

We have viewed the video material many times. Approaching the 400 metre mark you were running last on the rails. You moved out from there to a position immediately behind Mr Murphy’s horse, which was tiring. Ms Gath, who was making a run, was to your outside and overtaking Mr Murphy. You drove your horse into the gap between Mr Murphy and Ms Gath. Your horse fitted into that gap, but there was not sufficient room for your sulky without running the very real risk of contacting Ms Gath’s sulky. Nevertheless, you pressed on. Immediately, she had to take hold of her horse to avoid a collision. The other option, as she told Stewards, was to hold her ground and effectively take the risk of causing you to fall to the track.

As it was, the result of forcing your sulky into a gap in which it did not fit was that she grabbed her reins and her horse galloped. You continued ahead.

In our opinion, this was more than careless. It was reckless. To refer back to the definition, you deliberately ran an unjustifiable risk. You disregarded the consequences.

Accordingly, in our opinion, it was reckless driving and a breach of AHRR 168(1)(b) has been established to our comfortable satisfaction.

The appeal as to liability is dismissed and we shall hear the parties on the question of penalty.

**PENALTY**

We have now considered the submissions of the parties on penalty.

The penalty imposed by the Stewards in the first instance was one of suspension for seven weeks. That took into account your age, your comparative inexperience, although you have been an A grade driver for approximately 12 months, and your record, which is certainly good, with only one careless driving offence in over 250 drives.

Further, this was not a completely pointless or hopeless appeal. There were arguments to be considered.

However, the bottom line is that you initially pleaded guilty and the Stewards certainly took that into account in imposing a suspension of seven weeks, comfortably below what might otherwise have been the case. As stated, you appealed and changed your plea.

In our opinion, this must be taken into account. The penalty which we consider to be appropriate for an unsuccessful contested plea of not guilty in the present case is a penalty of suspension for eight weeks. Apart from anything else, we do not want to give the impression that, when some allowance has been made for a plea of guilty, the plea can then be changed and the benefit of that allowance retained. Each case will be considered on its merits, but in the present case we are of the opinion that a penalty of eight weeks suspension is appropriate.

The appeal in relation to penalty is dismissed and the suspension is to commence at midnight on 19 October 2024.

Kathleen Scully

Assistant Registrar, Victorian Racing Tribunal