24 October 2024

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**KEVIN WEIDENBACH**

**Date of hearing:** 5 September 2024

**Date of decision:** 5 September 2024

**Panel:** Judge John Bowman (Chairperson) and Ms Heidi Keighran.

**Appearances:** Ms Kylie Harrison appeared on behalf of the Stewards.

Mr Kevin Weidenbach represented himself.

**Charge:** Australian Harness Racing Rule (“AHRR”) 163(2) states:

 If a driver’s horse or sulky shifts inside the line of marker posts, the driver shall restrain the horse and, without interference to another runner, return to a position outside the line of marker posts at the first opportunity.

**Particulars:** Driver Kevin Weidenbach was charged under Rule 163(2) for failing to restrain his drive and return to a position outside the line of the marker pegs when racing in the sprint lane over the concluding stages. Mr Weidenbach reserved his plea to the charge. Mr Weidenbach’s license to drive in races was suspended for a period of 10 days to commence midnight 20 June 2024. In assessing penalty stewards took into consideration the incident and effects to the outcome of the race, and previous penalties applied under similar circumstances.

**Plea:** Not Guilty

**DECISION**

Mr Kevin Weidenbach, you are appealing against a decision of the Stewards in relation to your drive of Chevron Flies in Race 2 at Bendigo on 11 June 2024. The only other horse involved was Believe In Forever, driven by Ms Ellen Tormey.

The Stewards have decided that you breached Rule 163(2) when you moved your horse partially into the sprint lane approaching the completion of the final lap and continued with part of the sulky in that sprint lane for approximately 150m until the finishing post. It is alleged that in so doing you contacted at least 7 marker pegs.

Your horse was narrowly beaten by Ms Tormey’s horse and ran second in a tight photo finish. There was no protest. At stated, the Stewards charged you with a breach of Rule 163(2).

We have viewed the video of the concluding stages of the race many times. The head on camera of the front straight is the most informative. It is clear that you had your wheels virtually on each side of the marker pegs for that last 150m. Your argument is that at the top of the straight there was room between Ms Tormey’s horse and the marker pegs. She effectively left her line. This forced you into a position where your horse was straddling the pegs and you were forced to stay in that position. In essence, you are saying that she shifted and took your run in a situation where she could have continued straight ahead.

The problem for you as we see it is that you moved into a position straddling the marker pegs and remained there. This was because there was no clear run available to you without your so crossing. She was ahead of you and she was entitled to take the run adjacent to the marker pegs. You pushed up, but the run was closing. Instead of restraining your horse or altering course, you pushed on for approximately 7 markers pegs with one wheel each side of the pegs. In our opinion, that constitutes a breach of Rule 163(2). We find that the Stewards were justified in reaching the conclusion that they did. Accordingly, the appeal in what could be described as conviction is dismissed.

**PENALTY**

In relation to penalty, we uphold your appeal and have varied the duration of your suspension. You are a full time driver, driving in South Australia 2 days a week and literally all over Victoria on the remaining days. Currently, and at times, you are having something in excess of 10 drives per week. You have a very good record, particularly given the amount of driving that you do. Further, we do not consider this appeal whist dismissed, to have been frivolous.

In all the circumstances, we uphold the appeal on penalty and impose a suspension of 7 days and we leave it to the parties to clarify the starting date.

Mark Howard

Registrar, Victorian Racing Tribunal