21 October 2024

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**ZAC PHILLIPS**

**Date of hearing:** 11 October 2024

**Date of decision:** 11 October 2024

**Panel:** Judge John Bowman (Chairperson).

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

Mr Zac Phillips represented himself.

**Charge:** Australian Harness Racing Rule (“AHRR”) 170(4)(a) states:

(4) A driver shall not –

(a) attempt or allow his foot or leg to come into contact with the hindlegs of the horse he is driving.

**Particulars:** Geelong 4 October 2024, Stewards inquired into the circumstances of driver Zac Phillips right foot making contact with the off hindleg of SPIRITED LASS when driving out in the home straight during Race 5 at Cranbourne on 29 September 2024.Mr Zac Phillips pleaded not guilty to the charge however after giving due consideration to the evidence Stewards found Mr Phillips guilty of the charge and after hearing submissions on penalty and bearing in mind HRV Minimum Penalty Guidelines a fine of $500 was imposed.

**Plea:** Not Guilty

**RULING**

This dispute in this matter is essentially based on S. 50N of the *Racing Act* 1958, which deals with appeals out of time.

It arises from a decision of the Stewards made at a Geelong meeting on Friday, 4 October 2024, but, whilst the decision was then made, it concerns an incident at a Cranbourne meeting some 5 days earlier.

On 4 October 2024, the Stewards charged Mr Phillips with a breach of AHRR 170(4)(a), which essentially prohibits the contact of a driver’s foot or leg with the horse that is being driven.

Mr Phillips pleaded Not Guilty to this, but, as stated, the Charge was found to be proven and a fine imposed. Mr Phillips wishes to appeal that decision. The time for lodging such an appeal is three days. Mr Crowther, on behalf of the Stewards, asserts that Mr Phillips was told that any appeal must be lodged within three days, but also admits that he stated, erroneously, that any appeal had to be in by the following Tuesday, which was in fact four days.

The appeal of Mr Phillips was in fact lodged on the following Wednesday, 9 October 2024. Interestingly, he states feely that he does not recall Mr Crowther saying an appeal had to be in by Tuesday, which was 8 October, when it should have been by Monday, 7 October 2024. His whole mistaken belief was that the 3 day limit meant three business days and thus expired on Wednesday, 9 October 2024.

Pursuant to Section 50N of the Act, to succeed in such an application there are two requirements – a satisfactory explanation and the Tribunal must consider that it would be unjust to refuse leave to appeal out of time.

This is a somewhat unusual situation. Mr Crowther clearly made an error as to the expiry date of time to appeal, but Mr Phillips is not relying on that, but on his wrongly held belief.

In all the circumstances, I am prepared to allow the appeal to proceed. I find that the requirements of S. 50N have been satisfied.

I accept that Mr Phillips had a genuinely held wrongful belief as to the expiry date for his appeal and I am of the view that it would be unjust to refuse leave to appeal out of time.

It is apparent that he was keen to appeal this decision from the outset, and he has pleaded Not Guilty.

I repeat that this is an unusual situation, but, as stated, I accept his explanation as being satisfactory and am of the opinion that it would be unjust to refuse him leave to appeal out of time.

The case will be added to the VRT pending list and will be heard on a date to be fixed.

Mark Howard

Registrar, Victorian Racing Tribunal