12 November 2024

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**ANTHONY PEACOCK**

**Date of hearing:** 7 November 2024

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**Panel:** Judge John Bowman (Chairperson) and Dr Andrew Gould.

**Appearances:** Mr Daniel Borg appeared on behalf of the Stewards.

Mr Nathan Jack represented Mr Anthony Peacock.

**Charge:** Australian Harness Racing Rule (“AHRR”) 149(2) states:

(2) A person shall not drive in a manner which in the opinion of the Stewards is unacceptable.

**Particulars:** Driver Anthony Peacock was found guilty of a charge under AHRR 149(2). The particulars of the charge being that as the driver of “Firecracker Nola”, Mr Peaccock committed his drive to remain in a three-wide position throughout, after there appeared to be an opportunity present through the early stages to restrain his drive and afford the mare an economical run, with cover at the rear of the field. Mr Peacock then continued to advance forward and race three-wide, without cover from approx. the 1500m when there was no realistic prospect of gaining the position outside the leader, actions which in the opinion of Stewards were unacceptable and detrimental to the chances of his drive, with the mare then tiring from the 750m, to be beaten 94.7m into tenth and last placing.

In determining penalty, in accordance with the HRV Minimum Penalty Guidelines, Stewards considered Mr Peacock’s not guilty plea, driving infrequency, overall record under this Rule, and suspended Mr Peacock’s license to drive for a period of four weeks with the suspension ordered to commence immediately. Mr Peacock was advised of his appeal rights. Firecracker Nola underwent a post-race veterinary examination which revealed a laceration on the medial coronet band on the off-fore limb.

**Plea:** Not Guilty

**DECISION**

A most unusual situation developed in relation to this matter. A hearing of it was conducted, partially, before the Chair and Dr Andrew Gould on 7 November 2024.

Essentially, the matter is in relation to Mr Peacock’s drive of “Firecracker Nola” in Race 1 at Shepparton on 22 October 2024. Following the race, the Stewards found him guilty of a breach of Australian Harness Racing Rule (“AHRR”) 149(2), which prohibits driving in an unacceptable manner. A period of suspension for four weeks was imposed.

Mr Peacock was contesting the finding of guilt and, accordingly, the imposition of the penalty. He had pleaded not guilty to the charge and continued to do so.

Mr Peacock had arranged for Mr Nathan Jack to represent him. Mr Jack is an experienced driver. The arranging of representation such as this before the Tribunal is not uncommon in harness racing cases.

The mode of hearing was by video link. That is also the most common way of conducting appeals such as this. The video hearing was fixed for 9.30am on 7 November 2024. On the day of the hearing, Mr Jack contacted the Registry seeking that the commencement time be put back to 10.00am, this being because of a medical appointment. This request was granted, and Registry notified the Stewards and Mr Peacock via email of the change to the commencement time of the hearing.

Nothing was heard from Mr Peacock, either at 9.30am or 10.00am on the day of the hearing. He had been notified of the starting time and date. He had informed the Registry that Mr Jack would be representing him.

Accordingly, the appeal went ahead at approximately 10.00am without him. The area of dispute essentially involved the video material of the race. At no time did Mr Jack refer to the absence of Mr Peacock, seek that the matter be stood down or adjourned to a later time. That is no criticism of Mr Jack. It appeared that he was not expecting Mr Peacock to participate. The video was shown and analysed. Mr Jack highlighted various things and made submissions. This was all done in a very competent fashion. We would repeat that no reference was made to the absence of Mr Peacock.

Ultimately, the Tribunal adjourned in order to consider and write its decision. We did this at approximately 10.35am and recommenced to read out the decision in relation to liability at approximately 11.15am.

Shortly after this, we were informed that Mr Peacock had contacted the Registry at approximately 10.25am. Some discussion had taken place. The bottom line is that he wished to be heard in relation to the matter. By the time that this information had reached us, we had handed down our decision on liability – guilt or innocence – and were about to move on to the question of penalty, having said that we were dismissing the appeal on liability.

A discussion then took place as to what should occur. Apparently Mr Peacock, who is 75 years of age and now only a very occasional driver, may have misunderstood the situation or Mr Jack may have misunderstood the instructions of Mr Peacock.

In any event, a determination was required as to the further conduct of the matter.

The Stewards wished the matter to proceed to a conclusion. That is entirely understandable, particularly as Mr Borg, who presented their case, had commitments elsewhere and had already displayed considerable patience. We should add that, in addressing us, Mr Peacock referred to his having some pages of notes and submissions. Mr Borg pressed for the resumption of the hearing on the question of penalty, noting that Mr Peacock had raised the issue of not being able to make submissions until after the decision had been handed down and did not raise this issue prior to that occurring.

This was a very unfortunate situation. The frustration of the Stewards is fully understandable.

However, the right to a hearing is a fundamental requirement of the Rules of Natural Justice. Section 50(i)(a)(i) of the *Racing Act* 1958 specifically states that this Tribunal is bound by those Rules.

The right to be heard is a particularly fundamental and important Rule.

As was stated by Lord Denning in *Kanda v Government of the Federation of Malaya* [1962] AC 322: - “The Rule against bias is one thing. The right to be heard is another. These two Rules are the essential circumstances of what is often called natural justice”.

If we were of the opinion that a party was deliberately failing to attend a hearing, or was adopting an attitude of complete disinterest or carelessness, the outcome might be different. Each case must be considered on its merits. In the present case, we are of the view that a new hearing should be conducted by a differently composed Tribunal.

We repeat that the Stewards are in no way to blame for what occurred.

The matter is sent off for rehearing before a differently composed panel.

Further, this present decision shall not appear on the Tribunal’s website or otherwise be available to the public until the rehearing of the matter and the handing down of the ultimate decision. This decision will not be distributed or available to Tribunal members, or to the public, until such time.

Kathleen Scully

Assistant Registrar, Victorian Racing Tribunal