1 November 2024

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**ROS ROLFE**

**Date of hearing:** 26 August 2024

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**Panel:** Judge John Bowman (Chairperson) and Judge Marilyn Harbison (Deputy Chairperson).

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

Mr Shane Gloury represented Mrs Ros Rolfe.

**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:** Stewards inquired into the driving tactics of driver Mrs Ros Rolfe, with Mrs Rolfe then pleading guilty to a charge pursuant to AHRR 149(2). The particulars of the charge being that she had engaged in repeated contests for the lead and failed to take opportunities to take cover and give her drive sufficient respite, actions which were in the opinion of Stewards unacceptable in that they were detrimental to her horses finishing position. Mrs Rolfe’s licence was suspended for three weeks. In determining penalty Stewards took into consideration Mrs Rolfe’s guilty plea, the degree of culpability, her driving frequency and record and HRV Minimum Penalty guidelines.

 **Plea:** Not Guilty

**DECISION**

Mrs Ros Rolfe, you are pleading “not guilty” to a breach of Australian Harness Racing Rule (“AHRR”) 149(2). This could be summarised as driving in an unacceptable manner. It concerns your drive of “Our Art Work” in Race 1 at Mildura on 12 July 2024.

Our Art Work ultimately finished fifth. The other horse principally involved was “Ozzie Battler”, driven by Mr Jack Laugher. There was also some later lesser involvement in a brief battle with “Avoca Blues”.

We say at the outset that in our opinion the applicable test to be applied is that known as the *Briginshaw* test. We must be comfortably satisfied that the charge has been proven.

There has been some discussion, particularly in light of the decision in the appeal of Ms Michelle Wight, chaired by the Honourable Shane Marshall on 11 July 2024, as to the appropriate test and whether it should be one of whether the charge in question is open to the Stewards. However, we repeat that in our opinion the Stewards bear the onus of persuading us to the level of comfortable satisfaction that the charge has been made out.

We have viewed the video material put in evidence many times. This shows the following. After scratchings, Our Art Work started from Barrier 1. Mr Laugher started from Barrier 2. Both horses like to lead and perform best when leading.

Mr Laugher’s drive was in fact the odds on favourite. Both horses began well and, after the short run to the winning post on the first occasion, Mr Laugher was leading by what could be described as about three quarters of a length and looked likely to cross the lead on the pegs. However, you, Mrs Rolfe, kicked up on his inside and kept him out.

What followed thereafter and well into the back straight was what could be described as a two horse war, you being on the inside and Mr Laugher being on your immediate outside.

The two horses drew something in the order of 20 metres clear of the field.

Finally, almost at the end of the back straight, Mr Laugher surrendered and eased in behind you. We accept that the end result of this was a very fast mile rate and, indeed, the fastest time for that section of the race at Mildura in over 1,200 races.

Subsequently, and shortly before swinging into the front straight, you were challenged by Avoca Blues, which drew alongside you. Mr Laugher remained on the fence. There was also a brief battle before this horse dropped back.

Ultimately, in the home straight, your horse weakened. It dropped back to finish fifth, about 20 metres behind the ultimate winner, which was Ozzie Battler, driven by Mr Laugher. It had sat behind you, but got out shortly after the horse swung for home. There is no additional inside lane at Mildura.

We have gone into the running of the race in some detail. We note the very helpful submissions made by Mr Gloury on your behalf. However, we are comfortably satisfied that this charge has been proven.

To engage in a lengthy speed battle with Mr Laugher, driving the hot favourite, effectively put an end to your chances. The further battle for the lead did not help. However, that early battle over more than half a lap, drawing 20 metres clear of the field and against a considerably higher rated horse, effectively ended your chance.

In our opinion, this was clearly driving in an unacceptable manner and a breach of AHRR 149(2).

We find the charge proven and dismiss the appeal.

**PENALTY**

We turn now to the question of penalty. We note that this is a somewhat unusual situation, you having changed your plea. At the Stewards hearing, you pleaded guilty and you were suspended for three weeks.

Before us, you changed your plea, something which you are fully entitled to do. However, it seems to us that this does mean that any earlier penalty imposed by the Stewards is not automatically applicable.

Of course, the ultimate decision is ours. We note that you are essentially a hobby driver and have been so for many years. Indeed, you have only had approximately six drives this calendar year. You have a particularly good record and we also take that into account.

In our opinion, given that this was a fully contested matter and should be treated as same, the appropriate penalty is suspension for four weeks and that is the penalty which we impose.

Kathleen Scully

Assistant Registrar, Victorian Racing Tribunal