13 December 2024

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**ANTHONY PEACOCK**

**Date of hearing:** 18 November 2024

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**Panel:** Judge Marilyn Harbison (Deputy Chairperson) and Mr Des Gleeson.

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

Mr Anthony Peacock represented himself.

**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 Tony Peacock was found guilty of a charge under AHRR149(2) with 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 (4) weeks with the suspension ordered to commence immediately. Mr Peacock was advised of his appeal rights. Checked shortly after the start by CRESCO THREEPEAT and broke gait as a result. 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**

1. Mr Anthony Peacock, this is an appeal which you have brought against a decision of the Stewards in relation to your driving in Race 1 at the Shepparton Harness Racing meeting on Tuesday, 22 October 2024.
2. The Stewards have charged you under Rule 149(2), which states that a person shall not drive in a manner which in the opinion of the stewards is unacceptable. You were found guilty of that charge and your driver’s licence was suspended for four weeks.
3. You were driving Firecracker Nola in that event. Your race plan was significantly disrupted by interference caused to your horse at the outset of the race by a horse driven by Mr Gary Pekin.
4. The Stewards agree that the reason for you being placed in that position was the interference from Mr Gary Pekin. He has been separately charged in relation to that matter and suspended for two weeks.
5. The Stewards agree that initially after that interference you had no alternative position in the running line to take up. There was a potential position to fall back behind Mr Liam Older, but the Stewards acknowledged that the gap had closed.
6. Instead, the Stewards say that you should have restrained your horse back one and a half or two positions immediately after the interference.
7. You did not do this. Rather, you progressed into the back straight in the three wide line. You were driving forward outside Mr Pekin, who had driven forward to race outside the leader.
8. The Stewards say that the difficulty with this is that your horse ultimately proved unable to handle that pace. When racing into the back straight, your horse gave ground and tired.
9. Your explanation to the Stewards was that you thought Pekin would have “had the decency” to let you go outside the leader, given that he was the one who had caused the initial interference and got you into this position. You were waiting for him to do so.
10. The Stewards say that you should have restrained the horse well before it got into that position, as the horse had no realistic possibility of running at that pace for very long, given its previous form.
11. You say that you got shoved out of your spot by the interference of Mr Pekin and could not find an alternative spot. You decided to go forward and see how tough the horse was. You said that ultimately you felt she was not right in her action and so let her ease out of the race.
12. You told the Stewards that in track work the horse is very tough, but she does not bring it to the races. You said that you realised she was upset about “getting flattened’ and indeed she did suffer from an abrasion which was noticed after the race.
13. The Stewards say that you should have given the horse an easier race after the interference. You agreed that sometimes horses will not go as well when they have been interfered with, but observed that you cannot tell in advance whether this will be the case, as you have not got a crystal ball.
14. You said that the horse has a “heap of strength” and you decided not to drop out to last, but to move forward and see what happened.
15. You said that it took you a while to make up your mind and when you finally decided you were in the back straight. You said that you just sat there quietly and there was nowhere else that you could go.
16. In the end you said that you were not happy to be in the position you were in, but that you had no option and thought you would “just see how strong she is because her track work has been amazing”.
17. You disagreed with the Stewards that there was a chance to restrain her from where you were in the three wide line. You said that you went back two or three times but could not get a spot. You said the other horses kept “kicking up inside of me”, so you had to find another plan.
18. You stressed that you did not persevere when you thought that she had enough and did not feel right. The Stewards say that the previous races of the horse show only moderate times and the way you have driven does not show any respect for the horse. The Stewards say that you should have just “taken your medicine” after the interference and gone back and just tried to finish the race off.
19. You told the Stewards that, if you could have got beside the leader, it might have been quite a different ball game. You said you wanted to see if the horse was worth keeping in work. You said, “Normally my horses are as tough as guts. They can sit 3 wide, but unfortunately this one couldn't”.
20. The Stewards say that it was clear from at least the 1500 metre mark that the position beside the leader was not available. You told the Stewards that you agree that you would not do it again, but you had to have a shot on this occasion.
21. You said that, coming into the back straight, you felt something was not right and made the decision not to press on.
22. We note that the medical evidence shows a laceration to the leg, most probably caused by the interference early in the race.
23. In our observation, Firecracker Nola was moving steadily up until almost into the back straight. She was not being put under any pressure by you to do so. There was no use of the whip. The video evidence is consistent with you having pulled her up as you described and not having persevered past that point.
24. You gave evidence that, on the next day, you found evidence of her having displaced a shoe. You believe this happened at the time of the interference. You did not advise the Stewards about this until the time of this hearing. You produced a veterinary report at the hearing to this effect.
25. We have decided not to take into account the veterinary evidence as to the displaced shoe, given that you left it so long to notify the Stewards about this. However, the veterinary evidence after the race disclosed the abrasion, and also the relatively slow heartbeat, consistent with your account of not having overtaxed the horse.
26. We have considered the Stewards argument that, in your actions, you have run through the sectional times well in advance of the demonstrated ability of the horse and in so doing have overtaxed the horse in circumstances where the horse had no realistic prospect of winning. The Stewards say that, in acting in this way, you have acted in a way detrimental to the racing of the horse.
27. However, we are mindful that this charge depends on a finding that you have acted in a completely unreasonable manner. It must amount to more than just an error of judgment. Your action must be blameworthy and culpable.
28. In this case, we find that your choice to continue to move forward after the interference, rather than to fall back to the very rear, was initially reasonable in the circumstances. The horse continued to improve around the field with no evidence of being urged along and was still making ground until just before the entrance to the straight.
29. We agree that you made a potential error of judgment in not moving to the back of the field immediately after the interference, but we do not find this error to have been unreasonable, blameworthy, or culpable in the context of the earlier interference and your need to react to it immediately, and the injury to your horse, the detail of which you could not have known at that time.
30. We find you not guilty of the offence of driving in a manner which was unacceptable.

Mark Howard

Registrar, Victorian Racing Tribunal