

**GREYHOUND AND HARNESS RACING APPEALS TRIBUNAL
NEW SOUTH WALES**

TRIBUNAL: JUDGE B. R. THORLEY

**ASSESSORS: MR K. RUSSELL
MR J. SCHRECK**

APPEAL OF MR BEN SARINA

DECISION

The horse Life Intact was a starter in the eighth race at Harold Park on 14 March 2008. It is part owned by the Sarina family, trained by Mr Dwayne Sarina, and was driven by driver Ben Sarina. It won the race. Immediately following the conclusion of the race the stewards opened an inquiry deriving from the fact that in its final run to the winning post Life Intact crossed over some four marker pegs and at least brushed a fifth. As a consequence of the inquiry, the stewards exercised their powers under Rule 66 and disqualified the horse from the race.

They then proceeded to charge Mr Ben Sarina, firstly, under Rule 163(1)(c) in that, it was alleged, he allowed the horse or the sulky to shift inside or make contact with marker pegs and, secondly, he breached Rule 163(2), which requires that in the event of a driver's horse or sulky shifting inside the line of marker pegs the driver shall restrain the horse and, without interference to another runner, regain position in the true running line at the first opportunity. To both of these charges Mr Sarina pleaded not guilty, but he was found guilty. He was then subjected to a period of suspension on each charge of eight weeks, and it was directed that those two penalties run concurrently. Mr Sarina appeals to this Tribunal against both the fact of the convictions and the severity of the penalties. He has at all relevant times been on a stay of proceedings.

We have viewed the video of the race in question from a number of angles. The undoubted facts are that, prior to the concluding stages of the race, driver Sarina had adopted a position towards the rear of the field. As the concluding stages arrived, the video clearly demonstrates that Sarina began to look for a run on the

outside of the running field, clearly determined that that was not an appropriate course, and returned back to a line along the marker pegs, no doubt in the expectation or hope that some opening would occur. Indeed, a measure of opening did occur, and straight into what he perceived to be an available opening went Mr Ben Sarina. But it is quite clear to us from the video in question—a view which was equally taken by the stewards—that that space was not fully available such that he could then manoeuvre a course without proceeding across the line of the marker pegs. We do not detect that there was any attempt to restrain his charge at any relevant stage. True it is that he did regain a line on the outside of the marker pegs after he had achieved the task of becoming the leader, but that does not represent compliance with the rule that was called in aid for the second charge.

There is one matter raised by the Appellant to which we should refer. The sulky attached to Life Intact is described as an Upstart. We understand the relevant design feature of this is that the wheels are at an angle such that the wheel span at track surface is somewhat wider than at the top of the wheels. It is claimed that this feature assists in handling any camber on the track. The Appellant argues that this feature somehow contributes to the course he took. We have to say we are quite unconvinced by the argument and, even were there some merit in it, then a driver must drive so as to accommodate any propensity in the chosen gear.

We think the convictions were well founded, in both cases, and the appeals against conviction are dismissed.

Having said that, by far the majority of the arguments addressed to this Tribunal at the hearing of these appeals was in relation to penalty. To support his arguments, the Appellant brought two videos, both of which we have seen, one of a race some two weeks ago at Canberra and another of a race at Harold Park on 15 August 2007 involving driver Fitzpatrick. In both those cases the drivers involved can be seen to have breached the rule prohibiting driving over marker pegs. In one case, the driver was fined, and in the other case the driver was reprimanded.

We have also been shown extracts from stewards reports and supplied with a list of all charges that have involved one or other of the two relevant rules over the last few years. No doubt the penalties at stake have varied greatly. In some cases no action has been taken. Otherwise the penalties have ranged between the administration of a reprimand to, at the most, the imposition of a six-week suspension.

We would agree with the Appellant, and indeed we think the stewards equally would agree, that there is a need for consistency. But consistency is not some nirvana. Every case has its unique features. What is really at stake is a consistency of approach to the issue of imposing penalties. There would never be consistency

of the results that have actually been reached. This is so because in every case circumstances vary, and they are not disclosed in a mere list of the results.

Nonetheless, we think that the events which are at stake here deserve some firm reaction. We think really what was at stake was the taking of a shortcut to achieve victory, and that was not permitted.

The Appellant has been driving now, we are well aware, for many years and has a very commendable reputation for his successes. He has no less than 22 pages of record, but it must be conceded that the number of times when he has been subjected to actual suspensions has, over that period, been but few relative to the number of races in which he competes. But the time has come, we think, when he must recognise that there are laws which govern the running of these races and, successful as he may be, he is to comply with them.

We think the penalties imposed on this occasion are a bit out of kilter with the penalties otherwise imposed, and we think it more appropriate that this Appellant should be subjected to a period of six weeks. Equally with the stewards, the Tribunal directs that those penalties be served concurrently. The penalties will run from today.

In each case the appeal deposit is forfeit.

B. R. Thorley, Judge
16 April 2008