

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

TRIBUNAL: JUDGE B. R. THORLEY

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

APPEAL OF MR GLENN MCELHINNEY

DECISION

After the running of the seventh race at Penrith on 3 April 2008 the stewards opened an inquiry particularly into the tactics adopted by driver Glenn McElhinney, who was in charge of Lika Titian. At the conclusion of that inquiry they charged Mr McElhinney under rule 149 (1). That rule requires that a driver shall take all reasonable and permissible measures during the course of a race to ensure that the horse driven by that driver is given full opportunity to win or obtain the best possible placing in the field.

The horse Lika Titian is in fact trained by the Appellant's brother. The Appellant himself had trained the winner of this particular race, namely, Michaels Wish, which was driven by Ms KerryAnn Turner. No doubt the fact that the race was won by a horse trained by the Appellant exercised the stewards' minds and contributed to their decision to open the inquiry which they in fact did.

The tenor of the inquiry however was not a happy one. It was characterised, both on the night of the race meeting and in the subsequent hearing on 15 April, by a measure of acrimony and resentment on the part of the Appellant. To some extent, it could even be said that the Appellant behaved in a petulant way. Nothing of this nature would have assisted the Appellant in the decision which the stewards had to make. The stewards were very well entitled to open the inquiry which they did and very well entitled to pursue it in the length and in the manner in which they did.

The stewards found the Appellant guilty of that charge, and they suspended him for a period of six weeks. The appeal is against both the fact of the finding of guilt and the penalty imposed.

The particulars of the charge which were laid down by the chairman of the stewards are important. Those (as they appear on page 33 and 34 of the transcript) are in the following terms:

The particulars of this charge ... are that you ... have driven vigorously to maintain the lead when challenged from shortly after the start until near the 1700 metres, when ultimately you were crossed by Pacific Victory, the odds-on favourite, when in the opinion of the stewards it was reasonable and permissible to restrain your runner and obtain a favourable forward, trailing position significantly earlier than you elected ...

In a sense, the way in which those particulars were formulated demonstrates an error on the part of the stewards. The test is not whether it was reasonable and permissible to have adopted some other course of action than that which was in fact adopted. The issue at stake is whether or not the tactics adopted by the driver can be accused of having been unreasonable. There may well have been options available which were reasonable. That is not necessarily an answer to the question of whether or not the tactics in fact adopted were unreasonable.

Here, the Appellant's horse was one of the outsiders in the field. It drew barrier one, a position which of course affords every opportunity to encourage the horse forward and to take the lead. This in fact the Appellant did. Indeed his encouragement, if one can call it that, consisted of a significant number of applications of the whip. He did indeed achieve the lead. But, by about the 1700-metre mark the lead was taken from him by Pacific Victory, which was the odds-on favourite. The Appellant then took a sit immediately behind Pacific Victory, a position which he maintained for all relevant purposes until, quite obviously, Lika Titian compounded and fell back in the field, finishing some 32 metres behind the winner.

However, the allegations which are made against the Appellant relate entirely to the period of time after he had acquired the lead and before he was overtaken at about the 1700-metre mark. The race in question was one of 2,095 metres. Arithmetically, the difference between 1,700 and 2,095 is 395 metres, but we are not talking about the whole of that distance; we are talking about only the time when, having achieved the lead, it is alleged he should have restrained his charge and let the field overtake him at an earlier point of time. We do not think it is unreasonable on the part of a driver to try to maintain his position and his speed over such a relatively short space at such a relatively early stage of a race. Indeed, we would imagine there are many circumstances in which drivers would be encouraged to see what is the capacity of the horse over the first furlong or furlong and a half.

Whilst we understand the stewards' decision to inquire, and whilst we applaud their efforts, we are not satisfied in the ultimate that this charge falls to be sustained.

Hence, the appeal will be upheld and the stewards' orders and findings are set aside.

It is directed that the Appellant's appeal deposit be returned to him.

We should finally mention that the Appellant himself did recognise the inappropriate behaviour that he exhibited at the hearing before the stewards and did indeed write to apologise to them for his conduct.

B. R. Thorley, Judge
28 May 2008