

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

**TRIBUNAL: JUDGE B. R. THORLEY**

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

**APPEAL OF MS KERRYANNE TURNER**

**DECISION**

Ms K. Turner, the driver of Seven Birdies, a participant in the second race at Young on 17 May 2008, was, after inquiry, charged by the stewards with a breach of Rule 149(1) of the Harness Racing Rules. This 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.*

To this charge she pleaded not guilty, but she was found guilty and was subjected to a period of six weeks suspension. The period of suspension was, as was set by the stewards, less than might normally have been imposed since the stewards were anxious to give credit to the Appellant for her comparative youth and her driving record.

The facts which were relied upon by the stewards are not in dispute. Mr Hammond, solicitor, who has appeared for the Appellant, has not disputed any of the factual matters that were at stake. It is convenient then to set out the particulars that were given by the stewards to the Appellant in support of the charge which they laid. These read:

"The particulars of the charge this evening are that at the Young harness racing meeting ... you, ... as the driver of Seven Birdies, ... have, approaching the 800 metres, elected to shift in from the running line to occupy the position three back along the marker pegs behind Battle Shoes, which was being driven with an element of vigour, and Limerick Castle, when it was reasonable and permissible to maintain your position in the running line, that was, one out and two back. By making this decision, your runner has been unable to obtain clear running until inside the final 400 metres, at which point, in order to avail Seven Birdies of clear running, you were required to race four wide round the final turn. The mare then ran on well, to be beaten 3 metres between first and second and 1½ metres between second and third, the position in which you finished in the race."

There are three comments that we would wish to make about this particular rule. One, the words "reasonable and permissible" are words which import standards of objectivity. They are not words which import standards of perfection. However, any endeavour to examine the problem raised by these words by referring to the subjective reactions of any individual driver is an error. Two, the rule imposes a duty ex verbis directly on the driver. Evidence of what, if any, driving instructions were given to the driver is admissible in order to understand and explain the facts which transpired, but compliance with any such instructions is not of itself determinative of the issues raised. Three, the issue to be determined is whether a particular measure taken during the course of a race is, as the rule says, reasonable and permissible. If there never is any alternative option, it cannot be said that whatever measure was taken was unreasonable. However, the mere fact that there is a reasonable option does not itself solve the problem. The finding that must be made in order to found guilt under this rule is that it was unreasonable to adopt the measure that was in fact taken.

To some extent the particulars given by the stewards in support of the charge could be read as their having fallen into a small error when they assert it was "reasonable and permissible to maintain your position in the running line". This is really only referable to what was an option. The question which was at stake really is whether it was unreasonable in the circumstances of the race at that time to make the decision which she did in fact consciously make to shift in from the running line to the line of the marker pegs behind the runners ahead, as has been described. However, we think that the following words in the particulars given sufficiently identified that which was of concern to the stewards.

We would share the view of the stewards overall that it was not a reasonable tactic to move towards the line of the marker pegs in the particular circumstances of this race as it was then being run. That necessarily created a difficulty for Seven Birdies when it was called upon to make its final run to the winning line. Indeed the video, we think, demonstrates this quite clearly. To that extent then we think the charge was properly laid and was properly made out.

The penalty, as we have said, reflected matters for which she was entitled to have credit, and we see no reason to interfere with it.

The appeal is dismissed and the stewards' findings are confirmed.

The suspension will date from today.

The Appellant's appeal deposit is forfeit.

B. R. Thorley, Judge  
23 June 2008