

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

TRIBUNAL: JUDGE B. R. THORLEY

**ASSESSORS: MR A. G. MULLINS
MR J. SCHRECK**

APPEAL OF MR JAMES NILE JNR

DECISION

Mr James Nile Jnr was in charge of Beach Baby Beach, which competed in the fourth race at Penrith on 22 May 2008. Following the race the stewards opened an inquiry into an event which occurred whilst the field was in the home straight on the first occasion. In the result the stewards charged the Appellant under rule 163(1)(b), found him guilty and subjected him to a period of 21 days suspension. Mr Nile has appealed against both the finding of guilt and also the severity of the penalty. It is noted that the Appellant has not sought any stay of proceedings and in fact has already served the greater length of the penalty.

Whilst the practical impact of the stewards' decision is not major, the facts of this appeal do indeed raise some matters for discussion. Rule 163(1)(b) provides:

A driver shall not —

(b) subject to rule 164, make another horse cover more ground than necessary.

Rule 164 provides:

The Controlling Body may determine the circumstances in which a driver who does not have a clear passage in the course of a race may take action to secure such a passage.

Pursuant to rule 164, the Authority in New South Wales formulated the circumstances contemplated in rule 164 by the expression of a policy statement which was to take effect in all races conducted in New South Wales after 1 May 2007. That policy statement is commonly described as the "ease out" rule, or the "candy pole" rule. It is one, without giving specific details of it, which is designed to enable drivers to ease out from a trailing position after the field has passed the candy pole erected on the side of the track in the latter stages of a race. That, however, is not relevant here.

The Appellant observed, during the score-up before the commencement of the race in question, that the horse Serene Angel (being driven by driver Sarina) was demonstrating fractious behaviour in galloping at that stage. Indeed, he tells us that during the score-up and during this demonstration on the part of Serene Angel, his own sulky was contacted once or twice by that horse.

When the race developed driver Nile found himself in a trailing position immediately behind Serene Angel. It was, he says, his belief that there was a real danger of Serene Angel again galloping and that therefore in his trailing position he himself would be placed in a situation of danger. He says that in fulfilment of that belief he determined in the home straight on the first occasion to pull out and not subject himself to that risk. This manoeuvre he indeed then committed, but in so doing it must be said that he did cause the horse then to his outside, namely, Esther Jane, to be carried somewhat further wider on the track. In the ultimate, we report that Esther Jane in fact won the race by a very narrow margin over the Appellant's horse, Beach Baby Beach.

We have also noted that in the stewards report of the events that occurred during this race the stewards recorded:

Serene Angel raced roughly in the home straight on the first occasion for which a warning was issued.

From our view of the video of the race in question, which we have seen on numerous occasions, just an instant after the Appellant began his outward movement Serene Angel did in fact break its gait. The apprehension that was in the mind of the Appellant manifested itself.

The question with which we are confronted is whether or not the provisions of rule 163(1)(b) should be regarded as containing absolute standards to be imposed upon a driver. We think the answer to this is no. To begin with, the rule itself is subject to the capacity of the Controlling Body to make policy decisions. The fact that it has indeed made one such policy decision in reference to but one point of time in the race is one factor. The fact that the

rule itself only speaks of the covering of "more ground than necessary" is another.

These features combine, we think, to avoid any interpretation that would impose absolute standards on a driver. We would instance, for example, the situation where in fact a horse which was being trailed suddenly dropped in its traces or suddenly was subjected to a massive bleeding attack, or some other emergency presented. What then is the driver in the trailing sulky to do? Surely it is not meant that he must run into the failed horse in front. Surely he is entitled, if not bound, to seek to avoid risks to safety in that sort of emergency. Once you walk down that sort of path, it seems to us that rule 163(1)(b) must be subjected to an interpretation such that it allows stewards to take into account the exigencies of a race.

At the outset of the instant inquiry the Appellant did assert his belief in the unreliability of Serene Angel. It would have been wiser for the stewards to have called driver Sarina to give some evidence before the inquiry. The Appellant did suggest to the stewards, as appears on page 3, that they could ask Mr Sarina to confirm that he (Sarina) was screaming at his charge "because it was getting rough ..." However, this the stewards declined to do.

In the circumstances we are not satisfied that the Appellant behaved otherwise than reasonably in the tactic that he indeed adopted. Moreover, we do not think that the measure of extra ground which Esther Jane was forced to cover was unnecessary. The fact that it won the race is eloquent of that.

In the result, we think this appeal falls to be upheld. The stewards' findings and orders are set aside.

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

B. R. Thorley, Judge
4 June 2008