

**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 BLAKE FITZPATRICK**

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**DECISION**

As the field in the fourth race at Harold Park on 6 May 2008 turned the corner in the home straight the leader, Dollymite, was travelling along a line close to the line of the marker pegs. Immediately behind the leader was Gatling Gold, driven by Blake Fitzpatrick. To his outside was Cams Bizzare, and three wide was Medieval Scene. Medieval Scene, we understand, is a horse which has demonstrated in previous races somewhat of a propensity to break its gait.

As the field came nearer to the finishing line driver Fitzpatrick recognised that his opportunity to win required that he move out from the line immediately behind the leader. He commenced this technique. But, at about the same time, Dollymite itself began to veer somewhat to its outside. Indeed, Dollymite can be seen from the video to have shifted out from its original line perhaps half a cart or even a little more. Necessarily of course, to achieve any overtaking mode, this required then of Gatling Gold that it go even further to its outside in order to secure a clear run. But in so doing this increased the pressure on Cams Bizzare, which in turn increased the pressure on Medieval Scene, which then broke its gait.

It is argued by Mr Fitzpatrick that other horses would have sustained this pressure and not broken their gait, and in that event would not have attracted the attention of the stewards. Be that as it may, we are of the opinion that it is not surprising that any horse would have galloped given the pressures that were coming from the inside, and a fortiori in the case of Medieval Scene.

So the stewards did inquire, and in consequence charged Mr Fitzpatrick under rule 163(1)(a) with causing interference. To that charge Mr Fitzpatrick stoutly pleaded not guilty. Nonetheless he was found guilty. He was then subjected to a period of 21 days suspension. He has appealed against both the fact of the finding of guilt and the severity of the penalty.

We think that the charge was in fact available to be laid and that the conviction was a proper one to record. There is ever a conflict between the need to achieve the best finishing position in the field and to adopt tactics to endeavour to secure that result. But all of this has to be balanced with the need to secure safety in the running. It was always predictable that a tiring leading horse might not pursue a straight path in the final run to the winning post. The manoeuvre that was being attempted by Fitzpatrick was always subjected to the risk that he may have to go wider than he would have wished, and in the proximity of the horses to his outside the manoeuvre that he did adopt was liable to cause interference, and so it did.

On the question of penalty, the stewards made reference to the fact that they had recently informed the industry that they had adopted a set of guidelines to assist them in the assessment of penalties. It is somewhat ironic that the Appellant's father was one of those who actually advised the stewards on the details of the content of those guidelines. However, in imposing the penalty of 21 days suspension the stewards referred to the fact that they would normally have given 28 days for this offence and that there was no deduction to be made because Fitzpatrick had pleaded not guilty, but they did refer to his good driving record, and for that reason made a deduction of 7 days, thus leaving 21 days.

We support the stewards in their endeavours to achieve uniformity and parity of penalties and we think that the adoption of guidelines is a very appropriate way of walking down this path. These are, however, but guidelines. It is not an attempt by the stewards to provide set penalties, and in the ultimate every case must depend upon its own facts. There are circumstances in every case which will intrude upon considerations which go to the assessment of a penalty. In this particular case, there does not appear to have been any reflection of the propriety of the tactic that was adopted in relation to the untoward behaviour of both the leading horse and that horse which had a given propensity to break its gait. These are, we think, matters which could have been regarded as, in some small measure, mitigating features. It is only for those reasons that we would contemplate a small further reduction in the penalty of another 7 days.

On that basis then the appeal is dismissed, the stewards' finding of guilt is confirmed, but in lieu of the penalty we impose a period of 14 days suspension.

The Appellant has been on a stay of proceedings at all relevant times. The suspension will date from today.

His appeal deposit is forfeit.

B. R. Thorley, Judge  
4 June 2008