

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

TRIBUNAL: JUDGE J. C. MCGUIRE

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

APPEAL OF MR VINCE SILVESTRO

DECISION

On 24 November 2008 the stewards conducted an inquiry into an incident which occurred during the running of the third race at the Bankstown Paceway. Vince Silvestro, the Appellant, was charged with an offence under Rule 163(1)(a), which provides:

A driver shall not —

(a) cause or contribute to any crossing, jostling or interference.

He was found guilty and subjected to a suspension of 14 days. The Tribunal is considering his appeal against both the finding of guilt and the penalty imposed. Tendered by consent are the transcript of the stewards inquiry and the video depiction of the race in question, in particular, the Appellant's conduct in driving his horse Pyro Torque.

Robert Morris, the driver of Bank On An Atom, gave an account of driving his horse "up the middle", between Mr Wilkins' horse, which was racing hard on the marker posts, and the Appellant's horse, which was three carts wide. He stated that the Appellant's horse hung in, that the Appellant tried to shut the gap, and that he (Morris) got a little tight for racing room and his horse got checked. He said that the Appellant's horse came down as Mr Morris's horse was putting its legs into the gap.

The Appellant's evidence substantially agreed with that of Mr Morris: that is, that as Mr Morris was "bustling through", his horse Pyro Torque came "slightly downward"; and that, although his horse started to hang down, there was "no-one there at that time." He stated that he was not aware that another horse was about to take a run to his inside, adding, "That just happened, bang, and he was there."

Having viewed the video, the Appellant told the stewards:

What I'm saying is: it may well have been a simultaneous occurrence, where he was trying to get off to make a run, and I was there or trying to close the gap. So what happened was very quick. He was travelling fast, and I was travelling slow,

and I was trying to close the gap. But I don't really think that I was—. I'm sure I wasn't in his way, because I looked down to make certain there was nothing there. And there wasn't.

The Appellant maintained that he had not come down onto a horse directly and that Mr Morris's horse had crashed into the back of him. Mr Morris believed that his horse struck the outside of the tyre of the Appellant's wheel. The Appellant asserted that Mr Morris did not have a clear run and had struck the back of the Appellant's wheel.

The stewards concluded that the Appellant had allowed his horse to shift down the track and tighten Mr Morris's horse, causing it to be checked and gallop. Accordingly, he was found guilty of causing interference.

The Tribunal has viewed the video on several occasions, and it appears that the Appellant was well clear when he began to move down, that Mr Morris gained momentum when he cleared the horse with which he was previously locked, and that Mr Morris was travelling faster than the Appellant and gaining on him. It is the Tribunal's view that the incident was consistent with Mr Silvestro's version of events. He asserted that if there was a position there for the taking, he was entitled to take it. It appears to the Tribunal that Morris could have contacted Silvestro by reason of his change in direction and his greater speed.

In the circumstances, the Tribunal is not satisfied that Mr Silvestro was in breach of the rule, and his appeal is upheld. Accordingly, the suspension is set aside.

Mr Silvestro's appeal deposit is to be refunded to him.

J. C. McGuire, Judge
13 January 2009