

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

TRIBUNAL: JUDGE J. C. MCGUIRE

APPEAL OF MR CAMERON DAVIES

DECISION

Mr Cameron Davies (the Appellant) appeals against his conviction and the penalty imposed by the stewards following an inquiry, which concluded on 2 May 2009, into the manner in which he drove Eye Spy Lombo in race 3 at the Newcastle Paceway on 4 April 2009. He was charged with a breach of Harness Rule of Racing 149(2), which provides:

A person shall not drive in a manner which in the opinion of Stewards is unacceptable.

Upon laying the charge the Chairman of Stewards stated:

The particulars of that charge are that, whilst driving in the Nevele R Stud New South Wales State Bred Three Year Old Pace at Newcastle on 4 April 2009, after initially moving three wide near the 1200 metres to trail Seven Aces, when that position became unavailable, you failed to make sufficient effort to return to the running line, resulting in your horse unnecessarily racing three wide without cover from the 1100 metres to the 800 metres.

The Tribunal has before it the transcript of those proceedings and has viewed the video of the subject race on some six occasions.

The Appellant was given the drive on Eye Spy Lombo by Mr Formosa, who trained and drove another horse in the race, Hi Flyin Lombo. It was the evidence that Mr Formosa instructed the Appellant to drive the horse as follows:

"Just come out ... There'll probably be heaps of speed there, so just try and slot in."

It is the Appellant's evidence that in his opinion Cmon Harry, driven by Andrew Stapleford, was the horse to beat. When asked to describe his drive, the Appellant stated that at the beginning of the race:

I've come across and I've slotted in. And I've seen Seven Aces, is it, three wide and I thought the chair horse would hold him, so I went up three wide to get on his back, and then when I've seen him cross I grabbed hold to go back where I was, and Mr Stapleford kicked up, so I decided to go forward again.

He then explained that he had settled second-last, one out and five back. He was aware that Cmon Harry drops out initially and then "takes off" about 800 metres from the finish.

The video demonstrates that the Appellant was positioned three deep approximately a mile out. He was not going forward; nor did he ease back into the running line. When asked why he had not eased back, his evidence was somewhat confusing when he answered:

Because Mr what's-his-name kicked up on me, and I thought, "It's better off going forward now," because it was too late to go right back to last.

He was asked:

So did you go forward, or did you just stay there and hold that horse in a pocket?

He answered:

I started going forward. And then I think Mr Formosa pulled out at the six or seven hundred, and I've got onto his back. And then Tritton came out underneath me and put me four wide, and then I've chased him up, and that was it; he'd had enough.

Prior to that, he claimed to have intended to get onto the back of Mr Bond, which was three wide, to get cover and a cart into the race. When Mr Bond crossed, the Appellant went back. When going back, Cmon Harry moved up to the inside of him at a point when he was going to grab hold of his horse and go back in. He went on to say that he restrained his horse, and when Cmon Harry got inside him he elected to go forward and progress to a point outside the horse in front of him.

It can be seen on the video that for all intents and purposes Cmon Harry was pocketed and that the Appellant maintained that pocket when Cmon Harry moved up inside him.

It was put to the Appellant that it was to Mr Formosa's advantage that he (the Appellant) was back in the ruck and getting in the road of Cmon Harry. He denied this. It was the Appellant's claim that he simply drove a bad race and, further, that his drive was totally on behalf of himself. He pointed out that he was inexperienced and had not driven for twelve months.

There was a strong inference from the stewards' questioning that the Appellant was suspected of engaging in team driving with Mr Formosa. There is no evidence which would satisfy this Tribunal that this inference was made out.

Mr Stapleford (the driver of Cmon Harry) was questioned. When he was asked to tell the stewards about the running of the race he stated:

Mate, when I've come down the straight with a lap to go I was attempting to move three wide, and Cameron's seen me coming and has come out in front of me, so I was going to go forward on his back. Once I was on his back, he then began to restrain his horse back in my face, and I thought he was going to go back to the tail of the field. So I don't like putting my horse in between horses, but I thought if he's going to go back to the end of the field I'll go up in between there, and then he can just drop back behind me. As soon as I went back underneath him, he then went forward again. And that was the last thing that was in my control. After that, I couldn't do a thing.

Mr Stapleford was asked:

When you say Mr Davies went back forward again, how far forward did he go?

He answered:

Just enough to hold me in.

The Tribunal is totally sceptical with regard to the Appellant's evidence that he initially drove three wide intending to get onto the back of Mr Bond and that when that horse crossed he went back. If that was his plan, it is difficult to see why at no stage thereafter he did not make any serious effort to get onto the back of that horse. Had he so desired, he could have dropped back further, to have raced behind Cmon Harry and trailed that horse. He was in full control of his horse, which proceeded as driven; it accepted restraint and direction to go forward.

The video further demonstrates that, having ensured he was back in the field as a consequence of restraining his horse, he simply drove three wide for a substantial distance. There was no obvious reason for this and no credible explanation was forthcoming. It is clear that, having placed his horse outside Cmon Harry so that it was slightly in front of the Appellant's horse, at that point he moved forward so as to place Cmon Harry in a tight pocket.

As to his claim that he did not want to race without cover, the Chairman of Stewards asked this question:

At that stage, given that 50 metres earlier you didn't want to be racing without cover and that's why you've restrained, why wouldn't you continue to restrain to take the back of Mr Stapleford?

The Appellant answered:

Because I changed my mind. I thought I would go up easy and get cover, like, if someone came out in front of me.

It was submitted that Mr Stapleford could have adopted better tactics and that he contributed to his own misfortune. This may be so. However, whatever Mr Stapleford's deficiencies may have been, that does not alter the position with regard to the Appellant's manner of driving.

Mr Davies Snr, on behalf of the Appellant, stated that his son was unfairly done by. Unfortunately, this Tribunal is unable to agree with that proposition. It holds no doubt that the Appellant's manner of driving was deliberate and that, whatever his intentions may have been, in the end result the \$1.50 favourite was severely hampered.

It does not accept the submission that the effect on Cmon Harry's performance was simply the result of an inexperienced driver driving a bad race.

The penalty of a suspension for six weeks was imposed after allowing a two-week discount for the Appellant's inexperience. It did not attract a discount extended to those who plead guilty.

The Tribunal is comfortably satisfied that the charge has been made out and that the six-week suspension is appropriate.

When news of this suspension is published it may well deter some other drivers minded not to adhere to the rules designed to ensure fair racing.

The appeal is dismissed.

The Tribunal is aware that the Appellant has served ten days of his suspension. To take account of this, the Appellant is suspended for four weeks, commencing this day.

The appeal deposit is forfeited.

29 June 2009

J. C. McGuire, Judge