

30 July 2020

DECISION

HARNESS RACING VICTORIA

and

MR AUSTIN MIFSUD

Date of hearing:	22 July 2020
Panel:	Judge John Bowman (Chairperson) and Mr Robert Abrahams.
Appearances:	Mr Nicholas Murray appeared on behalf of the Stewards. Mr Anthony O'Connell appeared on behalf of Mr Mifsud.
Charge:	Australian Harness Racing Rule 149 (2) states "A person shall not drive in a manner which is in the opinion of the Stewards unacceptable".
Particulars of charge:	The particulars of the charge being that after working forward to obtain the lead during the early stages in a quicker than average lead time of 33.2 seconds, where the average is 34.9 seconds, and after driving forward to maintain the lead near the 1500m as Royal Obsession (Ian Dornauf) was driven forward with vigour and intent, Stewards determined that it was then unreasonable and unacceptable between the 1200m and 1000m to persist in maintaining the lead when challenged again by Royal Obsession (Ian Dornauf), which stewards considered was the main contributing factor in Wonderforce commencing to give ground shortly thereafter to ultimately tire into 8th and last position beaten 91m. Mr Mifsud's licence to drive in races was suspended for 4 meetings within his applicable region of racing to commence midnight 12 May 2020. In assessing penalty in accordance with the Minimum Penalty Guidelines, stewards took into account Mr Mifsud's recent and clear prior record under this rule, his level of culpability which was assessed to be mid-range and the frequency in which he drives in races. A subsequent veterinary examination of Wonderforce revealed no apparent abnormalities.
Plea:	Not Guilty

DECISION

Mr Austin Mifsud, you have pleaded 'not guilty' to a breach of Rule 149(2). It relates to your drive of Wonderforce in Race 8 over 2080 metres at Cranbourne on 3 May 2020.

In essence, the Stewards allege that you had drawn the outside position, number 5, on the front row. You were keen to lead and drove the horse to the front. The early pace was quite fast and about 1.7 seconds quicker than the average lead time. You gave your horse a brief breather in the back straight, but then Royal Obsession, driven by Mr Ian Dornauf, began to move up quickly from a position of about fifth. The field was considerably strung out. By the turn out of the back straight, or shortly thereafter, Mr Dornauf's horse was at your wheel. By the 1200 metre mark, it was at about your saddlecloth number.

The real essence of the charge, against the background of what had happened earlier in the race, concerns what happened between the 1200m mark and shortly before the winning post with a lap to go. Mr Dornauf continued to challenge you. Your horse had not had an easy run. Rather than surrendering the lead and taking a sit behind Mr Dornauf, you elected to drive your horse vigorously and hold Mr Dornauf off. You were urging your horse forward and applying the whip. The second quarter of the last mile was again recorded at a faster than average time.

Shortly before the winning post and with a lap to go, your horse commenced to weaken. Ultimately it finished last, beaten 91.5 metres.

There is some dispute concerning how the horse pulled up and whether it was suffering from a condition. We shall not go into that. We do not consider it to have a significant bearing on the charge. If your horse was showing undue signs of stress, it was all the more reason to surrender the lead and not engage in a battle to retain the lead, particularly given the background of what had occurred from the start of the race.

A useful test in this regard is whether the knowledgeable harness racing spectator might be expected to exclaim words to the effect of 'What on earth is he doing' or 'My goodness, look at that' – see the New South Wales decision of *McMullen*.

We are comfortably satisfied that a knowledgeable spectator would have used such words when you again urged your horse forward, applying the whip, between the 1200 metre mark and approximately the 1000 metre mark. The horse had not had an easy run. There was still a lap to go. You were being challenged strongly for the lead. However, rather than taking a sit, you commenced to drive vigorously once more.

We are comfortably satisfied that the charge has been made out.

PENALTY

We have considered the question of penalty. The penalty originally imposed was four weeks, which, in the circumstances then prevailing, is specifically stated in the Stewards submissions to be the equivalent of four meetings. We understand that penalties have reverted to being in meetings. We see no reason to impose a penalty expressed in weeks. You have an excellent record. Four meetings seems to us to be the appropriate penalty. That is the decision at which we have arrived.

Mark Howard
Registrar, Victorian Racing Tribunal