

Appeal decision

Date: 13 March 2014

Code of racing: Harness

Appeal panel: Judge W Carter (chair), Mr D Kays and Mr G Casey.

Appearances: Driver Darren Ebert appeared on his own behalf.
Mr W Barr, stipendiary steward, appeared on behalf of the stewards.

Decision being appealed: Suspension of licence to drive in races for a period of 21 days – AR165(1)(a).

Appeal result: Appeal upheld

Extract of proceedings – in the matter of The Time is Right to Race a QBred Pace (C1 - C2) over 1780 metres at Redcliffe on 20 February 2014. Driver: Darren Ebert

THE CHAIRMAN: On 20 February at Redcliffe in Race 6 interference occurred which was of concern to the stewards. This led them to open an inquiry into the running of the race at the point where the interference occurred. After concluding the inquiry it was the stewards' determination that the appellant, Mr Ebert, should be charged with a breach of Rule 165(1)(a). Having heard the evidence, which was quite significantly voluminous and in respect of which there was significant contest, the stewards ultimately determined that Mr Ebert was in breach of the rule and that therefore he should be penalised, which he was with a 21-day suspension.

We have had the advantage in the appeal of a significant and helpful discussion from both Mr Ebert and Mr Barr, and it seems to us, as has been put that, that at the beginning of the race Mr Ebert went forward on the outside of Mr Graham's drive. Mr Graham had been drawn three on the front line and Mr Ebert to his immediate outside, and that Mr Graham, obviously intent on leading, moved forward. Mr Ebert followed him down. Mr Petroff, with Mr Faulkner on his inside from the second row, moved forward, Petroff obviously in an aggressive driving manner intent on obtaining a preferable position to where he was, and it seems to us that during the course of Mr Ebert's movement down and Mr Petroff's movement forward that the interference occurred and Faulkner's horse was taken out of the race.

Having examined the film and having heard what I have said were helpful submissions from both, it is a very difficult question and it was a difficult inquiry for the stewards, in our view, but we find it significantly difficult to determine precisely whether or not the interference was caused by Mr Ebert's movement down or Mr Petroff's movement forward. Rather we suspect that there was some degree of fault on each driver, and we think, having regard to the standard of proof which binds us in these circumstances, that there arises in our mind a significant doubt as to whether or not the whole of the blame should be taken by the appellant, and accordingly because of that serious doubt that we have we think we should allow the appeal.

At the same time, we wish to make it absolutely clear that we insist that there is an obligation on any driver to protect the other driver, and that of course is the stewards' role to ensure that that occurs. We were not totally impressed by the way in which the appellant drove. Our doubt arises because of our concern about the way in which Mr Petroff drove and the fact that the appellant's evidence is supported by Mr Faulkner, who was on Petroff's inside.

Those doubts are such that we think, as I have indicated, the appeal should be allowed. But we wish to make it perfectly clear, and we remind drivers in the position of Mr Ebert, that there is an onerous obligation on him and others in a similar position to protect the driver on the inside. So we allow the appeal and dismiss the conviction and the penalty.

Further right of appeal information: The appellant and the stewards may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **14 days of the date of this decision**. Information in relation to appeals to QCAT may be obtained by telephone on (07) 3247 3302 or via the Internet at www.qcat.qld.gov.au