

Appeal decision

Hearing Date: 10 March 2016

Decision Date: 23 March 2016

Code of racing: Harness Racing

Appeal panel: Mr P James (Chair) and Mr D Kays

Appearances: The appellant Paul Matis appeared on his own behalf
Mr D Farquharson, Chief Steward Harness appeared on behalf of Racing Queensland

Decision being appealed: Suspension of driver's licence for a period of four (4) weeks – AR149(2)

Appeal result: Appeal upheld

This is an appeal to the Racing Disciplinary Board in respect of a decision by Racing Queensland Stewards from an inquiry into the manner Paul Matis drove Franco Bulgari in Race 4 at the Albion Park meeting on 13 February 2016 when the driver was charged and found guilty for an alleged breach of AR149(2) which reads as follows:-

“A person shall not drive in a manner which in the opinion of the stewards is unacceptable”

The specifics of the charge being...*“racing into the first turn after the start you applied undue pressure to Franco Bulgari in a position for the lead when it was the stewards’ view that advantage was held by Camelot Bay, and that further in the back straight approaching the mile that you again placed exertion on Franco Bulgari to gain a position, in your view, on the back of Camelot Bay, which, in the opinion of the stewards, was not available at that time through the horse racing behind that horse – Camelot Bay – and that being Cee Uin L A – which only had a half to three-quarters of a length gap at the most, and we believe the exertion that you placed on Franco Bulgari was detrimental to its chances over the concluding stages of the race, and thus unacceptable”.*

In short the specifics allege two matters:

- from the front straight start, the fast pace immediately, and for some distance, after the start; and

- the continuation of the fast pace, under urging, on entering the back straight, which during the inquiry the stewards referred to as the “second dig”

Mr Matis entered a plea of not guilty.

Generally, there was no conflict between the stewards’ and the appellant’s outline of the relevant sections of the race, other than in respect of the section of the specifics alleging “*racing into the first turn after the start you applied undue pressure to Franco Bulgari for the lead*”, the appellant submitting that, although being aware of the fast pace, his horse was not being urged forward, but was being allowed to display an early speed it was capable of producing, without being urged, and that at that early stage his tactic was to hold the position and settle outside of the leader driven by Mr Dux.

Several viewings of the race video, and the sectional times record, confirms that the sections of the race referred to in the specifics were run at a fast pace, and that the actions of the driver on entering the back were questionable and the stewards were entitled to call on the driver to explain the tactics. In respect of the fast pace, as the race – Class 6+ - was the highest classed race on the program, the Board is not persuaded by the Stewards’ comment that the lead time -36.3 - was quick for this grade. In fact the lead time for a lesser grade race – Class C2+ - was 35.6.

The explanation offered centred on an incident toward the end of the first section when, in the opinion of Mr Matis, Mr Dux was prepared to surrender. In support of that submission Mr Matis was resolute in his opinion that the driver of the leader said “*I’m taking hold*” and because of that he urged his horse forward in an endeavour to obtain the lead. However very soon after, it became evident that Mr Dux was not about to surrender the lead, resulting in Mr Matis applying extra pressure in the hope of creating a position directly behind the leader.

Contrary to the appellant’s understanding, Mr Dux’s version of the incident is that he said “*I’m holding*” (meaning holding the lead) and that should have been obvious as he showed the whip to indicate his intention to hold the lead. That summation of the incident was confirmed by a steward in a viewing position adjacent to where the verbal incident occurred.

At the inquiry Mr Matis conceded that at the commencement of the second section “*I should have taken hold and forget about what Mr Dux said, but when he indicated that he was going to take hold, I thought well that’s OK, instead of sitting in the death I’ll take the lead*” and “*It’s just in hindsight it’s easy to see that, but at the time, that’s the way the race unfolded, and I think it is easy for the panel to look back and say “hey this is what happened”, but I think you need to be aware of the process by which the end result occurred. I mean, the end result in itself is unacceptable to you, and is unacceptable to me, but the way I got there was not just a deliberate attempt to put pressure on Mr Dux*”

so that I could get the lead. I was quite happy to sit in the death, and I just want you to be aware of that”

Franco Bulgari a \$82.10 chance, finished last 24.9m from the winner. There can be little doubt that the combined tactics resulted in the competitiveness of Franco Bulgari being affected detrimentally, although Mr Matis submitted that the personal time of the horse in the race was equal to its best personal time, and had it not become unbalanced on the home turn, its finishing position would have been improved considerably.

The Board is satisfied that in itself the driving tactics in the early stages could not be seen to be unacceptable. The question is, in the absence of a plausible explanation, could the combination of the early fast pace, and the “*second dig*”, be unacceptable, and unacceptable such that it is culpable?

Many authorities commenting on cases of a similar nature cite the unacceptability of a driver being punished simply for making a mistake. What is cited is that a perceived mistake must be of considerable significance and, taking into account the standing and experience of the driver, for which a rational explanation cannot be offered. Summarised recently by the Board in the case of *Browne-v- Racing Queensland 18 March 2014*.

The Board is satisfied that the tactics in endeavouring to gain some advantage during *the second dig* were a mistake due to a misinterpretation of the existing circumstances, however, the Board is not comfortably satisfied that, the unsuccessful endeavours to gain an advantage, and then to endeavour to rectify the failed attempt, were such that the charge could be sustained and uphold the appeal.

The Board wishes to place on record the respectful and professional manner in which both parties approached this appeal.

Further right of appeal information: The Appellant and the Steward may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **28 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