

**Appeal A Pyers v RIU - Reserved Decision of Appeals Tribunal dated 22 December 2020 - Chair, Prof G Hall**

**Rules:**

**Repondent(s)/Other parties:**

**Name(s):**

**Decisions:**

**BEFORE AN APPEALS TRIBUNAL OF**

**THE JUDICIAL CONTROL AUTHORITY**

**UNDER THE RACING ACT 2003**

**AND IN THE MATTER of the New Zealand Rules of Harness Racing**

**BETWEEN ALLEN PYERS**

Driver

**Appellant**

**AND RACING INTEGRITY UNIT (RIU)**

**Respondent**

**Information:** A10289

**Appeals Tribunal:** Prof G Hall, Chairman

Mr D Anderson, Member

**Appearing:** The Appellant in person, with the assistance of Mrs T Pyers

Mr J Muirhead, Senior Stipendiary Steward for the Respondent

**RESERVED DECISION OF APPEALS TRIBUNAL**

[1] Mr Pyers has appealed the finding and penalty of the raceday Judicial Committee at the Manawatu Harness Racing Club's meeting held on 19 November 2020 at Palmerston North where he was found in breach of r 869(3)(a) of the NZ Rules of Harness Racing (incompetent driving) in Race 3 and suspended for 5 months. Race 3 was a Non Winners Mobile Pace over 2500 metres. The handicap ratings for the horses ranged between MR 40-MR49. I SAID IMRACN driven by Mr Pyers drew 6 behind the mobile gate.

[2] The matter was heard at the Manawatu Raceway on 9 December last. The parties presented oral and written submissions.

[3] The Tribunal informed the Appellant the Appeal was by way of a rehearing and the Tribunal would have regard to the evidence before the Judicial Committee on the day and the decision of the Judicial Committee. At an earlier telephone conference we granted the parties the right to adduce further evidence. We said we would reach our own conclusion on the matter after considering all the evidence and receiving the submissions from the parties.

**Judicial Committee's decision**

[4] The Judicial Committee in upholding the charge found that after losing 60 to 70 metres at the start, Mr Pyers allowed his drive to catch the field very quickly at a relatively high speed. After catching the field he continued to speed through on the inside and then had to take abrupt evasive action to avoid the horse racing immediately ahead and ended up in the passing lane. He remained in the passing lane until it ended near the 900 metres, then ran out of room and raced inside the marker line down the back straight and around the bend the final time. At that time Mr Pyers' horse was in reality out of the contest. However, once in the final straight, instead of being eased down, Mr Pyers urged his mount on.

[5] Looking objectively at Mr Pyers' drive in its entirety, the Committee said it could not escape from the conclusion that his drive was incompetent and fell way short of what is expected of a professional driver.

**Appellant's case**

[6] Mrs Pyers opened the Appellant's case by questioning the speed with which the charge was laid against Mr Pyers and its subsequent hearing. She submitted that the Appellant had not had sufficient time to recover physically from what had been an extremely difficult drive behind a strong horse that was bolting, and in which to order his thoughts.

[7] The Tribunal has had regard to the medical evidence produced by the Appellant and his communication to the JCA on 11 December.

[8] Mr Pyers disputed that he was early to the start and that I SAID IMRACN had lost 70 metres by galloping. He believed it was a little over 50 metres.

[9] Mr Pyers stated it took him 1400 metres to catch the field. He said as he caught the field, he was going to settle nicely on Mr Butcher's back when Mr Ferguson's horse GOLDZILLER threw its head in the air. He said Mr Butcher had come back on to him and he had tried to take hold of I SAID IMRACN, but it was "over-racing fiercely".

[10] Mr Pyers said he had been unable to restrain I SAID IMRACN and so he went to the inside of Mr Butcher and into the passing lane. He pointed out on the video that there was quite a gap between the inside rail and the markers. The horse had raced over the markers and he was holding on. He could not pull I SAID IMRACN back and the field was "crawling". After a while, the horse had come back on to the track "a little bit".

[11] Mr Pyers said he had called out to Mr P Ferguson for room as he realised he could not stop I SAID IMRACN, but Mr Ferguson had not given it to him.

[12] With respect to racing in the home straight the final time, Mr Pyers said he may have slapped I SAID IMRACN on the rump. This was not in order to win the race or to make I SAID IMRACN go faster but simply to get the horse to the end of the race.

[13] Mr Pyers stated he did not believe the speed with which he was catching the field was untoward. He had slowly caught up the field.

[14] Mr Pyers said he had had to take evasive action and he did have control of I SAID IMRACN as he was able to manoeuvre the horse to the inside of Mr Butcher in order to avoid him. He had pulled I SAID IMRACN back and taken him down the track, so he did not run over Mr Butcher, who had come back on to him because of a check from GODZILLER. He added he had given I SAID IMRACN his head when racing over the markers as he could not restrain him, and he was worried about him choking.

[15] Mr Pyers said he had had 460 drives and had never been so scared. He was frightened for the horse, the field, and his own safety. He emphasised he could not pull the horse into the inside of the track because of the inside rail. I SAID IMRACN was over-racing and he could not pull it back. The horse had run in and then out and he was "not really in control until the top of the home straight the last time." At no point in the race did he think he could pull the horse out of the race, and that was not through lack of trying. He thought the best thing was to go inside the markers when he could not go into the infield. He added he certainly could not go out. He could not restrain I SAID IMRACN to behind Mr D Ferguson and take the horse out of the race.

[16] Mr Pyers concluded his submission by emphasising he had not deliberately gone into the passing lane, but it was because he had taken evasive action. He had no other option. Had he gone into the back of Mr Butcher or attempted to go outside him, there could have been a serious accident. I SAID IMRACN was over-racing before this and he was doing his best to restrain the horse. No one was hurt and he had kept the horse from choking down. No interference was caused by his actions. His actions were not deliberate nor were they incompetent.

### **Respondent's case**

[17] Mr Muirhead stated the Stewards' concern was with the Appellant's decision-making process after catching the field. He believed Mr Pyers' actions were not prudent, and his driving was not competent.

[18] Mr Muirhead said the incident was so surprising that the other Stipendiary Steward on the day, Mr Mulcay, had called him on the RT during the race.

[19] Mr Muirhead described the race:

"Mr Pyers had the gelding up on the mobile gate early in the score up prior to the start.

I SAID IMRACIN lost its pacing gait and galloped outwards losing a considerable amount of ground.

From my observations, using the video equipment, Mr Pyers when driving the gelding was out of the picture shot until approximately 2100m to run.

I estimated that he was in arrears of the field by at least 70 metres. (this is at least 6 seconds behind).

The track is 950 metres in circumference.

The field was racing in a staggered formation, with 4 runners on the marker line and 4 runners in the one out line (2 wide). There was a gap of at least 3 lengths from the last horse on the marker line (AURELIA COTTA (10)) and the last horse in the 2 wide line

(PENTATONIX (6)).

As the leaders approached the 1150m Mr Pyers had rapidly made up the lost ground under a drive. This is demonstrated by his use of the reins for a considerable distance to encourage the gelding forward.

To my surprise he did not steady his horse on catching the field in order to give the gelding some respite and reassess his options.

He quickly improved under a drive to the inside of the 2 wide line and then shifted into the passing lane.

He clearly misjudged the pace and almost came into contact with AURELIA COTTA (D Butcher) prior to shifting into the passing lane.

He has either had to shift into the passing lane to avoid running into the back of Mr Butcher or the perception would be he has miscounted the rounds. Either action would constitute an incompetent display considering his actions leading into this point.

Once in the passing lane his driving posture is upright in the sulky and he does not immediately attempt to restrain his horse back to the rear as required by the Passing Lane Regulations.

As a result he is now inside the main body of the field in a very precarious and potentially dangerous position (placing drivers and horses at risk of physical injury) as the field races past the winning post with a round to go (950m) into the 2nd last turn.

The gelding raced inside the track markers and/or contacting the markers rounding the turn and down the back straight and rounding the final turn until approaching the 200m when he shifted outwards making contact across the wheel of the sulky of GODZILLER (P Ferguson).

After all these eventualities for some inexplicable reason he then encouraged the horse by reining it up over the early stages of the run home."

[20] Mr Mulcay, Senior Stipendiary Steward, gave evidence. He said he officiated on the night in question and viewed the race in the Stewards' viewing area alongside the Judge's box. He confirmed he had contacted Mr Muirhead on the RT on the day. He said it was not an incident that the Stewards would observe or encounter on a regular basis. He said a driver might move inside the markers on a rare occasion if there was a safety issue. He did not believe that this was the case on this occasion. He was surprised that Mr Pyers had moved inside, and he noted he appeared to take a shortened grip with the left hand and gone inside Mr Butcher.

[21] Mr Mulcay stated that he observed that I SAID IMRACN broke early in the score up losing some 70 to 80 metres before settling. His attention was then centred on the body of the field before he noticed I SAID IMRACN closing the gap leaving the back straight near the 1400 metres before catching the field near the 1200 metres.

[22] Mr Mulcay observed Mr Pyers rein I SAID IMRACN up on several occasions near the 1150 metres to improve forward inside the rear horse in the one out line which was PENTATONIX (D Ferguson). He was surprised to see I SAID IMRACN shift inwards and improve down in the passing lane near the 1100 metres to the inside of AURELIA COTTA (D Butcher), with Mr Butcher then taking evasive action when shifting his runner up the track away from I SAID IMRACN.

[23] I SAID IMRACN then improved along the passing lane to the inside of GODZILLER (P Ferguson) approaching the winning post near the 950 metres and shortly after, when the passing lane ended, raced inside the marker line rounding the stable bend. I SAID IMRACN continued in that position for the length of the back straight and rounding the home turn before then being taken out across the back of GODZILLER to the outside of the markers.

[24] Mr Mulcay said his initial reaction on witnessing I SAID IMRACN improve into the passing lane was that this runner must have encountered a gear issue as it appeared to be a clear breach of the Passing Lane Regulations given that the passing lane only becomes available for racing purposes in the final lap.

[25] Mr Mulcay reported the incident to the Chairman and asked for Mr Pyers to attend the Inquiry Room to enable the matter to be investigated. Upon the viewing the replays and hearing Mr Pyers' explanation, it became apparent that he had not realised how quickly he was actually catching the body of the field and had exercised extremely poor judgement when reining his gelding up which resulted in that runner improving into the passing lane where it then remained for a considerable distance. As a result, Mr Mulcay said he was of the opinion, and in total agreement with Mr Muirhead, that Mr Pyers be charged under r 869(3)(a) on the grounds that he drove incompetently.

[26] In reply to questioning by the Appellant, Mr Mulcay said that Mr Pyers apparently had considerable difficulty with I SAID IMRACN after it got to the inside and raced over the markers but it was the Appellant's earlier actions in reining the horse up that formed the basis of the charge.

[27] Mr Muirhead reaffirmed that the Respondent's view that the evasive action Mr Pyers took was a result of his chasing his horse up and catching the body of the field at a speed that was much greater than that of the field. He believed I SAID IMRACN had gone inside the markers to avoid running into the back of Mr Butcher. He demonstrated on the videos that Mr Pyers still had momentum when he joined the field. He was using his hands to rein the horse up and had not steadied I SAID IMRACN. He acknowledged I SAID IMRACN had done a good job to catch the field but Mr Pyers should have steadied the horse, which would have given it some respite as well.

[28] When I SAID IMRACN was in the passing lane Mr Muirhead believed Mr Pyers could have done more to keep control. He was upright in the sulky when he should have been pulling back. Greater corrective action than Mr Pyers had taken was required to ensure the safety of the other runners as I SAID IMRACN might have taken fright. Mr Pyers' actions in the last 250 metres were not a major part of the RIU case.

[29] Mr Muirhead was firmly of the view that Mr Butcher did not come back on to Mr Pyers, but that Mr Pyers went forward on to Mr Butcher. Mr Pyers should have done more earlier to pull his horse back. I SAID IMRACN was not over-racing as it caught the field. He noted that Mr Pyers had made no reference to GODZILLER at the original hearing.

[30] Significantly, the Stewards did not believe there was an easing of the pace when GODZILLER skied its head. He said while there was some reaction from Mr Butcher, he believed it was because he was being cautious and was trying to allow some room as there was a bend coming up and he had a horse racing inside of him. Mr Muirhead emphasised that Mr Butcher did return to his correct racing position and he believed he had shifted out as a reaction to Mr Pyers being to his inside. He acknowledged he had not spoken to Mr Butcher.

[31] Mr Muirhead agreed that Mr Pyers appeared to have realised he should not be in the passing lane. He was there for some time. Usually it would only be momentary, as other drivers would make space. Mr P Ferguson did not appear to have done so on this occasion.

[32] Mr Muirhead concluded his written submission by stating Mr Pyers' drive in this race, and in particular the bad judgement he had displayed over the middle stages, fell well below the standard expected of a licensed horseman. In his experience, the drive could only be described as incompetent and a breach of r 869(3)(a). The Appellant's driving display resulted in the betting patrons not getting a run for their money as his shift into the passing lane would result in his horse being disqualified from any dividend or stake bearing place under the Passing Lane Regulations. Such displays of incompetent driving undermined the public confidence in Harness Racing which was paramount.

#### **Decision as to breach**

[33] We are not able to assess with exactitude the distance I SAID IMRACN lost as a result of galloping before the start as the horse is out of picture shot for some time, but it is clear that it is well in excess of 50 metres and would appear to be at least 60 metres. The key consideration is that I SAID IMRACN lost significant ground. The horse did well to catch the field by the 1150 metres and the Appellant has emphasised the slow speed of the race, which allowed him to do so.

[34] Significantly, I SAID IMRACN was still progressing at speed when it caught up to the field with the straight and one further lap to race.

[35] It is our view that Mr Pyers has misjudged the speed at which the field was racing and as a consequence he is travelling quicker than the field when goes to slot in behind Mr Butcher. We accept GODZILLER does sky its head at about this time, but we do not believe this has had the impact on the field that Mr Pyers suggests. There is no sudden concertina effect through a lessening of the speed, for example. We do not believe that Mr Butcher has come back on to Mr Pyers but rather that because of the speed with which he was travelling Mr Pyers found himself at risk of running into the back of Mr Butcher. Rather than steadying I SAID IMRACN before tagging on to the back of the field, Mr Pyers is still reining the horse up.

[36] Evasive action, as Mr Pyers has stated, was required. He said he was unable to take hold and his movement into the passing lane was a prudent response to the situation in which he has found himself. Mr Pyers was concerned about the inside rail as this removed the option of going into the infield. He thus went into the passing lane and then endeavoured to race in the gap between the markers and the inside rail before returning to the track near the top of the home straight. However, I SAID IMRACN raced over a number of these markers and it was fortunate that the horse did not gallop and cause interference or that the markers did not flick out of the ground in the direction of the field.

[37] The Stipendiary Stewards allege that Mr Pyers could have made greater efforts to control I SAID IMRACN at this time. They are correct when they state that the Appellant was sitting fairly upright in the cart and was not leaning back markedly in order to restrain I SAID IMRACN. We accept Mr Pyers was concerned that the horse did not choke down and, in the heat of the moment, he decided to steer the horse into the passing lane and then inside the markers once the lane ended. The horse continued, it must be said, to race over the markers for quite some distance. We add when I SAID IMRACN returned to the track Mr Pyers has continued to rein the horse in the home straight. Mr Pyers has said this was because he simply wanted to finish the race and get I SAID IMRACN out of there. The horse was towards the rear of the field and easing I SAID IMRACN down at this time was certainly an option that was open to Mr Pyers.

[38] The Respondent has stated that it is the actions of the Appellant when he caught up with the field that is the primary basis of their case. We accept this and comment no further on his subsequent actions other than to say we appreciate the danger that Mr Pyers believed himself to be in at that time.

[39] The video evidence and that of Mr Mulcay is to the effect that having regard to the pace at which the field was racing, Mr Pyers was travelling too quickly when he attempted to slot in behind Mr Butcher. He had to take abrupt evasive action to avoid Mr Butcher's horse, AURELIA COTTA, which was racing immediately ahead of him and, in so doing, he ended up in the passing lane with a lap to race. We do not accept Mr Pyers' assertion that I SAID IMRACN was over-racing immediately prior to the horse catching the field. Mr Pyers was reining the horse up at this time.

[40] We believe a competent driver would have been aware of the contrasting speeds with which both he and the field were travelling and would have eased his horse prior to catching the field. Had Mr Pyers done so, he would not have been forced to take evasive action.

[41] Thus, we agree with the raceday decision that Mr Pyers' drive fell below the standard expected of a competent driver. The Appeal against the finding of incompetent driving is dismissed.

### **Penalty**

[42] Mr Pyers submitted that the 5-month suspension was a harsh outcome. It was severe. The horse's racing manners were a mitigating factor.

[43] Mr Pyers stated he intended to drive only trotters in the future. He was getting a team together and was training on his own track. He had six horses ready to race.

[44] Mr Muirhead submitted the penalty was appropriate. He produced Mr Pyers' record which evidenced the Appellant drove infrequently. The 5-month suspension was perhaps the equivalent of only 10 drives.

[45] The starting point in the Penalty Guide for a breach of this Rule is an 80-drive suspension or a fine of \$4,000. The 5-month suspension imposed by the Judicial Committee has clearly factored in the racing manners of I SAID IMRACN, Mr Pyers' good record, and the infrequency of his drives.

[46] The penalty is not inappropriate or manifestly excessive. The Appeal against penalty is dismissed.

### **Costs**

[47] The Respondent sought costs in the sum of \$172.50 for the typing of the transcript of the raceday hearing. The Appellant did not address this issue.

[48] The sum sought is fair and reasonable. We award costs to the RIU in the sum of \$172.50.

[49] There was a half day hearing. A contribution to the costs of the JCA is appropriate. Again, these must be fair and reasonable. We order costs in the sum of \$500.

Dated at Dunedin this 22nd day of December 2020.

Geoff Hall, Chairman

**Penalty:**