

Non Raceday Inquiry RIU v C J DeFilippi - Written Decision dated 25 October 2018 - Chair, Mr R McKenzie

Rules:

Repondent(s)/Other parties:

Name(s):

Decisions:

BEFORE A JUDICIAL COMMITTEE

HELD AT ASHBURTON

IN THE MATTER of the New Zealand

Rules of Harness Racing

IN THE MATTER of Information No. A10873

BETWEEN SP RENAULT,

Stipendiary Steward for the

Racing Integrity Unit

Informant

AND COLIN JOHN

DeFILIPPI of Broadfield,

Licensed Open Horseman

Respondent

Date of Hearing: 22 October 2018

Venue: Ashburton Raceway, Ashburton

Judicial Committee: Mr RG McKenzie (Chair), Mr G J Clapp (Member)

Present: Mr Renault, the Informant

Mr DeFilippi, the Respondent

Mr BR Negus, Licensed Public Trainer, Advocate for Mr DeFilippi

Date of Oral Decision: 22 October 2018

Date of Written Decision: 25 October 2018

RESERVED REASONS FOR DECISION OF JUDICIAL COMMITTEE

The Charge

[1] Information No. A10873 was filed by Stipendiary Steward, Mr SP Renault, against Licensed Open Driver, Mr CJ DeFilippi, alleging that Mr DeFilippi, as the driver of CLOVER LOU in the Race 5, Avon City Ford Cup Day Boot Party – Limited Remain Handicap Trot, at the meeting of New Zealand Metropolitan TC meeting held at Addington Raceway on 28 September 2018, he “failed to drive CLOVER LOU, out to the end of the race when having a reasonable chance of finishing 3rd”.

[2] Mr Renault produced a letter from Mr M R Godber, General Manager of the Racing Integrity Unit, pursuant to Rule 1108 (2), authorising the filing of the information. The information was served on Mr DeFilippi on 17 October 2018 and was heard at the meeting of Ashburton TC held at Ashburton Raceway on 22 October 2018.

[3] The charge and the Rule were read to Mr DeFilippi at the commencement of the hearing. He confirmed that he understood both the charge and Rule and that he denied the charge.

The Rule

[4] Rule 868 provides as follows:

(2) Every horseman shall drive his horse out to the end of the race if he has any reasonable chance of running first, second, third, fourth, fifth, or sixth.

Informant's Submissions

[5] Mr Renault presented the following written submissions to the hearing in conjunction with showing the side-on and head-on videos:

(1) CLOVER LOU drew barrier two in this race. From the start CLOVER LOU began well and went to the lead. The horse remained in that position until being challenged by outside runners in the home straight.

(2) Mr DeFilippi can be seen to urge CLOVER LOU near the 200 metres by slapping the horse with the outside rein on one occasion. Approaching the 150 metres Mr DeFilippi reaches down with his left hand and activates the removable deafeners. Mr DeFilippi again slaps CLOVER LOU once with the right rein near the 120 metres, 100 metres and 80 metres. As CLOVER LOU passes the 50 metres Mr DeFilippi urges the horse for the final time, with a slap of the right rein. From this point to the finish of the race, Mr DeFilippi sits motionless in the sulky.

(3) When Mr DeFilippi urges the horse for the final time it is clear to see that CLOVER LOU is holding third position at that time. CLOVER LOU is approximately one length ahead of the horse to its outside, RACHMANINOV, and a further half length ahead of SUCH FUN, which is improving down the outside of the track.

(4) CLOVER LOU is passed by SUCH FUN just short of the finish line and finishes in 4th place, beaten by a ½ head.

(5) Stewards' concerns with Mr DeFilippi's drive are from the 50 metres until the finish of the race. Mr DeFilippi shows no vigour from that point.

(6) The Judicial Committee in HRNZ v Tomlinson (2008) said:

Driving out is not defined in the Rules but it is recognised that this must involve demonstrable or discernible actions — in other words, it must be apparent to an observer that the driver has taken some action to get the best from a horse. Those actions should, as a minimum, involve some urging with the reins or using the whip on the horse, harness or sulky. Punters who invest money on horse races are entitled to expect this of a driver with a chance of running in the first six placings.

(7) Mr DeFilippi looks to his inside near the 100 metres and again approaching the 30 metres. When questioned on the night regarding this, Mr DeFilippi explained that this was because he was of the opinion that he had shifted into the passing lane and would have been disqualified for blocking the trailing runner.

(8) Looking at the head-on replay of the home straight, Stewards believe that there is always a run to the inside of CLOVER LOU for a trailing horse. EDEN CREEK was the horse following CLOVER LOU during the running. However, this horse failed to run on.

(9) At no stage, do you see Mr DeFilippi attempt to pull on the right rein and steer the horse outwards. If Mr DeFilippi was so concerned about this then surely, he would have made some attempt to shift ground outwards. He does not do this.

(10) Mr DeFilippi's obligations under Rule 868(3) require him to drive his runner out to the end of the race if he has a reasonable chance of finishing in the first six placings. It is entirely reasonable to suggest that CLOVER LOU did have a reasonable chance of finishing 3rd had Mr DeFilippi continued to drive his horse out to the finish line.

(11) This was CLOVER LOU's 9th race day start. The mare has trotted roughly on occasions in previous race starts. Trainer M Alfeld made a gear change on the horse prior to this race and added the whip to the horse's gear. The horse trotted well in the race in question, however Mr DeFilippi elected not to turn the whip and instead drive the horse out using the reins only.

(12) Over the concluding stages is where people viewing, especially those who had invested on the race, would expect to see a driver doing everything reasonable to ensure the horse was fully driven to the line. Instead what everyone saw was a horseman who sat motionless in the sulky over the final 50 metres. Mr DeFilippi's lack of vigour is best highlighted when viewing his drive on CLOVER LOU alongside the actions of the other drivers in the race. Those drivers were all showing vigour required of them over the final stages.

(13) It can only be speculation to say what the outcome of the race would have been had Mr DeFilippi showed any vigour from the 50 metres. There is an obligation on every driver to leave no doubt in the mind of anyone viewing the race that the horse is driven out to obtain the best possible placing.

(14) The Appeals Tribunal in C DeFilippi v HRNZ (2006) said:

To a degree, compliance with the particular rule is a matter of perception because the drive must be viewed objectively and members of the public watching the race should not be dissatisfied or disaffected by the lack of vigour and action of a driver in the latter stages of a race. The purpose of the rule is to ensure that horses with a prospect of finishing in the money are given their best chance of so doing. We agree with the Judicial Committee's interpretation of the rule which is an interpretation taken from the 1998 appeal case of

Greer. In that case, the Appeals Tribunal stated: "We find that the obligation that arises under Rule 868(3) requires at least some action by the driver to urge his horse on, that is some demonstrable or discernible movement by the driver so that the driver can be seen to be driving his horse out.

(15) All drivers are expected to display a concerted effort when they have a reasonable chance of finishing in the first six placings.

Respondent's Submissions

[6] Mr Negus submitted that the head-on video replay showed quite clearly that the horse was lugging in to the passing lane. The Rules state that a horse may not shift into the passing lane. CLOVER LOU had moved into the passing lane "two feet", he submitted. Mr Negus agreed that Mr DeFilippi had not pulled the horse to the right as, to do so with a tiring trotter, would result in its breaking. The horse had moved into the passing lane because it had been tried two or three times with the rein and it had failed to respond. Mr De Filippi had, Mr Negus submitted, attempted to straighten the horse at the 100 metres but it continued to "bore in". Each time he hit the horse with the rein it had failed to respond. It had run its race, he said. Further, use of the whip does not necessarily mean that a horse would go better. CLOVER LOU is a horse of limited ability, he said.

[7] Mr DeFilippi said that CLOVER LOU had not raced for eight weeks. She had a workout at Motukarara six days prior to the race, in which she had led and finished 3rd out of five, 4½ lengths from the winner. The horse had been 9/9 in the betting in this race and run 4th.

[8] Mr Negus added that the horse was not going to go any faster unless Mr DeFilippi "chased" it into the passing lane. He submitted that Mr DeFilippi could be seen to be attempting to straighten the horse to avoid breaching the Rule relating to going into the passing lane.

[9] Mr Murray Alfeld, trainer of CLOVER LOU, gave evidence to the hearing and said that the mare is known to go really rough in the straight and has to be held together. Leading in to this race, she had a workout at Motukarara in which she led and was passed by two horses in the straight. She had to be "held" all the way up the straight. She used to run out but, in this race, she had run in. He had been pleased with her performance in running 4th in the race, her first at Addington Raceway.

[10] Mr Negus asked Mr Alfeld if, in his opinion, the horse had been well-tried before Mr DeFilippi had to stop driving and straighten her. He said the mare had been well-tried and had run into the passing lane. It was not permissible to drive a horse out once it had run into the passing lane. This was the first time that a whip had been carried, Mr Alfeld said, but he acknowledged that it had not been used.

[11] When questioned by Mr Renault, Mr Alfeld said that CLOVER LOU was not a horse that could be driven out. On this occasion, he was pleased how the horse had trotted. She had got tired at the end and was no "star". However, she was a good beginner and was able to race handy, he said.

[12] Mr DeFilippi, in response to a question from the Committee, accepted that there was room for another horse in the passing lane until the last 50 metres of the race.

[13] Mr Negus submitted that there would have been no perception on the part of the public that the horse had not been tried.

[14] Mr DeFilippi questioned Mr Renault as to whether horses have been relegated for running into the passing lane. Mr Renault answered that if it had blocked another runner and caused interference, a horse could be relegated in such circumstances.

[15] In conclusion, Mr Renault submitted that Mr DeFilippi was required to either attempt to get the horse out of the passing lane, not necessarily by pulling hard on its head, or to drive it out. His obligation was to drive his horse out to the finish. Mr Negus disagreed. Mr DeFilippi's obligation was to prevent the horse going further into the passing lane, he said. The horse's head was turned outwards and it had maintained momentum, as far as it was able to. The horse was tired. It had already been hit with the rein 4-5 times prior to the 50 metres, Mr Negus said.

Decision

[16] Mr DeFilippi is charged pursuant to Rule 868(3) with failing to drive CLOVER LOU out to the end of the race when having a reasonable chance of finishing 3rd. CLOVER LOU finished in 4th placing, the official margin between 3rd and 4th being a ½ head. It is not necessary for the Informant to prove that the horse would have finished in 3rd placing, but only that there was a "reasonable chance" of doing so.

[17] Mr Renault said that Stewards' concerns were with Mr DeFilippi's drive over the final 50 metres of the race during which, it was alleged, he showed no vigour.

[18] Mr Renault alleged that Mr De Filippi had urged CLOVER LOU near the 200 metres by slapping the horse with the right rein on one occasion. From that point, Mr DeFilippi, after activating the removable deafeners, again slapped the horse with the rein near the 120 metres, the 100 metres and again near the 80 metres. Passing the 50 metres, Mr DeFilippi urged the horse on one final occasion by a slap with the rein and then sat motionless in the sulky to the finishing line, Mr Renault alleged. The Committee observed that

CLOVER LOU lost 3rd placing in the last stride.

[19] Mr Renault demonstrated on the side-on video replay that, at the 50 metres mark on the inside of the track, CLOVER LOU was approximately 1½ lengths ahead of SUCH FUN, which eventually beat it for 3rd placing.

[20] Mr DeFilippi had told Stewards on racenight that he had been concerned that he had shifted into the passing lane and would have been disqualified for blocking the trailing runner had he not attempted to keep his horse out of the passing lane. This was to be a critical element of Mr DeFilippi's defence to the charge. The Committee was shown head-on video footage of the run home. Mr Renault submitted that there was always a run available for the trailing runner, but that horse had failed to run on, he said. Furthermore, Mr Renault alleged, at no stage did Mr DeFilippi attempt to pull on the right rein and steer his horse outwards.

[21] It is significant that neither Mr Negus nor Mr DeFilippi disputed Mr Renault's submission that Mr DeFilippi failed to drive the horse out over the final 50 metres. The Committee inferred from that that it was accepted that he had failed to do so. The defence put forward by them relied on other factors which factors, it was submitted, prevented Mr DeFilippi from driving his horse out.

[22] The defence to the charge as presented by Mr Negus and Mr DeFilippi was, essentially, that the horse had been running into the passing lane and to have attempted to straighten it would have resulted in its breaking, it had earlier failed to respond when struck with the rein and that, essentially, it was a tired horse and had run its race.

[23] Mr Renault referred to the decision of the Appeals Tribunal in Greer (1998), a case involving a breach of the same Rule 868(3). In its decision, the Tribunal referred to the mandatory requirement of the Rule – that is to say, a horseman **shall drive his horse out**.

The Tribunal went on to say:

Drive itself is not defined in the rules . . . we find that the obligation that arises under this rule requires at least some action by the driver to urge his horse on; that is, some discernible movement by the driver so that the driver can be seen to be "driving his horse out".

[24] In another Appeals Tribunal decision (DeFilippi 2006), the Tribunal said:

To a degree compliance with the particular rule is a matter of perception because the drive must be viewed objectively and members of the public watching the race should not be dissatisfied or disaffected by the lack of vigour and action of a driver in the latter stages of a race.

[25] The requirement to drive out was dealt with in the 2008 case of Tomlinson in which the Judicial Committee elaborated on the requirement to drive out. In its decision, the Committee said:

Driving out is not defined in the Rules but it is recognised that this must involve demonstrable or discernible actions – in other words, it must be apparent to an observer that the driver has taken some action to get the best from a horse. These actions should, as a minimum, involve some urging with the reins or using the whip on the horse, harness or sulky. Punters who invest money on horse races are entitled to expect this of a driver with a chance of running in the first six placings.

[26] The Committee carefully viewed the video replays of the race. CLOVER LOU had begun well from the 2600 metres standing start and led from barrier rise and still led as the field turned into the final straight. Mr DeFilippi urged it once with a slap of the rein at the 200 metres, Some 80 metres later, after activating the removable deafeners, he slaps the horse with the rein again. He repeats this at the 100 metres and 80 metres and, on one final occasion, passing the 50 metres. He did not further urge the horse inside the final 50 metres, which was not contested by or on behalf of Mr DeFilippi.

[27] It is significant in the Committee reaching its finding that, at the 50 metres, CLOVER LOU was approximately one length in front of RACHMANINOV, with SUCH FUN a further half length behind that runner. SUCH FUN finished fast from that point to take 3rd placing off CLOVER LOU, virtually in the last stride. We repeat that this is significant. This interpretation of the replay was put to the hearing by Mr Renault and not contested by or on behalf of Mr DeFilippi.

[28] We accept that Mr DeFilippi has urged his horse by several slappings of the right rein until the point 50 metres from the finishing line and, like Mr Renault, the Committee has no issue with his drive to that point, happy that Mr DeFilippi's actions were in accordance with the requirements of the Rule.

[29] Mr DeFilippi has explained his lack of action over the last 50 metres, to which the charge relates by saying that CLOVER LOU had nothing more to give and had not responded to the earlier encouragement that he had given it. Furthermore, he maintained, it was inclined to drift down into the passing lane and he was concerned about following horse or horses, having regard to the requirement in the Regulations to not move into the passing lane and to maintain as straight a course as possible in the home straight.

[30] However, the Committee's view of the video replays was that they did not support Mr DeFilippi's explanation for his lack of action. By sitting still over the last 50 metres with no actions whatsoever, either with the reins or the whip, which remained throughout tucked under his right arm, there was no "demonstrable or discernible actions" to drive his horse out.

[31] The Committee is satisfied that Mr DeFilippi failed to drive his horse out to the end of the race.

[32] The Rule also has a requirement that CLOVER LOU must have had a “reasonable chance” of running first, second, third, fourth, fifth or sixth, in this case 3rd. CLOVER LOU finished in 4th placing, beaten by the very narrow margin of a ½ head for the 3rd placing. The Committee is satisfied that CLOVER LOU had a better than “reasonable chance” of finishing 3rd had Mr DeFilippi continued to drive her out to the end of the race. It is probable that even a very minimum amount of urging over the final 50 metres would have led to a different result.

Decision

[33] The charge is found proved.

Penalty Submissions

[34] Mr Renault informed the Committee that Mr DeFilippi has had 36 drives this season and 288 drives in the 2017/2018 season. He has a clear record under the Rule.

[35] Mr Renault then referred to the Penalty Guide starting point for a breach of the Rule – a 10 drives suspension or a \$500 fine. Stewards are seeking a term of suspension in this case, he said. Mr DeFilippi averages around 3-4 drives per meeting and, on that basis, Stewards were submitting for a 3-days’ suspension.

[36] Upcoming meetings that would be encompassed in a term of suspension were then looked at. Mr DeFilippi expressed a preference for a fine if the Committee were prepared to consider it.

Reasons for Penalty

[37] In considering penalty, the Committee had regard to the Penalty Guide starting point referred to by Mr Renault in his penalty submissions. The first matter to be considered was whether a suspension or a fine was an appropriate penalty for this breach. The breach was in the mid-range.

[38] After considering all relevant submissions, including the mid-range nature of the breach, Mr DeFilippi’s previous good record over a long period involving very many drives and, to some extent, the possible wayward tendencies of the horse, the Committee decided that a fine would be a sufficient penalty. It is a further factor that the Committee finds that there was no intent on Mr DeFilippi’s, and we stress this point, and indeed it was not alleged. We believe that Mr De Filippi has been guilty of an error of judgement on this occasion.

[39] The Penalty Guide impliedly contemplates that, in any particular case, a Judicial Committee is free to find that a suspension is not justified. In this case, the Committee has taken a step back and looked at the level of offending and all of the other circumstances referred to, and concluded that a fine rather than a term of suspension is the appropriate penalty.

[40] From the starting point of \$500, which we accept is appropriate, the Committee is able to give Mr DeFilippi a discount in further recognition of his good record and we have fixed that discount at \$50.

Penalty

[41] Mr DeFilippi is fined the sum of \$450.

R G McKenzie

Chair

Penalty: