

**Non Raceday Inquiry RIU v G Lee - Decision as to Penalty dated 26 February 2018 - Chair, Prof G Hall**

**Rules:**

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

**Name(s):**

**Decisions:**

**BEFORE A JUDICIAL COMMITTEE OF**

**THE JUDICIAL CONTROL AUTHORITY**

**UNDER THE RACING ACT 2003**

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

**BETWEEN RACING INTEGRITY UNIT (RIU)**

**Informant**

**AND MR GORDON LEE**

Open Horseman/ Licensed Trainer

**Respondent**

**Information:** A10401

**Judicial Committee:** Prof G Hall, Chairman

Mr M Conway, Member

**Appearing:** Mr L Tidmarsh, Stipendiary Steward, for the Informant

The Respondent in person

**Date of hearing:** 4 February 2018

**Date of decision:** 26 February 2018

**DECISION OF JUDICIAL COMMITTEE AS TO PENALTY**

[1] In our reserved decision of 13 February last we found a charge of careless driving against the respondent, Mr G Lee, proved. This charge related to his drive of the horse MAGNATE MARA in Race 10, the FULTON HOGAN/WEDDERBURN TAVERN MOBILE PACE, at the Central Otago Trotting Club meeting held at Omakau on 2 January 2018.

[2] We found Mr Lee to be in breach of r 869(3)(b) in that Mr Lee drove carelessly near the 650 metres when he failed to concede his position to Mr McIlwrick resulting in his runner contacting the sulky of that runner, pacing roughly and breaking in consequence.

[3] We required the parties to provide written submissions as to penalty and we have now received these.

[4] The penalty guide for Judicial Committees adopts a starting point of a 10-drive suspension or a \$500 fine for a breach of r 869(3)(b).

**Informant's submissions**

[5] The RIU assessed the level of carelessness to be mid-range. As demonstrated on the video coverage, Mr Lee attempted to hold SENORITA MARGARITA from shifting outwards and obtaining the one-one position for a distance of around 50 metres. Due to Mr Lee's carelessness in failing to concede his position to SENORITA MARGARITA, his horse, which he co-trains, MAGNATE MARA, was hampered and galloped out of contention, along with several trailing runners, namely IODEAN and CLIFTON TACTIC, both of which were inconvenienced.

[6] When considering the matter of mitigation, the Stewards acknowledged that Mr Lee's driving record is exemplary, with no breaches under this rule in the past 12 months. Mr Lee is an experienced horseman who plies his trade in the Southland and Otago region in training partnership with his brother Colin. Mr Lee's last charge under this rule was almost 3 years ago on 21 March 2015 when the

JCA imposed a fine of \$200.

[7] When assessing aggravating factors, the RIU emphasised that the betting public had been substantially affected by Mr Lee's actions in that any wager placed on MAGNATE MARA in the race, had lost the opportunity for a return.

[8] In the current racing season Mr Lee has driven on 12 occasions and last season on 85 occasions. Mr Lee usually has 1 to 2 drives at a meeting, predominantly driving only his own horses.

[9] Stewards believed that a fine in the vicinity of \$500 was the appropriate penalty.

### **Respondent's submissions**

[10] Mr Lee provided brief submissions with the assistance of Mr Lawson, an experienced lay advocate.

[11] Mr Lawson emphasised, as the RIU had rightly pointed out, that Mr Lee's record is exemplary.

[12] Mr Lawson submitted that Mr Lee should not be punished nor disadvantaged by defending this charge, as was indicated by the complex and lengthy JCA report filed subsequent to the hearing. This was not a simple issue.

[13] Mr Lee assessed the level of carelessness as at the bottom of the range; not mid-range as assessed by the RIU.

[14] Magnate Mara was 7/7 in the betting in a 12 horse race field. It thus could hardly be stated that the betting public had expected him to win.

[15] The key point concerning penalties for any judicial system was submitted to be consistency of penalty. The respondent identified the most recent penalties for the breach of this rule:

C.D. Thornley 28/1/2018 \$ 300 fine

J. Best 4/2/2018 2 day suspension

S. O'Reilly 3/2/2018 3 days suspension (second offence )

N. Purdon 2/2/2018 \$ 350 fine

R. Austin 27/1/2018 \$ 300 fine

F. Schumacher 12/1/2018 \$ 250 fine

B. Hope 12/1/2018 \$ 450 fine

S. O'Reilly 10/1/2018 \$ 300 fine

B. Hutton 5/1/2018 \$ 200 fine and 2 days suspension

[16] On the basis of consistency, Mr Lawson submitted that Mr Lee should receive a \$300 fine.

[17] Mr Lee added that the modern technology with respect to the design of the new speed carts clearly suggests, "It infringes as to what is possible, and what is not possible in these types of push out situations." He emphasised that if it was accepted the complete manoeuvre took 30 metres, then in actual real time that was less than 2.25 seconds.

[18] Mr Lee said he personally believed, "Our Industry needs to seriously address the Push Out Rule commencing the last 1,000 metres before a driver or horse is critically injured on the receiving end of a push out. It is unacceptable to allow direct contact from a wheel and steel cart on a horse's legs."

### **Decision**

[19] We address first the need to assess the nature and gravity of the breach.

[20] With reference to the time that Mr Lee had to react, we said at [39] in our decision of 13 February: "Mr Tidmarsh has estimated that Mr McIlwrick has endeavoured to push Mr Lee wider on the track over a distance of some 50 metres. We find it difficult to estimate the distance from the videos but would conclude it was a distance of at least 30 metres."

[21] Thus in finding the charge proved, we determined that the incident had continued for at least 30 metres. We further said in our decision of 13 February at [43]: "We accept there was not much time for Mr Lee to react, but the head of MAGNATE MARA being turned inwards strongly suggests he did react and momentarily fought to maintain his position."

[22] We thus would view the breach as being at the bottom end of mid-range. We see no need to raise or lower the starting point in the JCA Penalty Guide of a \$500 fine, when assessing the circumstances of the breach.

[23] We have regard to personal aggravating and mitigating factors. There are no aggravating factors. Mr Lee was clearly entitled to defend the charge.

[24] The significant mitigating factor is the respondent's record. The RIU described it as exemplary. We concur. While not the busiest Southland driver, he does drive regularly on racedays in that area. And we understand he ventures further north, not infrequently. Three years without a breach is noteworthy. A discount of \$150 is appropriate having regard to this record.

[25] Mr Lee is fined the sum of \$350.

[26] The matter was heard on a raceday. There is no order as to costs.

[27] With reference to the need to address the push out rule in light of modern cart design, we understand that Mr Lee has a prominent role in the NZ Harness Racing Trainers and Drivers Association and is actively involved in discussion around safety issues. We encourage him in these endeavours.

Dated at Dunedin this 26th day of February 2018.

Geoff Hall, Chairman

**Penalty:**