

Non Raceday Inquiry RIU v P Butcher - Decision dated 21 March 2018 - Chair, Mr A Godsalve

Rules:

Repondent(s)/Other parties:

Name(s):

Decisions:

NON RACEDAY INQUIRY

IN THE MATTER OF The New Zealand Rules of Harness Racing

BETWEEN RACING INTEGRITY UNIT

Mr Steve Mulcay, Senior Stipendiary Steward

Informant

And Mr PHILLIP BUTCHER, Licensed Open Horseman HRNZ

Respondent

Rule 303(2)

Information No. A10554

Judicial Committee: Mr AJ Godsalve, Chair – Mr AJ Dooley- Committee Member

Appearing: Mr PA Butcher, Respondent

Venue: Cambridge Raceway

Date of Hearing: 18 March 2018

Date of Decision: 21 March 2018

DECISION OF JUDICIAL COMMITTEE

BACKGROUND

This matter has its background in race 9 at the Auckland Harness meeting on 23rd February 2018. As a result of concerns held by the raceday Stipendiary Stewards over the way two horses (MAX PHACTOR and WRANGLER) had been driven, an investigation was undertaken. This culminated in the Information, the subject of this hearing, being submitted.

Information A10554 alleges that:

“On the 23rd day of February, at Auckland, Mr PA Butcher. Driving MAX PHACTOR (in race 9) committed a breach of Rule 303(2), in that he misconducted himself by directing abusive and threatening language to Junior Driver, J MacKinnon (driving WRANGLER) during and following the running of this event”.

RULE 303(2) provides: -

No person or body who holds a permit or licence under these Rules and no owner, trainer, breeder, stablehand, unlicensed apprentice or racing manager shall misconduct himself or fail to comply with any request, direction or instruction of any Stipendiary Steward, Racecourse Inspector, or Starter.

Penalty

Rule 1003 (1) provides: -

A person who commits a breach of any Rule shall be liable to the following penalties

(a) A fine not exceeding \$10,000 and/or

(b) Suspension from holding or obtaining a licence for a period not exceeding 12 months and/or

(c) Disqualification for a period not exceeding 12 months.

Plea

At the commencement of this hearing the relevant Rule was read to Mr Butcher by the Chairman. Mr Butcher acknowledged that he understood the Rule and confirmed that he admitted the breach.

Summary of Facts

Mr Mulcahy submitted a written Summary of Facts, as follows:

1. Stewards had concerns with the respective driving tactics adopted by J MacKinnon (WRANGLER) and P Butcher (MAX PHACTOR) during the running of this race. (Race 9, Auckland Trotting Club 23rd February 2018).
2. Driver J MacKinnon was interviewed following the event with the assistance of trainer R Dunn, and during the course of the interview made reference to abusive and threatening comments made to him by Mr Butcher.
3. Driver P Butcher was interviewed on 2 March in relation to both his driving tactics and the alleged comments. Mr MacKinnon repeated what he recalled being said to him and this contained 'profane' language with repeated use of the 'F' word. Mr MacKinnon also made reference to Mr Butcher threatening to 'drop him and put him in a chaff sack'. Mr Butcher clarified this by saying what he had actually said was 'I should drop you and they would be picking you up in a chaff sack, but I have too much respect for the other drivers'.
4. Mr Butcher agreed with everything else that was stated by Mr MacKinnon.
5. Mr Butcher then apologised to Mr MacKinnon and Mr Dunn with the respective apologies being accepted (in the presence of the Stewards).
6. The matter was then adjourned to be given consideration.
7. Following consultation with the Chief Stipendiary Steward and General Manager of Stewards, and after receiving written permission from the Operations Manager, it was decided to issue Mr Butcher with a charge under Rule 303(2) and this information was given to him today by phone.

Film - the films of the race in question were available and were narrated by Mr Mulcahy. He identified the two horses concerned. WRANGLER was leading the race after drawing barrier 1. MAX PHACTOR had drawn 4. From about the 1500m mark to about the 1300m mark MAX PHACTOR challenged for the lead on the outside of WRANGLER. It was apparent that Mr MacKinnon had no intention of relinquishing the lead, in spite of Mr Butcher using some vigour to try to get MAX PHACTOR past WRANGLER. Mr Mulcahy pointed out that from about the 1200m mark it was clear that Mr Butcher was directing 'a lot' of comment to Mr MacKinnon while still attempting to get past him. MAX PHACTOR eventually reached the lead when WRANGLER began to tire.

Mr Mulcahy noted that WRANGLER had finished last, some 20 lengths behind the field. MAX PHACTOR was beaten 4½ lengths. Mr Mulcahy then confirmed that Stewards had interviewed Mr MacKinnon, and later Mr Butcher over their driving tactics and had been advised of the matters referred to earlier which resulted in this charge being laid against Mr Butcher. It transpired that the verbal attack by Mr Butcher on Mr MacKinnon had continued after the race when the horses were returning to the stabling area.

The Committee asked Mr Mulcahy to clarify Mr MacKinnon's position when he was challenged by Mr Butcher, particularly any obligation he may have had to relinquish the lead. Mr Mulcahy stated that Mr MacKinnon was not required to hand-up the lead to Mr Butcher.

However, he referred to Rule 868(2), which relates to the obligation on drivers to take all reasonable and permissible measures to ensure their drive wins the race or obtains the best possible position. 'Reasonable' in this context could relate to drivers not engaging in 'speed duels' which may negate their chances at the finish.

A discussion ensued where the Committee and Mr Mulcahy confirmed that in their experience, drivers usually handed-up the lead when challenged in situations like this as it was often counter-productive to horses' chances not to do so.

Documents

Mr Mulcahy submitted in evidence a copy of a letter signed by the General Manager of the RIU dated 18 March 2018, in which authority is given for an Information to be lodged against Mr Butcher for breaching Rule 303(2).

Mr Butcher

Mr Butcher told the Committee that he apologised for the manner in which he had spoken to Mr MacKinnon. He said that he knew he shouldn't have 'done it'...that he was not in a 'good space' and that he was very disappointed with himself in that he was not a horrible person.

Decision

As Mr Butcher has admitted the breach we find that this charge is proved.

Penalty Submissions

Mr Mulcay submitted that Mr Butcher had never breached this Rule; that he had shown contrition; and that he had admitted this breach. He added that he considered that Mr Butcher's behaviour brought the Industry into disrepute and added that the Stewards have a duty of care to ensure as much as possible that industry participants are provided a work place free from 'bullying'. He added that he believed that an aggravating factor was that the behaviour complained of was prolonged and continued after the horses had pulled up at the end of the race.

Mr Mulcay referred to an earlier prosecution (RIU v White) and stated that he considered a similar penalty was appropriate in this case. He said that if the Committee determined that a suspension was an appropriate penalty he believed it should be a 4 day suspension. He added that he believed Mr Butcher was likely to have 5 drives a day, and a 4 day suspension would result in him losing approximately 20 driving opportunities. Mr Mulcay said that in the case of a monetary penalty being imposed, Stewards submitted a fine of around \$600 to be appropriate.

Mr Butcher said again that he was 'not in a good head space' and would prefer a suspension as opposed to a fine.

Penalty Discussion

The JCA guidelines on penalty (2015) for Harness Racing do not list a starting point for the general charge of Misconduct. The starting point for general Misconduct under the Thoroughbred Racing guidelines is 'fact dependant'. It can be therefore inferred that the starting point for general Misconduct for Harness Racing is also 'fact dependant'.

Previous matters which have been dealt with by various JCA Committees where language and/or threatening behaviour has been involved have in the main not been where a race was underway...mostly they have been where language has been directed at Officials, and/or other industry participants at times other than during competition.

A serious charge in the Thoroughbred code (Jockey 'W') in 2015 involved threats and offensive language, including during a trial race, and ultimately led to a 12 month disqualification. We mention this to illustrate the seriousness of how this type of offending is viewed by racing Authorities, given the safety issues surrounding racing generally. Horseracing, either code, is at times dangerous and challenging, and participants should not be put at risk by threats from other drivers or riders.

In 2009 another rider (Jockey 'W', not the person referred to above) was fined \$2000 for using insulting and threatening language to another jockey in the weighing area after an inquiry.

In 2017 driver 'D' was fined \$850 after being charged with using offensive and insulting language to Officials while being interviewed about a raceday incident.

Reasons for Penalty

As stated above we approached this Penalty decision on the basis that there is no starting point, and penalties are 'fact dependant'.

We accept the fact that Mr Butcher has admitted the breach and has no prior history of any breaches under the general 'Misconduct' Rule. He has shown remorse. He made reference twice to the fact that he was 'not in a good head space' at present. That does not excuse his behaviour. Mr Butcher is a mature man and has been engaged in the Harness industry many years. We understand he also has employment outside the industry.

Mr Mulcay has submitted that the Stewards' preferred penalty involves a suspension of 4 days, which in his estimation could result in Mr Butcher not driving in around 20 races.

The Committee finds difficulty in accepting that Mr Butcher would drive 5 times each raceday. Mr Butcher himself stated that he was not driving as often now as he has in the past. While he is a primary driver for one stable we are aware of, it is a fact that on some days he only drives once or twice.

Judicial Committees are empowered to assess penalties on the basis that they are 'meaningful', i.e. that they will have a significant and appropriate impact on the offending party; and that they are seen to be meaningful to other industry participants, and the public at large.

We therefore believe that to achieve a meaningful penalty we have to consider a fine.

In assessing a penalty, we look at the mitigating and aggravating factors. Clearly the fact that Mr Butcher threatened physical harm to Mr MacKinnon is of real concern. It would be naive to think that drivers and jockeys don't take issue with others during races when things 'don't go their way'. That is in the nature of competition. However, in this case Mr Butcher has gone past that and his threatening language to Mr MacKinnon cannot be condoned. It has to be said that Mr MacKinnon's driving may have been a contributing factor, indeed the Stipendiary Stewards investigated the way in which both he and Mr Butcher drove their horses in that race. However, Mr Butcher is an experienced Open Horseman, while Mr MacKinnon is a Junior Driver and it is not unreasonable to expect a better standard of behaviour from Mr Butcher.

The Committee therefore determined that this matter would be dealt with by way of a fine.

We adopted a starting point of \$800, and after taking into account Mr Butcher's admission, his clear record, and his apparent contrition, arrived at a figure of a fine of \$600.

Penalty

The Committee therefore imposed a fine of \$600 on Mr Butcher.

As this matter was heard on a raceday there was no order made in respect to costs either to the JCA or the RIU.

Alan Godsolve

Chair

Penalty: