

Non Raceday Inquiry RIU v R Holmes - Decision dated 11 March 2019 - Chair, Mr D Jackson

Rules:

Repondent(s)/Other parties:

Name(s):

Decisions:

BEFORE A JUDICIAL COMMITTEE

HELD AT CHRISTCHURCH

IN THE MATTER of the New Zealand Rules of Harness Racing

IN THE MATTER of Information No. A7744

BETWEEN Racing Integrity Unit

N YDGRN

Chief Stipendiary Steward

Informant

AND ROBBIE HOLMES

Open Horseman

Respondent

Rule Breach: 868(2)

Hearing Date: 22 February 2019

DECISION

1. Mr Holmes defends a charge that he breached Rule 868(2) in that when driving "Tehoro Dazzle" in race 5 at the New Zealand Metropolitan Trotting Club meeting on 25 January 2019:

"In the run home you failed to take an available inside run when it was both reasonable and permissible to do so and therefore failed to ensure your horse finished in the highest possible placing."

2. Put simply, the allegation is that Mr Holmes failed to take the passing lane when it was both reasonable and permissible to do so. "Tehoro Dazzle" finished sixth.

3. Rule 868(2) reads:

Every horseman shall take all reasonable and permissible measures at all times during the race to ensure that his horse is given full opportunity to win the race or to obtain the best possible position and/or finishing place.

4. Mr Ydgren demonstrated the incident on the videos. He demonstrated that the respondent was 4 back and racing on the pylons at the 400 metres prior to entering the run home. Mr Ydgren further showed that Mr Holmes had worked "Tehoro Dazzle" to the pylons having started from the second line of the mobile barrier draw (#12). In short, Mr Holmes had done well to get "Tehoro Dazzle" into that position from the draw.

5. Mr Ydgren demonstrated that the leading horse at the top of the straight was Mr Blair Orange's drive, "Unique Marshall", which had raced about half a cart width away from the pylons throughout the turn into the straight. Mr Orange was spoken to by Stewards and explained that he had taken "Unique Marshall" wide of the pylons because of the horse's tendency to "lay inwards on the bend", which was visible from the videos. Mr Orange told Stewards that he wanted a buffer zone so as not to strike the pylons. Mr Ydgren confirmed that Mr Orange had been spoken to about the resulting impact on trailing runners (either behind him or wider coming around him) where racing in the lead but out from the pylons.

6. Mr Ydgren demonstrated that at the 350 metres Mr John Dunn, driving "Shpeedy", who was racing 3 back on the fence, moved away from the back of the then trailing horse. For a short distance Mr Holmes followed Mr Dunn but then moved back down to the

pylons in order to follow Mr House, driving "Gunnery Coin", and settled 1.5 lengths behind that horse but in the trail. By that point, Mr Ydgren demonstrated that Mr House was in front and on the pylons with Mr Orange to his immediate outside. Mr House had improved his position to the inside of Mr Orange and taken advantage of the width of Mr Orange on the turn into the straight. This move made Mr House the lead horse on the running line before the commencement of the passing lane.

7. Soon after entering the straight, Mr House maintained a straight line parallel to the passing lane (in accordance with his obligations under the Rules as the leading horse in the race with an unimpeded run to the finish line) with the passing lane, therefore, left for Mr Holmes to exploit. However, Mr Ydgren demonstrated that rather than take the passing lane, Mr Holmes chose to follow Mr House and then with approximately 125 metres left to move towards the outside of Mr House and follow Mr Orange. However, in doing so he literally ran out of racing room such that Mr Holmes effectively had to stop driving "Tehoro Dazzle" with approximately 60 metres or so left to run in the race.

8. Mr Ydgren submitted on the videos that a shift down into the passing lane for Mr Holmes was clearly permissible. Mr House was at least one cart width outside the lane. Mr Ydgren submitted that when assessing whether it was reasonable for Mr Holmes to take the passing lane, or otherwise to take the outside line which he did - there were several factors to consider namely that his taking the outside line showed a lack of awareness of the change in the leader prior to the commencement of the passing lane, and that the passing lane was clearly the better percentage option for a trailing horse with horses to its outside. Further, Mr Ydgren submitted that this was not a split second decision for Mr Holmes. Rather, this was a situation which had developed from the 400 metres and which Mr Holmes had misinterpreted at the expense of the horse's connections.

9. Mr Ydgren concluded by submitting that by taking the outside run, Mr Holmes exposed "Tehoro Dazzle's" performance to factors beyond his control such as other runners shifting ground or otherwise weakening; all the while the passing lane remaining free. As it transpired, that is what happened with Mr Holmes running out of clear racing room from the 120 metres onwards. On Mr Ydgren's analysis, had Mr Holmes taken the passing lane his horse may well have finished 3rd or 4th. For these reasons Mr Ydgren submitted that Mr Holmes was culpable.

10. Mr Holmes made a number of submissions in his defence. By reference to the video Mr Holmes showed Mr Orange at the turn and prior to the passing lane some $\frac{3}{4}$ of a cart width out from the markers. He said that that was the last time that his vision was not impaired and that, at that stage, to his mind Mr House did not have a clear run and was not the lead horse at that moment, which made Mr House entitled to the passing lane as the trailing horse. He submitted that his vision was impaired as he passed the commencement of the passing lane and that he determined at that point that the lane was not available to him at all. Rather, he determined at that stage to get onto Mr Orange's back to save ground noting that, if as a rule you take the passing lane and it closes on you, your horse covers extra distance. As a rule therefore Mr Holmes submitted that drivers tend to take the leaders back in order to give them options up the straight. Mr Holmes said he felt Mr Orange was wide and going wider, which would enable "Tehoro Dazzle" to take a gap between Mr House and Mr Orange.

11. At the passing lane Mr Holmes demonstrated that for him to come from 4 back on the running line at the 400 metre mark, he would have to travel .6 of a second quicker than the lead horses to run a position. In this race they ran the last quarter in 30.7 he said. He felt Tehoro Dazzle would have to have run quicker than 30 seconds for its last quarter to get close to the leaders. He emphasised that the horse has never finished quicker, when winning its three races, than 30.5, 30.5. and 30 seconds and that that is her "Sunday best". He submitted that the horse ran well, that he chased her up the straight and activated her ear plugs and even then had not made the helmet of Mr Orange at the finishing post. He submitted that if he had taken the inside lane he would not have gotten closer or travelled quicker. He was, he said, sixth at the turn and sixth at the finish. When questioned Mr Holmes confirmed that he knew the lane was there but that he felt Mr House was entitled to it. Until Mr House moved slightly down, he had already made his decision and gone onto Mr Orange's back, he said.

Decision

12. We have listened to Mr Holmes' defence, which was careful and clear. We do not accept it however. Mr Holmes confirmed that he was looking for an outside run namely outside Mr House and inside Mr Orange as the latter took his horse wider in the straight. Mr Holmes' difficulty is borne out of his assumption that Mr Orange is the leader at the commencement of the passing lane and his failure to appreciate that it was, in fact, Mr House who had the lead and whom he was following in the trail. Mr Holmes has committed himself early in the run home to following Mr Orange as he believed that he might get outside Mr House and inside Mr Orange, as Mr Orange's horse continued to run wider (having run wide on the bend). Mr Holmes' breach is in failing to identify the availability of the passing lane and to then reassess his options. It must have been clear to Mr Holmes that the lane was available and that Mr House was not going to take it. We believe that in failing to take the passing lane run, Mr Holmes has failed to take all reasonable and permissible measures to obtain the best possible position, and finishing place, bearing in mind the margin between fourth and sixth spanned no more than a head. We acknowledge that "Tehoro Dazzle" may not necessarily have the speed to run better than sixth but that is not the test and Mr Holmes' culpability is in failing to give "Tehoro Dazzle" the clearest run available via the passing lane. The run he took resulted in "Tehoro Dazzle" running out of clear racing room. That is plain from the video.

13. We find the breach proved. We called for penalty submissions from the parties, which were delivered in writing.

Penalty

14. My Ydgren sought a penalty by way of suspension of 5 days. He said Mr Holmes had an excellent and clear record in respect of this rule. He was a busy driver having driven 173 times this season, with 349 drives last season and 356 drives the season prior. He noted that the penalty guidelines call for a 20 drive suspension or a \$1,000 fine. Mr Ydgren submitted that Mr Holmes' actions here may have cost punters a higher placing and that that was an aggravating factor, although "not a weighty one". He said Mr Holmes drives in approximately four races per race meeting. He submitted that having regard to the starting point for a suspension under the guidelines of five days and balancing that against the aggravating and mitigating factors, Mr Holmes should be suspended for five days.

15. Mr Holmes submitted that a three day suspension was appropriate. He maintained that "Tehoro Dazzle" was never going to finish better than sixth, wherever it had raced. He noted his own excellent record and submitted that all drivers make mistakes from time to time. He submitted that he had never faced such a charge before despite a career spanning 7,000 drives.

Decision

16. We do not accept Mr Ydgren's submission that the possibility of Tehoro Dazzle being deprived the chance of finishing better than sixth is an aggravating factor. It is a factor which is implicit in the charge. We otherwise agree with Mr Ydgren's submissions as to Mr Holmes' record and the extent of his driving commitments. We acknowledge Mr Holmes' submissions and note that he also seeks a suspension.

17. Taking the suggested starting point of five days, we will reduce that by one day on account of Mr Holmes' excellent record and further, on account of his professionalism and courtesy before this Committee. Mr Holmes sought a deferment so that he could drive on the weekend of 9 and 10 March 2019, which Mr Ydgren agreed with.

18. Accordingly, Mr Holmes is suspended from driving for four days being 15 March – NZMTC, 16 March - Wyndham HRC, 17 March - Banks Peninsula TC, 22 March- NZMTC (premier meeting).

19. There is no order for costs either of the parties or of the JCA.

D M Jackson

Chair

11 March 2019

Penalty: