

**Non Raceday Inquiry RIU v R O Paynter - Decision dated 12 February 2018 - Chair, Mr A Godsolve**

**Rules:**

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

**Name(s):**

**Decisions:**

**BEFORE A JUDICIAL COMMITTEE HELD AT CAMBRIDGE**

**IN THE MATTER OF** Harness Racing New Zealand Rules of Racing

**BETWEEN** Mr S T R Mulcay, (Senior Stipendiary Steward) - **Informant**

**AND**

Mr R O Paynter, Licensed Trainer - **Respondent**

**JUDICIAL COMMITTEE:**

Mr A Godsolve (Chair) and Mr A Smith (Committee Member)

**VENUE:** Cambridge Raceway

**DATE OF HEARING:** 8 February 2018

**DATE OF DECISION:** 12 February 2018

**INFORMATION:** A7025, dated 28 January 2018

**Rules:** Rules 868 (2) **OR** 868 (3)

**The Charge**

1] This matter relates to a race meeting of the Waikato/Bay of Plenty Harness Inc held at Tauranga on 28 January 2018. Specifically, the charge refers to Race 3 , the STAPLES RODWAY TAURANGA HANDICAP TROT, over 2100 metres.

2] The Information alleges that Mr R O Paynter, the Respondent **“failed to take all reasonable and permissible measures over the final 150 metres to ensure that ‘ IL PIRATA ‘ (2nd placed) was given full opportunity to win the race ‘ OR IN THE ALTERNATIVE ‘ he failed to drive ‘ IL PIRATA’ out to the end of the race when he had a reasonable chance of winning”**.

3] Mr Paynter has endorsed the Information to the effect that he admits the breach **in respect of the first of the alternative charges (to which Rule 868 (2) relates)** and has signed the Information accordingly.

4] Mr Mulcay asked the Committee at this point in the hearing to therefore disregard the second part of the alternative charges. The Committee accepted that the hearing would continue on that basis.

5] Rule 868 (2) states :

*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.*

**Summary of Facts/Evidence**

6] At the commencement of the hearing Mr Paynter acknowledged that he (a) understood the Rule in question, and that (b) he reaffirmed his admission of the breach in respect of Rule 868 (2).

7] Using the available video films, Mr Mulcay identified the horse IL PIRATA at the start of the race in question. This was a trot over 2100 metres, and IL PIRATA started off a handicap of 30 metres. Mr Mulcay stated that Mr Paynter was the trainer and part-owner of IL PIRATA. He added that the Stewards had no concern with Mr Paynter's drive until the field entered the home straight. At that time IL PIRATA was 3 back on the markers. Further into the home straight Mr Paynter moved IL PIRATA outwards off the markers and began following the eventual winner GEORGE. A horse on the outside of IL PIRATA went off-stride and Mr Paynter had to take a slight hold on IL PIRATA to ensure the breaking horse did not impede its progress. However IL PIRATA was running on quite resolutely without being driven out by Mr Paynter. Mr Mulcay identified track markers which showed at about the 200 metres mark IL PIRATA was on the

outside and just behind GEORGE. Further on at about the 150 metres mark, Mr Mulcay submitted that IL PIRATA was in 'clear air', and that Mr Paynter had removed the deafeners. From that point until the finish of the race Mr Mulcay stated that Mr Paynter had displayed a distinct lack of vigour even though IL PIRATA was making ground quite strongly on GEORGE. IL PIRATA eventually finished into 2nd, a ½ head from winning the race. Mr Mulcay pointed out that Mr Paynter was carrying a whip, and that there were various measures available to him to drive the horse out to the finish - which the Stewards considered he had not utilised, hence the bringing of this charge.

8] Mr Mulcay made reference to the Use of Whip Regulations which govern drivers' use of the whip in races. These allow for trainers, in addition to using the whip in a striking motion, to :

- (a) Run the reins over the horse's rump
- (b) Use the whip in a pushing motion through the horse's tail
- (c) Hold the whip on the horse's tail or rump

9] Mr Paynter said that IL PIRATA had suffered a stress fracture of a leg some time ago and the horse required 9 months out of racing to recuperate. He said that he selected a grass track (Tauranga) to give the horse his first race back after the injury as he believed this would be kinder on his leg. He added that he himself had not driven in races very much at all in the past 3 years or so, however as he had done all of the preparatory work on IL PIRATA he decided to drive the horse himself in this race. He said that he thought he would get a good first hand idea of the horse's condition and the status of his injured leg by driving the horse. Mr Paynter added that he was aware that IL PIRATA can go off-stride easily and that as he was trotting well up the straight he 'held him together' to the finish of the race without using his whip. He added that he wasn't sure if he had actually won the race or finished second. Mr Paynter also said that he had won races on IL PIRATA in the past.

### **Decision**

10] As Mr Paynter has admitted the breach we find the charge proved.

### **Submissions on Penalty**

11] Mr Mulcay referred to the JCA Penalty Guide which provides for a suspension of 20 drives and/or a fine of \$1000 as a starting point for a breach of this Rule. Mr Mulcay stated that he believed Mr Paynter should be given credit for his admission of the breach, his co-operation with Stewards, and that he has not previously breached this Rule. Against that, he stated that it was an aggravating factor that Mr Paynter's actions could have dented public confidence in the code in that punters who supported the horse may have not been given the chance they should have got. Mr Mulcay referred to a penalty of a 3 month suspension imposed on another driver previously (MARTIN, 2016) and submitted that a similar penalty might be appropriate in this case.

12] Mr Paynter asked that his penalty be dealt with by way of a suspension. He said that he was principally a trainer and that he had only driven twice in the past 12 months. He added that trainers in his position 'battled' and he would find it difficult to pay a fine. He said that he had young children to support.

### **Reasons for Penalty**

13] The Committee confirmed that for a breach of this Rule the JCA Penalty Guide provides a starting point of a 20 drive suspension and/or a fine of \$1000. These provisions were increased in December 2017 in consideration of concerns throughout the industry and by punters that horses should be given every opportunity to win or placed to the best of their ability.

14] The Committee ascertained that in the past 3 years Mr Paynter had driven in races on 5 occasions.

Mitigating factors:

1. We accept that Mr Paynter has co-operated with Stewards at the initial enquiry into this drive.
2. We take note of his admission of the breach.
3. We also take note that Mr Paynter has not previously breached this Rule - however given that he very rarely drives in races this does not carry as much weight as a busy driver's record might.
4. The Committee has taken note of the fact that the horse in question had suffered a serious injury and that Mr Paynter had been diligent in its convalescence and return to racing. However, Mr Paynter chose to start the horse in a race on this day and in doing so he was required, as the driver, to ensure the horse was as competitive as any other horse in the race.

Aggravating factors:

1. The horse was put into a position from the 150 metres mark to challenge for the lead. The Committee believes that it is not unreasonable to consider that had Mr Paynter utilised any of the lawful means open to him to drive the horse out, it could and very possibly would have won the race.

2. As Mr Mulcay submitted, Mr Paynter failed to display any vigour at all towards the finish of the race.

3. The margin between the winner of the race in question and Mr Paynter's horse was ½ head. IL PIRATA was clearly finishing strongly. We consider this to be an aggravating factor in assessing penalty.

4. There was a difference of approximately \$3500 in prizemoney between 1st and 2nd.

15] The Committee assesses this breach to be at the mid-high level on the scale of seriousness. We take into account the status of the race, the prizemoney available, and the circumstances already discussed when assessing this level. It is incumbent on Judicial Committees to impose penalties that are meaningful. Given that Mr Paynter has very rarely driven in races over the past 3 years the Committee had to consider whether the submissions by Mr Mulcay on penalty would result in a meaningful penalty. A 3 month suspension alone might mean that Mr Paynter would miss the opportunity to drive once or at best twice. That would not be a meaningful penalty. While we took into account Mr Paynter's submissions on a likely penalty, to achieve a penalty with any impact using a suspension alone might mean Mr Paynter faced a 12 month suspension. That could have a serious impact on his driving career.

16] We therefore believed that a penalty encompassing both a suspension and a fine would be appropriate. To arrive at a monetary level the Committee took into account a number of recorded breaches of this Rule in the preceding 3 years which have resulted in a combination of a suspension and fine. Mr Paynter advised that he did not have any driving commitments in the 7 days following this hearing.

### **Penalty**

17] The Committee therefore imposed a fine of \$350 on Mr Paynter. In addition to that, his licence to drive in races was suspended from after racing on 8 February 2018 (the day of the hearing) until after the completion of racing on 8 June 2018 - a 4 month suspension.

Alan Godsalve

Chair

**Penalty:**