

Non Raceday Inquiry RIU v G D Smith - Reasons for Decision and Penalty dated 30 March 2021 - Chair, Mr R G McKenzie

Rules:

Repondent(s)/Other parties:

Name(s):

Decisions:

**BEFORE A JUDICIAL COMMITTEE
OF THE JUDICIAL CONTROL AUTHORITY
HELD AT CHRISTCHURCH**

IN THE MATTER of the New Zealand Rules of Harness Racing

IN THE MATTER of Information No. A11479

BETWEEN S P RENAULT, Stipendiary Steward for the Racing Integrity Unit

Informant

AND GAVIN DEAN SMITH of Kaiapoi, Licensed Open Driver

Respondent

Judicial Committee: Mr R G McKenzie (Chair)

Mr D J Anderson (Member)

Venue: Addington Raceway, Christchurch

Present: Mr S P Renault, the Informant

Mr G D Smith, the Respondent

Date of Hearing: 26 March 2021

Date of Oral Decision: 26 March 2021

Date of Written Decision: 30 March 2021

REASONS FOR DECISION AND PENALTY OF JUDICIAL COMMITTEE

The Charge

[1] Information No. A11479 alleges that at a race meeting conducted by Ashburton Trotting Club at Timaru on Saturday, 27 February 2021, the Respondent, as the Driver of KD HAWK in Race 1, Woodlands Stud Trot, "failed to take all reasonable and permissible measures to ensure KD HAWK was given full opportunity to win the race or obtain the best possible placing through his lack of vigour in the home straight".

[2] Mr Renault produced a letter from Mr M R Godber, General Manager of the Racing Integrity Unit, authorising the filing of the Information pursuant to Rule 1108(2).

[3] The Information was served on Mr Smith on 17 March 2021.

The Plea

[4] Mr Smith had signed the Statement by the Respondent on the Information form indicating that he denied the breach of the Rule. He was present at the hearing of the Information. The charge and relevant Rule were read to him, after which he confirmed that he denied the breach.

Summary of Facts

[5] Mr Renault presented the following Summary of Facts, while showing the video replays of the race:

1. On Saturday 27 February 2021 the Respondent, Mr Gavin Smith, was the Driver of the horse KD HAWK in Race 1 at the Ashburton TC meeting held at Ashburton Raceway.
2. KD HAWK is trained by Bob Butt and in this race finished in 4th placing a margin of 0.9L behind the winner RANDOM JUDE. The official margins for the race were a nose x 3/4L x nose.
3. Following the race, Mr Smith was questioned by Stewards in relation to the lack of vigour he displayed throughout the run home. The matter was adjourned on the day to allow Stewards to make further enquiries.
4. A post-race veterinary examination of KD HAWK on the day in question failed to detect any abnormalities with the horse (the Horse Incident/Examination Report was produced).
5. The betting records of the race were examined closely and no anomalies were detected.
6. After considering the matter, Stewards lodged a charge under Rule 868(2) alleging Mr Smith failed to take all reasonable and permissible measures to ensure KD HAWK was given full opportunity to win or obtain the best possible placing through his lack of vigour in the home straight.
7. 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.*
8. Rule 868(2) is aimed at ensuring that the integrity of Harness Racing is protected. A Driver has two main obligations. They are to drive his horse in a manner that is both reasonable and permissible in order to gain the best possible finishing place, as an investor is entitled to have a Driver do his best to gain a return from that investment.
9. KD HAWK drew barrier 4 on the unruly in this race. The distance of the race was 2400 metres (standing start). KD HAWK began quickly from its draw and improved three-wide around the field to be in third position as the field entered the first bend. The horse goes into a break shortly after and loses considerable ground resulting in the horse being some distance behind the body of the field after settling.
10. Near the 1100 metres KD HAWK is able to catch the field and assume a position last on the inside. From around the 900 metres the horse is shifted outwards to a two-wide position before improving three and four-wide with cover inside the final 500 metres.
11. As the field straighten for the run home Mr Smith shifts KD HAWK to a position widest on the track and has clear running inside the final 300 metres.
12. It is from this stage of the race that Stewards have major concerns with Mr Smith's drive. The video clearly shows that Mr Smith has a firm grip on the reins and has sat motionless in the sulky until just prior to the 100 metres where you see his right arm make a small movement and urge the horse for one stride before again sitting motionless until the end of the race. Inside the final 40 metres of the race, you will see Mr Smith release the firm grip he has on the horse slightly and allows the horse a little more rein until the finish of the race.
13. At the time Mr Smith shifts ground to obtain clear running, KD HAWK is approximately 6 to 7 lengths behind the leader RANDOM JUDE as evidenced by the back straight camera angle. The horse has continued to take ground off the leaders under a hold and finished less than a length from the winner without being driven out to the finish line. Had Mr Smith driven the horse out, Stewards believe it is entirely feasible to suggest the horse had a strong chance of winning the race. Under a hold the horse has made up at least 5 lengths inside the final 300 metres.
14. The vigour of Mr Smith inside the final 300 metres was completely unacceptable in the circumstances. There is a clear obligation on the part of a Driver, that when circumstances permit, they must leave no doubt in the minds of the viewer of the race (whether that is the Stewards, the public or the Judicial Committee) that the horse is given every opportunity to finish in the best possible position. Stewards do not demand that excessive force be used upon horses; however, it is expected that a Driver must display vigour that is both demonstrable and discernible, especially when they are in contention for stakes and/or dividend bearing places. Looking at the replays, it is entirely realistic to think that KD HAWK had a reasonable chance of winning the race.
15. When questioned on the day, Mr Smith said he was being careful with the horse because he was aware that the horse had broken at its last start when utilising the passing lane and had clamped its tail when he used the rein near the 100 metres.
16. There was no impediment to Mr Smith to drive the horse out in the run home. There was no anomaly or discernible change apparent with the horse's gait. The horse has trotted fluently in the home straight.
17. A Driver may take into account the known characteristics of a horse, just as a Driver may act on instructions from an owner or trainer, but may only do so to the extent that the provisions of Rule 868(2) are not breached.
18. The horse was having its 9th raceday start in this race. It was the first time Mr Smith has driven this horse. The horse was having its 2nd start back in this race, since being spelled after trialling in October 2020.

19. At its first start back a week earlier at Rangiora on 20 February 2021 the horse broke when improving into the passing lane and being urged with the inside rein by Driver C J DeFilippi near the 200 metres.

20. A quote from the Judicial Committee in *RIU v H 2005* said “A breach of this particular Rule (the Rule Mr Smith has been charged under) is one that invariably jeopardises the Integrity of Harness Racing for reasons which are self-evident. Harness races are based on the requirement that all contestants in a race are given every opportunity by their Drivers and that, when the race has been run, all contestants have been fully tested and been asked to do the best that they can do. This has to be the case in order that the betting public, so important to the Industry, can have confidence that they have had a run for their money when they have invested their money on contestants in a harness race. Any suggestion that a horse has not been given every possible opportunity and has not been asked to do the best that it can, for whatever reason, will result in loss of public confidence in Harness Racing. As stated, it is the primary function of the Judicial Committees, in dealing with penalty, to maintain integrity and public confidence in harness racing”.

21. A quote from the Hon Justice Mr W R Haylen in relation to a Ruling dated 20 May 2009 said.

“perhaps to throw my interpretation into the mix I might view it this way - that the sort of culpable action that is required to amount to a breach of this Rule might be such that in normal circumstances a reasonable and knowledgeable Harness Racing spectator might be expected to exclaim with words to the effect “what on earth is he doing “or “my goodness look at that” or some such exclamation”.

22. The Judicial Committee in *RIU v B 2019* said “the test is an objective one and a reasonable observer would not have considered that Mr B took all reasonable and permissible measures to win the race. That reasonable observer would have expected Mr B, at a very minimum, to take some action such as running the reins over the horse’s rump or pushing the whip through the horse’s tail. Mr B’s action of holding the whip on the horse’s rump, which we accept he did, did not in the Committee’s view satisfy the obligation to take all reasonable and permissible measures”.

Conclusion

23. Stewards believe the films shown to the Committee today clearly show Mr Smith did not, to quote Rule 868(2), “take all reasonable and permissible measures at all times during the race to ensure that his horse was given full opportunity to win the race or to obtain the best possible position and/or finishing place”. In support of that view it is submitted that:-

(i) Mr Smith had a clear run to the line inside the final 300 metres of the race,

(ii) For 200 metres after turning for home Mr Smith has sat motionless in the sulky,

(iii) Just prior to 100 metres from the finish Mr Smith has urged his horse for one stride before again sitting motionless for the remainder of the race although, inside the final 40 metres, he does allow his horse a little more rein through until the finish of the race,

(iv) Throughout the final straight KD HAWK was trotting fluently with no apparent change in the horse’s gait.

24. It is the view of the Stewards that Mr Smith’s lack of urgings clearly fall well short of what a reasonable-minded person would expect, especially when taking into account it was entirely permissible to show vigour that is both demonstrable and discernible over the final 300 metres of the race. Mr Smith’s actions have had a significant impact on those who placed a bet on the race. The ongoing confidence in the Harness Racing Industry needs constant reinforcement including the displaying of driving using reasonable and permissible measures at all times to ensure a horse is given every opportunity to win a race or finish in the best possible position. Mr Smith’s actions on this occasion have clearly failed to meet that threshold.

25. Mr Renault then added that he did not believe that there was any intention on Mr Smith’s part to not allow the horse to run on its merits. His actions are nevertheless culpable and blameworthy, and more than a mere error of judgement, he submitted.

Respondent’s Submissions

[6] Mr Smith submitted that he had no reason for wanting the horse not to win. KD HAWK is a horse that Mr Bob Butt trains and drives. He suspected this would be the only occasion on which he would drive the horse.

[7] He said that KD HAWK has trotted all the way once in nine starts and has galloped at various stages of a race.

[8] Mr Smith then had shown to the hearing video replays of two other starts of the horse in support of that submission. On one occasion, it had galloped just short of the finishing line and, on another occasion, it had galloped upon entering the passing lane after trailing the leader.

[9] In the race in question, Mr Smith submitted that, while the horse had not been trotting roughly, it was not balanced. To have urged it would have been incompetent, he suggested. He had let its head go after it had trotted into 4th and was unlikely to be lapped on if it galloped over the finishing line, he said. He had earlier run the rein over its rump and the horse had clamped its tail, which suggested the horse was already doing its best.

[10] He could only do his best based on what the horse felt like at the time. He wanted to win and was doing his best for punters, he said. It was a maiden trotter that never trots all the way, he said, and he felt he was doing his best for everybody by keeping it in its gait. He had based his drive on the start before when it did gallop and how it felt at the time. He had made the “best call available”.

[11] The horse's Trainer, Mr Butt, gave evidence by telephone. Mr Butt said that his pre-race instructions were to watch the horse all the way as he was lacking confidence and likely to gallop for no reason and without warning. He was happy with Mr Smith's drive in the race, he said.

[12] Mr Renault put it to Mr Butt that he had urged the horse with the whip and reins when it galloped just short of the line at Rangiora. Mr Butt agreed but said that the horse did not like it and had galloped.

[13] Mr Smith then called Open Driver, Mr C J DeFilippi, to give evidence by telephone. Mr DeFilippi said that, referring to another start at Rangiora, the horse had received the run of the race and felt like a winner until it got the gap in the passing lane and he gave it "half a slap" with the rein, and it broke when it should not have. Mr DeFilippi said that in the Ashburton race, he would have done exactly what Mr Smith had done. He conceded, however, that the horse had gone to the line strongly and was doing its best.

[14] Mr Smith produced a letter from Mr Tim Vince, part-owner and former trainer.

[15] In response to a question from the Committee, Mr Smith conceded that, with a minimum of urging from him, the horse could have run at least 3rd. Mr Smith said that the horse had not responded well when he had urged it earlier in the run home, so he did not urge it again. It did not feel that good prior to that point, he said. He had not "sat on" a horse in this fashion before, but he felt that it was the best way to drive it to achieve the best possible placing.

Reasons for Decision

[16] The Committee is required to judge the quality of Mr Smith's drive and that judgement must be based on an objective assessment of the drive.

[17] If Mr Smith has failed, given the circumstances of the race, to take all reasonable and permissible measures, viewed objectively, in the final 300 metres to ensure that KD HAWK was given full opportunity to win or obtain the best possible finishing position, then he is in breach of the Rule and liable to penalty.

[18] What actions then did Mr Smith take to fulfil his obligations under the Rule? The Committee noted that apart from one slight urging, which was almost indiscernible, he made no effort to urge the horse. The Rule requires that he do so.

[19] The evidence of Messrs Butt and DeFilippi, on which Mr Smith placed some reliance, and the letter from Mr Vince are of limited relevance. A Driver in a Harness race has a broader obligation than to please the Trainer or Connections.

[20] The Committee is concerned exclusively with this drive in this race. Mr Smith can place some reliance on what he believed the manners of the horse to be but, at the end of the day, he has to drive the race as it unfolds, and not based on some pre-conceived idea as to its ability or manners. At the finish of the race, the horse has to have been fully tried. This was not the case on this occasion. The horse has gone to the line untested as would be apparent to any reasonable observer. The quote from Hon Justice Mr W R Haylen back in 2009, referred to by Mr Renault, is pertinent.

[21] Mr Smith may have felt, in his own mind, that he was doing the right thing by driving the horse quietly, but the Rule requires that he take, and be seen to take, all reasonable and permissible measures to finish in the highest possible placing. The Committee is clearly satisfied that Mr Smith has not done so.

[22] He has made a serious error of judgement on this occasion and, quite simply, has not done enough to discharge his obligations under the Rule. Had he urged the horse at all, it may well have broken but, then again, it may not have. If the horse did break, then so be it, but at least it will have been tried which it was Mr Smith's obligation to do.

[23] Having considered all of the evidence and submissions and viewed the video replay many times, we find that Mr Smith's actions or, rather, lack of action amounted to a serious error of judgement and was culpable in that it was blameworthy. We have taken into account Mr Smith's explanation, but we do not accept that any of the reasons advanced by him justified his lack of action in not driving KD HAWK to give it the best possible chance in the race.

[24] The Committee is comfortably satisfied that Mr Smith has, on this occasion, failed to take all reasonable and permissible measures to give KD HAWK full opportunity to win the race or finish in a higher finishing position but, rather, has relied on what he had been told about the horse's racing manners when he should have driven according to his best judgement.

Penalty Submissions

[25] Mr Renault told the Committee that Mr Smith has had 6,190 lifetime drives – this season 268 and last season 322. Mr Smith averages 3.88, say 4, drives per meeting based in this season's statistics, Mr Renault said.

[26] A breach of this Rule is not common and Mr Smith has a clear record.

[27] The Penalty Guide starting point is a 20-drives suspension or a \$1,000 fine. Stewards assessed this breach as being at the high end of the scale. Mr Smith was given the entire length of the straight to ensure that his runner was given full opportunity, but instead chose to sit motionless, almost warranting a charge of failing to drive the horse on its merits, Mr Renault said.

[28] Mr Renault submitted that a suspension was an appropriate penalty. An uplift from the starting point to a 30-drive suspension (7-8 meetings) should be applied.

[29] Mr Smith, in relation to penalty, asked the Committee to compare the penalty in the case of Butcher (heard at Alexandra Park this evening - 2 days and \$250) for a breach which, he submitted, was higher-level than this breach.

[30] The hearing then looked at the upcoming meetings at which Mr Smith would be likely to drive. Mr Smith said that he did not wish to seek a deferment of suspension.

Reasons for Penalty

[31] The starting point for penalty for a breach of the Rule, as per the Penalty Guide, is a 20-drive suspension or a fine of \$1,000. A term of suspension is clearly called for in this instance.

[32] Although Mr Renault has submitted that there should be an uplift from the starting point for being a high-level breach, the Committee does not necessarily accept that position. Can there be degrees of failing to take reasonable and permissible measures? If so, how is the severity of a breach assessed? If assessed on the look or perception, this breach is indeed a high-level breach. However, there will be no uplift for that factor.

[33] In the end, the Committee has settled on the Penalty Guide starting point of a 20-drives suspension. From that point, we are able to give Mr Smith a discount for his good record, notwithstanding that breaches of the Rule are, fortunately, quite rare. We have fixed the discount at 4 drives, or 1 day. That discount reduces the term of suspension to 16 drives, or 4 days, and that is the penalty that the Committee has arrived at.

Penalty

[34] Mr Smith's Open Driver's licence is suspended for a period commencing after racing tonight up to and including 5 April 2021 - 4 days. The meetings intended to be encompassed by that period of suspension are NZ Metropolitan TC on 31 March, Wyndham HRC on 1 April, NZ Metropolitan TC on 3 April and Banks Peninsula TC on 5 April.

R G McKenzie

(Chair)

Penalty: