

RACING PENALTIES APPEAL TRIBUNAL
REASONS FOR THE DETERMINATION OF MR A E MONISSE
(PRESIDING MEMBER)

APPELLANT: MR STUART ALEXANDER MCDONALD

APPLICATION NO: 22/10940

PANEL: MR ANDREW E MONISSE (PRESIDING MEMBER)

DATE OF HEARING: 13 DECEMBER 2022

DATE OF DETERMINATION: 14 DECEMBER 2022

DATE OF PUBLICATION: 20 MARCH 2023

IN THE MATTER OF an appeal by STUART ALEXANDER MCDONALD against a determination made by Racing and Wagering Western Australia Stewards of Harness Racing to impose a 14 day suspension for breach of 163(1)(a)(iii) of the Rules of Harness Racing

Mr Gary Hall Snr represented Mr Stuart Alexander McDonald.

Mr Brad Lewis represented the Racing and Wagering Western Australia Stewards of Harness Racing.

Introduction

1. This is an Appeal by a licensed reinsperson, Mr Stuart Alexander McDonald (“the Appellant”) against conviction recorded by the Racing and Wagering Western Australia Stewards of Harness Racing (“the Stewards”) for breach of Rule AR 163(1)(a)(iii) of the RWWA Rules of Harness Racing (“the Rules”).
2. On 13 December 2022, I heard the Appeal. On 14 December 2022, I announced my decision to dismiss the Appeal, with my reasons for that determination to be published at a later date. I now publish those reasons.

The Inquiry

3. On 5 December 2022, the Appellant drove the horse HEART OF HEARTS as it competed in Race 2 at Pinjarra Paceway. At about the 200 m mark of that race there was an incident that occurred at the bend just before entering the home straight to the finish line and in front of a Steward observation tower.
4. On 5 December 2022, a panel of harness Stewards chaired by Stipendiary Steward Mr Peter Webster conducted an inquiry into that incident ("the inquiry"). The other members of this panel were Senior Steward Christopher Brown, Deputy Steward Louis Austin and Cadet Steward Ellie Asphar.

The breach of the Rules under inquiry

5. The Stewards in the inquiry charged the Appellant with contravening Rule AR 163(1)(a)(iii) of the Rules. That rule relevantly provides: "*A driver shall not cause or contribute to any... interference.*"
6. Rule AR 163(5) of the Rules relevantly provides: "*A driver who, in the opinion of the Stewards, fails to comply with any provision of this rule is guilty of an offence.*"

The Particulars for the charge

7. The particulars for the Appellant's charge were:

"... at Pinjarra Race Meeting on the 5th of December 2022 in Race 2, when you were the driver of HEART OF HEARTS, when racing into the home straight on the final occasion you've allowed your horse and your drive to come down the track contacting the offside front legs of BETTER BE BUCKS which dislodged the driver and fell to the track, also severely checking ABBEE BEE which was following HEART OF HEARTS." ("the charge")
8. The Appellant pleaded *Not guilty* to the charge.

The Evidence

The Race 2 footage evidence

9. The Stewards played the evidence of the race footage of Race 2 in the inquiry and to the witnesses in it.

Steward Austin's evidence

10. Steward Louis Austin was the first witness to give evidence in the inquiry. He was in the observation tower overlooking the incident under inquiry. His evidence included (as transcribed *nb.* same for all other witnesses that are quoted):

"I viewed this incident from the 200, approximately the 200m station, which gave me an elevated view of the incident. The field Mr Wych had been racing in the one out one back position getting to about the 500m Mr McDonald started to come forward, he had a runner to his outside, which was Ms Madeline Young and I felt Mr Wych was then able to move fairly to the inside of Mr McDonald, placing Mr McDonald in a four wide position. As they've come forward under my stand, I felt that even though Mr Johnson's horse who faced the breeze and started to drop out, he may have just wandered up a fraction, but I

certainly felt that Mr McDonald has allowed his runner to get down and tighten the ground someway of Mr Wych's horse. There was no appeal, certainly I didn't feel that there was any pressure to Mr McDonald's outside, Ms Young was there but back and I didn't feel was putting pressure on Mr McDonald however as they raced away, Mr McDonald's drive has got down further and subsequently contacted the front offside leg of Mr Wych's horse on two occasions which caused Mr Wych's horse to not only blunder but fall immediately. Mr Lewis was behind coming off the fence and working to a three wide position and however he couldn't miss the incident and as a result he's fallen on top of Mr Wych."

11. Later in his evidence Mr Austin corrected his earlier evidence, stating that it was ABBEE BEE being driven by Mr Christopher Lewis that had fallen, not Mr Wych's horse BETTOR BE BUCKS.

Reinsperson Wych's evidence

12. Mr Wych gave evidence that included the following:

"Mr Austin has basically wrapped it up."

"The pressure was coming from the outside."

"I appealed twice for room, which I never got, it got tight, my horses green, it's first start, state that, but I didn't drive into a wheel, no."

And:

"AUSTIN: Mr Wych, I'll ask you once again, did you steer up?"

WYCH: No. I didn't steer up at all.

AUSTIN: At the point of contact, was your horse's head turned to out Mr Wych?"

WYCH: No, I appealed quite a while before that for some room and Mr McDonald did say yes – I heard that – but I didn't get any – I didn't get any room at all, and it got tighter and tighter. And it's as simple as that."

Reinsperson Lewis's evidence

13. Mr Christopher Lewis, the driver of the horse ABEE BEE, also gave evidence. It included that he *"couldn't see exactly what was happening, fall there, but I was just heading to the outside of Mr Wych"*.

Reinsperson Young's evidence

14. Ms Madeleine Young, another reinsperson in Race 2, also gave evidence at the request of the Appellant. It included:

"AUSTIN: [D]id you at any stage, view Mr McDonald check his horse away on a number of occasions?"

YOUNG: I didn't, I just seen, I was following Mr McDonald and I felt like we were going in a straight line, he did check the horse, but after that I pulled out to make my run.

AUSTIN: So, just to clarify what I mean Mr McDonald has checked away..."

YOUNG: Yep

AUSTIN: on several occasions, he's checked away, Mr McDonald has said that in his evidence, you have observed Mr McDonald check his horse away?

YOUNG: Well I wouldn't say that I seen him checking because I'm behind him, but I felt that the whole...

AUSTIN: But you say he held his line?

YOUNG: Yeah, well I felt that we were, held the line, I didn't see the horse get, going down, but..."

15. Later in her evidence Ms Young, on the Appellant holding his line, stated:

"AUSTIN: At that point you hadn't come to the outside, and you say Mr McDonald was travelling in the true three wide line, holding his line

YOUNG: Yeah

AUSTIN: Prior to the contact you still say that?

YOUNG: From where I was yeah...

AUSTIN: Where were you at the time?

YOUNG: I probably just pulled off

AUSTIN: Coming to the outside of Mr McDonald, so did you put any pressure on Mr McDonald? Ok, did you see, I will ask you once again, once you've come off the back of Mr McDonald, did you see Mr McDonald make efforts to check his horse away from Mr Wych's run?

YOUNG: Well at that point I wasn't really watching what he was doing."

The Appellant's evidence

16. The Appellant gave evidence as to his driving of HEART OF HEARTS at the relevant time and in defence of the charge. After viewing the footage of the incident, he stated:

"[Y]ou can see that I'm moving my horse, trying to steer my horse and I think I'm doing a relatively, pretty good job it, and I think before Mr Wych's horse go down you can see his head gets turned rapidly to the right, goes up and that's when the contact happened, but it was turned up into me before it galloped. That's why the contact has happened."

17. The Appellant also stated that when the left wheel of his sulky made contact to the right foreleg of Mr Wych's horse BETTOR BE BUCKS that:

"AUSTIN: At the point of contact you were actually checking away

McDONALD: Yes, I would say, I was checked away the whole round the corner, I wouldn't have made it that far otherwise."

And in another part of his evidence:

"McDONALD: I was clear of that runner the whole way as passing and the only reason that I didn't make any contact was because he steered up into me"