

## Appeal decision

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**Date:** 7 August 2014

**Code of racing:** Harness

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**Appeal panel:** Mr B Miller (chair), Mr G Casey and Mr D Kays.

**Appearances:** Mr B Potts, solicitor, appeared for driver Barton Cockburn.  
Mr W Birch, general manager, Stewards and Integrity Operations, appeared on behalf of the stewards.

**Decision being appealed:** Suspension of licence to drive in races for a period of eight weeks – AR149(1).

**Appeal result:** Appeal upheld.

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**Extract of proceedings – in the matter of the Roll With Joe Australasian Breeders Crown 3YO CG&E Heat (3CO+) over 2138 metres at Albion Park on 25 July 2014.  
Driver: Barton Cockburn**

THE CHAIRMAN: On the evening of Friday, 25 July in the Roll With Joe Australasian Breeders Crown 3-Year-Old Colts, Geldings and Entires Heat, two horses competed in a race over 2138 metres. As a result of what the stewards considered was inactivity on the part of Barton Cockburn, a charge was levelled under Rule 149(1) of the Australian Harness Racing Rules, whereby it was deemed by the stewards after investigation that Mr Cockburn had failed to take all reasonable and permissible measures that he should have taken during the course of the race to ensure that the horse driven by him was given full opportunity to win, or to indeed obtain the best possible placing in the field.

Mr Cockburn in his evidence before the stewards at the outset of the inquiry identified on page 2 of the transcript that he had instructions to the effect that "If the lead wasn't there just sit and make it a race from the half." There has been some conjecture over whether the half is the 800 metres – which is a half mile – or as Mr Cockburn and the trainer of the of the horse Belinda McCarthy suggested, the 600-metre mark.

The issue for this tribunal is one to determine whether or not there was any fault in the drive of Mr Cockburn such that there would be a base for a justification of the charge in question. We have read the transcript, and we have heard the evidence from Mrs Belinda McCarthy, who was called by telephone to provide support to Mr Cockburn.

It should be noted here that the normal driver of the horse is the husband of Belinda McCarthy, Mr Luke McCarthy, who was apparently ill on the night, but who had given instructions directly to Mr Cockburn to the effect that, in his opinion – and in the opinion of his wife and that of the senior managing owner, Mr Kaplan – the horse Alleluia was unlikely to surrender the lead, that horse being driven by Grant Dixon, one of the leading drivers in Queensland.

It would appear that the three drivers of whom we are speaking at this point are all within the top echelon of drivers in Queensland, and we do refer to both Mr McCarthy, Mr Dixon and to the appellant here, Mr Cockburn.

The tribunal has viewed the film, and there has been much said about the tactics adopted by Mr Cockburn during the beginning stages of the race. What is apparent is that Mr Cockburn had been, for some reason or other, resigned to the belief that, more likely than not, he was never going to get to the lead. He sat on the horse and allowed Dixon on Alleluia to meander, as one might say, to the front, and at no point in time did Mr Cockburn make any attempt to challenge for the lead or to test the driver of Alleluia at any stage, at least up until passing the 800-metre mark.

The question for this tribunal is whether or not that inactivity by Cockburn was sufficient to warrant the stewards' charge being sustained. In reading the transcript there are various areas that allow for determinations to be made either in favour of that concept or against it. Mr Birch has identified that at no point in time were instructions given that suggested that Mr Cockburn was not to challenge for the lead, and frankly that would appear to be a scenario other than for what Mrs McCarthy has said in her letter to the tribunal, which was tendered.

Again in reading the transcript, one could refer to page 16 where Mr Cockburn, in being subjected to the charge and being identified as being more likely than not failing to adhere to the facts in the charge, was asked to plead to the charge and he pleaded not guilty. He confirmed that, in his opinion, the stewards seemed already to have determined what the decision would be and chose not to identify that he make any further inquiry or representation. But on page 16 he did say:

"The trainer told me to drive the horse like that. If I pulled out at the 1200 it was going to be the quickest 1200 metres at Albion Park. If I pulled out at the mile Grant was going to run for a mile. If I pulled out at the 800, we have run the quickest 600. It wouldn't have mattered when I pulled out, Grant was just going to run. I spoke to Grant on the way up here and he's gone couldn't have crossed him at the start, he had too much speed."

The circumstances have led this board to consider all aspects of the drive in question. There is no doubt that the inactivity by Mr Cockburn was such as to bring to the mind of the stewards the need to thoroughly investigate and identify that charge that was levelled against him. The question then for this tribunal is to determine whether that is a culpable act that would warrant a charge being maintained.

Again, as has been said, there has been much consideration between the members of this board. In the end result the board has determined that whilst the drive was poor and whilst he should have attempted to test the driver of the other animal for the lead, we are not inclined to the view that he has disobeyed instructions. We are in fact inclined to the view that wrongly perhaps he has followed those instructions.

For a man of his capability and experience, that is something that he should give serious credence to a belief in when contesting races of a similar or future nature.

We are swayed by the fact that this was a race for two horses and two horses only.

In our opinion, the charge should have been levelled. However, further evidence should have been taken, in our view, from McCarthy, the former driver of the horse. We accept that the instructions that were given were such as to allow Mr Cockburn to drive in the manner in which he did, and for that reason, and that reason alone, we do not believe that the charge can be proved and accordingly we uphold the appeal and dismiss the penalty.

Further right of appeal information: The appellant and the stewards may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **14 days of the date of this decision**. Information in relation to appeals to QCAT may be obtained by telephone on (07) 3247 3302 or via the Internet at [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au)