

Appeal decision

Date: 2 July 2015

Code of racing: Harness

Appeal panel: Mr P James (chair), Mr D Kays

Appearances: Mr K McLean, appeared on behalf of the driver Narissa McMullen.
Mr D Farquharson, Stipendiary Steward, appeared on behalf of the stewards.

Decision being appealed: Suspension of licence to drive in races for a period of 4 weeks
– AR149(2)

Appeal result: Appeal dismissed.

Extract of proceedings – in the matter of the driving tactics adopted by N McMullen on Louboutin NZ in Race 2 the Seymour Rising Stars Championship Final 2138 metres on Saturday, 6 June 2015 at Albion Park

THE CHAIRMAN: On Saturday, 6 June 2015 the Appellant drove Louboutin NZ in Race 2 at Albion Park. The stewards opened an inquiry into the running and handling of the horse and after the inquiry charged the Appellant with a breach of Rule 149(2) of the Australian Harness Racing Rules. That rule provides:

“A person shall not drive in a manner which, in the opinion of the stewards, is unacceptable.”

On Thursday, 18 June 2015 at the resumed inquiry at the Redcliffe Harness Racing Club the driver N McMullen was found guilty by the Stewards Panel and her license to drive in races was suspended for a period of four weeks. She was granted a stay of this suspension on the 19th June 2015 and that stay continues until this Appeal Decision.

Stewards summarised their reasons that the drive was unacceptable as follows at page 27 of the Transcript:-

“And the specifics of the charge are that the early exertion that you placed on the mare when initially unsuccessful for the lead leaving the front straight until half way around the first turn, to then be exerted again in the back straight when it was evident that the driver of Lumos, who initially had advised a driving tactic change in that they attempted to hold a forward position, and also that the horse, without any application of the whip from the start, had the advantage of the inside and had more than enough speed to keep Louboutin out from the lead, that the exertion that you placed on Louboutin in the back straight to again try for the lead was, in the opinion of the stewards, unacceptable, and as a result of that exertion, we

believe was the contributing factor to the mare weakening in the concluding stages to finish in tenth position, beaten in excess of sixty five meters.”

The defendant in this Appeal pleaded not guilty in respect of her drive and to the charge and has appealed on conviction and penalty. We have read the transcript and also listened to the helpful submissions from both the Stewards and Mr McLean. We have also viewed the film of the race.

The issue this board has to determine is whether the opinion of the stewards that the drive was unacceptable, having regard to the circumstances of this race, was a valid and supportable opinion.

Sometime was taken up during the stewards inquiry and at this Appeal in relation to matters which may be generally referred to as “Integrity Matters”.

Mr McLean queried the line of questioning by the stewards in the inquiry in relation to matters of an integrity nature in relation to this particular race, and drive by the Appellant, and why certain witnesses were not called at the inquiry. In particular the Appellant’s knowledge of betting and parties who she may have spoken to or known and whether any of these matters could or may have affected the outcome of the race.

During this Appeal Mr Farquharson carefully explained the steward’s role in all inquiries and this inquiry in particular and the need to be thorough to ensure “the Integrity of the industry” is not compromised. In fact it would be a dereliction of their duty if they did not address these issues.

He explained that at the end of the day after due enquiries into the betting and other matters relating to this race, that the stewards were satisfied that this matter and the Appellant’s drive in the race were not integrity related matters and the charge against the Appellant reflected this. All parties accepted his candid and forthright explanation.

The Appellant is an experienced and competent driver and we are of the view that in the middle stages of the race, at about the time Mafuta Vautin driven by D. Graham left the one one position to challenge for the lead, that driver N McMullen (the Appellant) to again urge her horse forward aggressively for some distance, resulted in Louboutin becoming uncompetitive for the remainder of the race. It was submitted that the horse raced best from the death seat, and during the middle stages the opportunity existed for the horse to be driven in that manner without being driven over aggressively.

We find that the actions of driver N McMullen in again urging her horse forward aggressively for some distance in the middle stages of the race was unacceptable. We also note that on page 28 of the Transcript that the horse wasn’t sore and no adverse findings in relation to the horse were apparent from the Veterinary Surgeon (other than having had a hard run).

In our view the stewards were rightfully of the opinion that the Appellant’s drive was unacceptable, and our objective assessment of her drive is also that it was unacceptable, and was culpable to a degree that the appeal must be dismissed and we so rule.

The stewards and in particular Mr Farquharson on their behalf at this appeal stated that, they have a high opinion of the driver's ability, but on this occasion to use their terminology, "she had a brain snap."

In relation to penalty the Appellant entered a not guilty plea and hence could not be given any discount in this regard. The stewards imposed a penalty of four weeks suspension of her driver's licence. They acknowledged that she had a good driving record.

Penalties for a breach of this Rule can attract much higher penalties and a period of four weeks is usually the starting point. We do not consider a penalty of four weeks in the circumstances of this appeal is manifestly excessive.

We therefore dismiss the appeal both in respect of conviction and penalty.

Further right of appeal information: The Appellant and the Steward 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