

**GREYHOUND AND HARNESS RACING APPEALS TRIBUNAL
NEW SOUTH WALES**

TRIBUNAL: JUDGE J. C. MCGUIRE

ASSESSOR: MR K. RUSSELL

APPEAL OF MR MICHAEL FORMOSA

DECISION

On 26 January 2009 and 31 January 2009 the stewards conducted an inquiry into the manner in which Michael Formosa, the Appellant, drove the horse Staminator. He was charged with a breach of Rule 149(2), which provides:

A person shall not drive in a manner which in the opinion of Stewards is unacceptable.

He entered a plea of not guilty.

The particulars of the charge are that:

... rounding the home turn in race 6 at Tamworth on January 26, 2009, that rounding the home turn and in the early part of the front straight, you have made insufficient effort to stop your drive Staminator shifting up the track, resulting in Snazzy Shannon being inconvenienced and taken wider and in Xavier gaining an inside run.

At the conclusion of the stewards inquiry the Appellant's licence was suspended for six weeks. The Tribunal is considering his appeal against both the finding of guilt and the penalty imposed.

Placed before the Tribunal is the transcript of the stewards inquiry and the video depiction of the race. Briefly stated, the evidence that emerged is to the following effect.

On the observation of the stewards, as the horses came round the final turn the Appellant was racing outside the leader Moneycounter. Xavier, a horse driven by Mr Cameron Davies and trained by the Appellant, was racing in the position behind the leader.

To the stewards' observation, on proceeding into the turn the Appellant directed Staminator wider on the track. From the questions, this appeared to be the stewards'

initial position. However, they appeared to draw back from any allegation that there was a deliberate direction of the horse wider on the track, as he was not charged with a breach of Rule 149(1).

To the stewards' observation from a head-on position, there were two movements of Staminator's head, turning out, and as a result it shifted up the track. That shift caused Snazzy Shannon to run wider on the track and enabled Xavier to obtain a run to the outside of Moneycounter and to the inside of Staminator. Xavier won the race.

It was the Appellant's account that Staminator did on this occasion what it had previously done: that is, it shifted out coming out of the corner. He was asked whether he had turned Staminator's head in. He said it was hard to say, that he would usually "just hold him together". He could not recall having pulled the horse's head out. At the 400 he believed he had a chance of winning. However, on turning for home Moneycounter was getting away from him, and he did not think he could beat it.

He agreed that the video showed his horse's head turning out twice. However, he maintained that his horse had moved in a fraction and that he had corrected it as he did not want his horse to move back and cause interference. He maintained that he checked wider as he did not want to cause any interference to any horse on his inside. It was his position that in any event the movement of his horse did not affect the placing of any other runner in the race. He stated that in checking off he did not give Xavier "any more room than he needed." To quote him:

Well, as I said, usually the horse hangs in on the corner, and coming out of the corners he tends to run out. That night in particular he hung more than usual, which my evidence explained why. So I had to really pull on his head harder than I would usually have to, to make sure he didn't hang in and collect any other runners, which made it look like I've pulled him out more than I really had to.

He further stated:

I believe Mr Davies went for a run where there was limited room, and when the leader kicked there was more room for him to move through. I checked off him, which I didn't have to. I did not have to check off him, but I did not want to cause any interference. And I also checked off Mr Atkins' horse Jaccka Sandy later in the straight, which I didn't have to but I didn't want to cause any interference.

I also believe that any movement that my horse made did not contribute in any way to the outcome of the race.

It was the ultimate finding of the stewards that they could substantiate the charge. They found the Appellant had made insufficient effort to stop his drive from shifting out, and found him guilty as charged.

The Tribunal has considered the account of the Appellant. However, it believes the video depiction to be the determinative evidence.

The Tribunal has viewed the videos of both the subject race at Tamworth and a prior race at Newcastle. In the Newcastle race the horse's head twice moved to the right momentarily, and the Appellant straightened its head. He drove the horse correctly at Newcastle and kept the horse effectively in a straight line; he did not move up the track. He had no difficulty in controlling the horse and driving it in an orthodox fashion.

However, at Tamworth the Appellant, being aware of the tendency of the horse to turn its head to the right, took no effective steps to control it and allowed it to move some two and a half cart widths up the track. The Tribunal appreciates that he should not have turned down the track so as to possibly interfere with a horse on the inside. However, he had a clear obligation: (a) to control the horse's head, to make every endeavour to prevent it moving, and to prevent the horse moving up the track; and (b) to make every endeavour to keep the horse in a straight line. This action would not have resulted in any interference.

The Tribunal is comfortably satisfied, on the balance of probabilities, that the Appellant made insufficient effort to stop Staminator shifting up the track, resulting in Xavier gaining an inside run. Whilst his actions or lack of action caused inconvenience to Snazzy Shannon, the Tribunal does not consider that this alone would have constituted such a breach of the rule as to attract any penalty. It is significant that no protest was lodged by the driver of Snazzy Shannon or by the stewards.

Despite any mitigating factors, the Tribunal considers his breach of the rule to be so serious as to attract a penalty of a six-week suspension at the very minimum. It is to be noted that he was suspended for four weeks on 8 January 2005 for a breach of Rule 149(1).

The appeal is dismissed. The suspension of six weeks is confirmed, and is to date from 31 January 2009.

The appeal deposit is forfeited.

J. C. McGuire, Judge
23 February 2009