

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

**TRIBUNAL: JUDGE J. C. MCGUIRE**

**ASSESSORS: MR A. G. MULLINS  
MR K. RUSSELL**

**APPEAL OF MR JOHN BOSERIO**

**DECISION**

The Tribunal is considering the appeal of John Boserio (the Appellant) who was suspended for a period of 28 days following a stewards inquiry into the manner of his driving in race 5 at Menangle on 24 March 2009 at Menangle. On that occasion he drove Laroche Ardenne.

The transcript of the inquiry is before the Tribunal, and it contains the evidence of Mr Adams, the steward who described how he endeavoured to effect a start in race 5. He started the car and started off to progress in the score-up. The Appellant was observed to wave his whip, apparently at the starter, and then gave a second wave. His whip went "straight up in the air" and was "waved about". The starter drew the inference that the Appellant had a problem, and as a result he declared a false start.

Mr Boserio readily agrees that he did wave the whip, but asserts that he did so for good reason. He did not query the steward's account, and gave his version of events, which appears at page 2 of the transcript, where he stated:

*As they all said, sir, when the mobile took off he was a little bit slow to take off, and he went to have a shit and he wouldn't go at all. When he's had the shit and he's sort of opened up, I've tapped him up to try to catch up, and then I thought this, "Bugger this, if he's going to stay opened up he's not going to catch the field." If he hadn't had the shit, we would have caught the field in the first place. That's the only reason I asked for a false start. ... [inaudible] ... he just wouldn't go, and I said to ... [inaudible] ... when we came back, he said, "What happened?" I said, "He just had a shit and wouldn't go." That's all it was.*

He was charged with breaching Harness Rule of Racing 239(a), which provides:

*A person whose conduct or negligence has led or could have led to a breach of the rules is guilty of an offence.*

It was pointed out by the stewards:

*We are dealing with that rule, the particulars of that charge being that you, licensed driver John Boserio, in the initial score-up for the running of race 5 whilst driving Laroche Ardenne, did raise your hand to indicate to the starter that a false start should have been declared when none of the incidents which are catered for in Rule 141, which reads:*

*"In mobile start races the starter may declare a false start if at or before the starting point a horse causes interference to another runner, falls, breaks gear or scores up in front of the gate."*

None of those circumstances occurred, and accordingly it was deemed inappropriate for the starter to declare a false start.

The stewards took the view that the horse's action in defecating was not an act or circumstance that justified the causing of a false start. The Appellant maintains that he was acting in the best interests of the horse and of the punters. The stewards did not query the Appellant's account of why he sought to halt the start.

The Tribunal appreciates that there is an onus on drivers to ensure that they approach the start in a responsible manner. The effecting of an even start is an essential factor in ensuring that all horses have an equal chance in a race. However, it appears to the Tribunal that there are incidents or events which could justify a driver in causing a false start which are not covered by the rules. By way of an exaggerated example, had the Appellant been driving the favourite in the Interdominion and his horse was proving recalcitrant as it was engaged in defecating and he sought a false start, it is difficult to imagine that he would have been charged.

The Tribunal accepts that the Appellant was not seeking some advantage and that he acted in good faith and could not have anticipated the horse behaving in the natural way in which it did, and the Tribunal considers that his actions were justified.

Accordingly, the appeal is upheld and the suspension is quashed.

The appeal deposit is to be refunded.

J. C. McGuire, Judge  
20 April 2009