

**NEW SOUTH WALES
HARNESS RACING
APPEAL PANEL**

APPEAL PANEL MEMBERS

Hon W Haylen KC

Mr B Skinner

Mr C Edwards

Reserved Decision

12 MARCH 2024

APPELLANT JACK CALLAGHAN

RESPONDENT HRNSW

**AUSTRALIAN HARNESS RACING RULES
163(1)(d)**

DECISION

- 1. The Appeal is upheld to the extent that the 7-day suspension be set aside and be replaced by a reprimand.**
- 2. Fifty percent of the Appeal fee may be returned to Mr Callaghan.**

1. On Thursday 8 February 2024 HRNSW Stewards opened an inquiry into the reasons for Fiftyshades Cresco being carried down over marker pegs, locking wheels and being checked approaching the 100m mark in Race 2 over 1720m at Penrith Harness Racing Club. The Stewards heard evidence from Mr Jack Callaghan, the driver of Stellas Delight, and from Mr Brian Portelli, the driver of Fiftyshades Cresco. Stewards noted that upon entry to the home straight and for the remainder of the home straight Mr Portelli was racing behind Mr Callaghan and then attempted to take a run to the inside or a move to the inside wheel of Mr Callaghan, at which time Mr Callaghan appeared to shift down the track.
2. Mr Portelli's initial evidence was that coming into the home straight, he was waiting for the outside run to come, and as he went to go for the outside run, Mr Callaghan's horse shifted up ground a bit, so he grabbed hold to get into the inside. Mr Callaghan's horse came down on him while his horse was full of running and they clashed a few times down the straight and he tried to restrain his horse to the outside peg.
3. Mr Callaghan's initial response was that as they straightened, he was down on the fence and received contact from behind which shunted his gig up the track a bit and put him and his horse off balance a bit and once rebalanced he just came back down the track and tried to hold his true line.
4. The Stewards continued their investigation of this incident over two sessions on separate days where evidence continued to be taken with the assistance of video replays. Towards the end of the first day, Stewards announced that Mr Callaghan had a charge to answer under AHRR 163 (1)(d), namely: "A driver shall not directly or indirectly cause another runner to shift inside of the line of marker posts or into the sprint lane." The particulars of this charge were that Jack Callaghan, being the driver of Stellas Delight in race 2 at Penrith Harness Racing Club on 8 February 2024, at a point passing-identified on the films at 18.58.05- have shifted your runner down the track, causing the runner of Mr Portelli, being Fiftyshades Cresco, to have the front legs contacted and move inside the line of marker pegs. Mr Callaghan pleaded not guilty to that charge. The Stewards ultimately found him guilty as charged and imposed a 7 day suspension, a penalty that might be considered to be at the lower end of available penalties.
5. Mr Callaghan was asked if he understood the rule and the particulars of the charge, to which he replied, "Not really, no." He asked how he had put Mr Portelli inside the marker pegs when he had never established a full run inside his horse? The Chairman of the Stewards Panel pointed out it was identified earlier in the evidence that Mr Portelli's legs were at Mr Callaghan's axle and at that point Mr Callaghan had shifted down the track, causing contact to Mr Portelli, and as a result, Mr Portelli had been forced inside the line of marker pegs. Mr Callaghan responded by observing that when Mr Portelli was hard on the marker pegs and had not got enough room inside Mr Callaghan's wheel and the marker pegs, to even go further when he had already put himself in restricted room. The Chairman replied that Mr Callaghan was not being charged with putting him in restricted room, he was being charged for forcing him inside the line of the marker pegs. During further discussion Mr Callaghan submitted that it did not matter where Mr Portelli's legs were if he could not get his gig through. There was no run for him. He asked how he was supposed to

know that Mr Portelli was going to come through. Mr Callaghan then asked for an adjournment of the hearing so that he could gather more evidence and to seek advice from a more senior and experienced driver. He then stated that he had been driving for numerous years but had never once been in a position anything close to the charge against him. The Stewards granted the adjournment, and the hearing was continued on 14 February 2024 at Menangle.

6. Early in the Inquiry Mr Portelli said that the incident happened quickly and that he was trying to get out of the situation although at one point he thought he had established a run inside Mr Callaghan but that was only for a short time. He later stated that there was more than a run open to the inside of Mr Callaghan. He had steered his horse into the gap once it appeared and then as he nearly got there his gig probably did not go through and fell short when Mr Callaghan came down on him. He agreed with the Chairman that he pitched for a run, but it had not been fully established. In later questioning by Stewards, Mr Portelli spoke of his horse going forward and picking up quickly "because the gap just closes as quick as it came." Mr Portelli was then questioned at some length about the timing of his move inside Mr Callaghan and how far he had gained a run before it closed. He accepted that he at one stage was a foot inside, but it was half a horse 'when it gets tight'. It was then put to him that Mr Callaghan's horse's head was starting to go down indicating that he was looking to correct his line and that there was no room to go through. Mr Portelli agreed with that proposition. It was then put to Mr Portelli that he was not doing his best to restrain his horse and to get out of a spot that he thought was closing.
7. In his evidence and on numerous occasions Mr Callaghan complained about the tactics of Mr Portelli driving his horse onto his back and helmet and how that contact had caused him great discomfort to the point of making it difficult to drive his horse forward. He had moved his body from side to side to indicate to the driver behind that he was racing right on top of him and putting both Mr Callaghan and the rest of the field in an 'extremely dangerous position'. This contact occurred for most of the race. Coming into the straight he kept the line he had established on straightening, and he was hard on the marker pegs before he received interference from Mr Portelli's horse that shunted his gig because of the way he was positioned in the sulky. Questioning from the Stewards seemed to indicate acceptance of Mr Callaghan's sulky being turned to the side at this point. On the second day of hearing Mr Callaghan repeated his contention that the only reason there was an incident coming into the straight was because of the way Mr Portelli had driven. He noted that the point where Mr Portelli had stated that he had restrained his horse in the straight was shown to be incorrect on the video where Mr Portelli is shown to whip his horse again.
8. During the course of this Appeal, it was disclosed that there is an ongoing Stewards inquiry into the driving tactics of Mr Portelli in this race. That inquiry has not concluded. HRNSW submitted that those driving tactics were separate to the matters being considered in this Appeal, which is limited to the provisions of AHRR 163 (1) (d) and the particulars of this specific charge. The Appeal Panel accepts that a wider appeal relating to tactics during the whole of the race is not part of this Appeal, however, it regards the clash that occurred coming into the home straight as being central to what happened down the straight.

9. The Appeal Panel has closely reviewed the race video and is comfortably satisfied that coming into the straight Mr Portelli has come into severe contact with Mr Callaghan's cart and possibly Mr Callaghan's helmet. Mr Callaghan's head and body are thrown around in a disturbing manner while the cart swings to the left. Mr Callaghan has to fight for some time to obtain control of his horse. These measures taken by Mr Callaghan leave open the question of whether he shifted down the track deliberately or was baulked into that position. The replays strongly suggest that Mr Callaghan was at least baulked at that vital time coming into the turn. Mr Portelli appears to quickly take advantage of the situation and drives vigorously to the inside of Mr Callaghan's horse despite the closing gap.
10. All of the matters referred to above are an important part of what happened next. It seems clear to the Appeal Panel that further down the track Mr Callaghan does shift his runner down the track and causes Mr Portelli's horse to move inside the line of marker pegs. Having regard to the events that occurred at the top of the straight, it is likely that this move was an indirect cause of Mr Portelli's horse moving inside the line of marker pegs.
11. Having regard to all those matters the Appeal Panel concludes that the Appeal be upheld to the extent that the 7-day suspension be set aside and be replaced by a reprimand. Fifty percent of the Appeal fee may be returned to Mr Callaghan.

Hon Wayne Haylen KC – Principal Member

Mr B Skinner – Panel Member

Mr C Edwards – Panel member

12 March 2024