

**NEW SOUTH WALES  
HARNESS RACING  
APPEAL PANEL**

**APPEAL PANEL MEMBERS  
Hon. W Haylen KC  
J Murphy  
G Watson**

**27 MAY 2024**

**APPELLANT CHLOE FORMOSA  
RESPONDENT HRNSW**

**AUSTRALIAN HARNESS RACING RULES  
149(2)**

**DECISION**

1. The decision of the Appeal Panel in this case is that the Appeal is dismissed. Ms Formosa is suspended from driving for a period of 21 days commencing from Saturday, 25 May 2024.

1. Ms Formosa is a licensed Grade A driver with Harness Racing NSW and appeals against a 21day suspension imposed by Stewards concerning her drive on My Crackling Rosie in race 9 at Menangle on 14 May 2024. The grounds of Appeal were that the severity of the penalty was excessive and that not all circumstances were considered during the initial inquiry.
2. After taking evidence from Ms Formosa, Stewards issued a charge under AHRR 149 (2). The terms of that provision are: 'A person shall not drive in a manner which in the opinion of the Stewards is unacceptable'.
3. The particulars of the charge were that Ms Formosa, as the driver of My Crackling Rosie in race 9 at Menangle on Tuesday 14 May 2024, have from approximately the 1450 metres, after establishing a position in advance of the field, failed to shift My Crackling Rosie down to the marker pegs, which has enabled a run for My Ultimate Flynn, which prevented My Crackling Rosie from obtaining the lead during the early stages, which ultimately resulted in My Crackling Rosie racing without cover from that point until approximately the 700 metres when you were able to progress forward to the lead. And in the opinion of the Stewards, that failure to shift your runner down the track was unacceptable. Ms Formosa pleaded guilty to that offence as particularised.
4. In calculating an appropriate penalty for this breach of AHRR 149 (2), the Stewards firstly adopted the Guideline penalty for this offence, being a ten week suspension. Her early guilty plea allowed for a two week reduction of the head penalty, and another four weeks reduction was allowed for her record as a driver. Lastly, the Stewards noted that Ms Formosa was a concession claiming driver and had regard to the circumstances of this incident, allowing a further seven days reduction. As indicated above, those considerations resulted in Ms Formosa being suspended for 21 days.
5. At the hearing of the Appeal the Stewards drew attention to a number of factors as well as the circumstances of the race. It was noted that My Crackling Rosie had started in 23 races and on 16 prior occasions had led in a race. On only 1 of those 16 occasions had the horse drawn barrier 1. Those races clearly showed the ability of the horse to shift inwards at various stages of a race in order to secure the lead position. Further, Ms Formosa had been licensed as a driver for over 3 years and had driven in 569 races. She was a Grade A driver and able to drive in races of the highest class, including Group 1 races. It was noted that while a Grade A drivers licence provided significant benefits to a driver, there was also an increased expectation that the holder of such a licence is to exercise, at all times, the level of skill and judgment consistent with the highest driver licence category. It was also pointed out that crossing to the lead is one of the most rudimentary tasks a driver can undertake during a race, particularly in this instance where Ms Formosa was well clear of all remaining runners and where the need to calculate the required clearance of other runners was removed.
6. In relation to the circumstances of the race the Stewards noted that Ms Formosa had been reprimanded for breaching AHRR 149 (2) in January 2024 and that this was the second breach of the rule in a short time frame. In this race Mr Formosa was able to shift My Crackling Rosie from a nine wide position after the start to be positioned two wide without issue. The horse was able to lead comfortably but was not shifted to the marker pegs approaching the first turn where it could continue to lead the race. Instead the horse was disadvantaged and obliged to race without cover until obtaining the lead around the 700 metre.
7. It was argued in favour of Ms Formosa that in the back straight her horse was in the same line as the others and was two off the pegs and her failure to cross was nothing more than a little error of judgement. There was authority for the proposition that this rule was not intended to pick up minor errors or split second decisions. The events at the turn out of the straight occurred in split seconds. This was said to be a slight error

although it was conceded that the horse should have been close to the peg line and that Ms Formosa might have been a little bit complacent. Submissions were also made regarding the financial loss that Ms Formosa would face during this suspension.

8. The Appeal Panel is unable to accept the case argued for Ms Formosa. This was not a case where a split second decision was made in urgent circumstances. There was a period of 4 or 5 seconds when Ms Formosa could have comfortably obtained running on the pegs, leaving the other runners to challenge her. Indeed, those horses at the turn in question were unable to challenge for the lead in the final stages of the race and dropped out. Her horse was well placed to take the lead on the pegs when coming to the turn. Simply, her failure to do so left the horse fourth back and then taking a substantial time to reach the lead again. It is arguable that those events cost the horse its chance to win the race.
9. There is one further point which was not considered in the Stewards inquiry and that concerns the two occasions where Ms Formosa clearly stated that her instructions were to 'cross the field and hand up'. That is precisely what she did. It is understandable that as a young driver Ms Formosa would follow those instructions, however, her status as a Grade A driver was to deal with the circumstances around her as she found them and to ensure that her horse obtained the best chance of success.
10. Having regard to the matters dealt with above, the substance of the Stewards case is accepted and the Appeal is dismissed. Ms Formosa is suspended from driving for a period of 21 days commencing from Saturday 25 May, 2024.

Hon Wayne Haylen KC – Principal Member

Mr J Murphy – Panel Member

Mr G Watson – Panel Member

27 May 2024