

**NEW SOUTH WALES
HARNESS RACING
APPEAL PANEL**

**APPEAL PANEL MEMBERS
B Skinner
D Kane
C Edwards**

REASONS

6 JUNE 2024

**APPELLANT JACK CALLAGHAN
RESPONDENT HRNSW**

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

DECISION

1. The decision of the Appeal Panel in this case is that the appeal is upheld and the appeal deposit is to be returned.

1. On 8 March 2024 at Newcastle in Race 4, Coral Stride was driven by Mr Jack Callaghan, a licensed driver (“the appellant”). The race was conducted over 1609m.

2. An Inquiry was conducted by HRNSW Stewards following the race into the tactics adopted by Mr Jack Callaghan and Mr Bailey McDonough who was the driver of Celestial Gossip. The Inquiry commenced on 8 March 2024 and resumed on 6 May 2024.

3. The concern of stewards ultimately turned on the tempo of the race, and particularly the sectional time recorded for the second quarter namely, 26.9 seconds.

4. After taking evidence and following the resumed inquiry, Stewards issued a charge against the appellant and Mr Bailey McDonough pursuant to Australian Harness Racing Rule 149(2) as follows:

AHRR 149(2) *A person shall not drive in a manner which in the opinion of the stewards is unacceptable.*

5. The particulars of the charge were that from passing the 1100 metres, after resisting a challenge for the lead, Mr Callaghan continued to maintain his position along the marker pegs, where the tempo was, in the opinion of the stewards, excessive, with the second quarter recorded in 26.9, where it was reasonable for him to ease the tempo throughout the stage or throughout the second quarter of the event.

6. The stewards also noted that Coral Stride became uncompetitive over the concluding stages and weakened out of the event and believed this was a result of, or the main contributing factor to it, as a result of the excessive tempo shown during the second quarter of the event and the over exertion of the runner during that stage and as result was uncompetitive, to be beaten some distance.

7. The appellant received a six-week suspension from driving in races to commence at midnight on 7 May 2024. A Notice of Appeal was lodged on 7 May 2024 in which the appellant challenged the conviction and asserted that he was driving to instructions. A stay was granted to enable an appeal panel to be convened. The appeal was fixed for hearing by zoom and was conducted on 16 May 2024.

8. It is important to record that Mr Bailey McDonough was granted leave to withdraw his appeal against a 28-day suspension for the same driving offence on 16 May 2024. Having viewed the video film and reviewed the evidence, the appeal panel was left in no doubt that responsibility for the speed of the second quarter lay almost exclusively with Mr McDonough.

9. Mr Day appeared for HRNSW and relied upon the following material:

1. Transcript of Inquiry (Newcastle 8 March and Menangle 6 May 2024)
2. Victorian Racing Appeals Tribunal Decision – Austin Mifsud 26 June 2007
3. Victorian Racing Appeals Tribunal Decision – Austin Mifsud 23 October 2003
4. Victorian Racing Appeals Tribunal Decision – Daryl Douglas 18 May 2009
5. Race Results – Newcastle 8 March 2024 and Career Racing Performances Coral Stride and Celestial Gossip
6. Average Sectional Times 1609m Newcastle 01/01/2022 to 07/03/2024
7. Coral Stride – Career Winning or Placing Performances when leading.
8. New South Wales Racing Appeals Tribunal Decision – Lauren Panella 15 March 2012
9. Career Driving Statistics – Jack Callaghan

10. Unsigned and unidentified written submissions were made available by Mr Callaghan who appeared for himself. The panel does not encourage the practice of appellants relying upon anonymous material.

11. The gravamen of the rule is well understood. Mr Callaghan in the written submission relied upon by him referred to the decision of the Honourable Justice Haylen sitting in the Racing Appeals Tribunal in an appeal by Blake Fitzpatrick (20 May 2009) and to a decision of the Racing Appeals Tribunal in *Stariha v QRAT* (6 January 2004).

12. In the Blake Fitzpatrick decision, the need to demonstrate the sort of culpable action required to amount to a breach of the rule was expressed by His Honour in terms of a test of a reasonable harness racing spectator exclaiming with words to the effect ‘What on earth is he doing?’ or ‘My goodness look at that’ or some such exclamation.

13. Earlier in the decision, three observations made by Judge Goran in a decision of Honan (1983) were modified and endorsed. They were: -

(a) the rule does not permit the mere substitution of the steward’s view as to how a particular horse should have been driven for the view of the driver,

(b) the rule does not seek to punish a mere error of judgment during the race on the part of the driver, and

(c) the driver’s conduct must be culpable in the sense that objectively judged it is found blameworthy.

14. The stewards appeared to give little weight to a written statement submitted by the trainer of Coral Stride, Mr Mark Callaghan. Firstly, there was no dispute that instructions were given for the horse to lead. Secondly, Mr Mark Callaghan stated: "Through the next quarter, although pressure was being applied to Coral Stride, I was happy with her action and the ease in which she seemed to be travelling as she came past me just after the winning post with a lap to go."

15. The stewards relied heavily upon a comparison of times run by Coral Stride and the fact that the speed of the race in the second quarter was the second fastest on record at the Newcastle track. One of the difficulties with that approach is that in order to establish that the drive was blameworthy, the stewards needed to demonstrate what alternatives were open to Mr Callaghan in circumstances where excessive pressure was being applied by Mr Bailey McDonough.

16. The culpability relied upon by the respondent amounted to little more than an assertion that there was failure on the part of Mr Callaghan to drop back and thereby abandon the lead resulting in a reduction of the speed at which Coral Stride was travelling. The difficulty with that proposition is that the horse is a noted front-runner, and it was simply not possible for the stewards to predict what would have occurred thereafter had the lead been abandoned.

17. The onus lay on the stewards to establish culpability and that the driving of Mr Callaghan was blameworthy. The panel does not accept that the stewards discharged what is, after all, a high onus. There may well have been an error of judgment on the part of Mr Callaghan but that was not sufficient to establish that the drive was unacceptable as that term is used in the rules and the charge that was laid.

18. For the forgoing reasons, the panel upholds the appeal and directs that the appeal deposit be returned.

Mr B. Skinner - Convenor
Mr D. Kane - Panel member
Mr C. Edwards - Panel Member

06 June 2024