

**NEW SOUTH WALES
HARNESS RACING
APPEAL PANEL**

**APPEAL PANEL MEMBERS
P Kite KC
D Kane
B Judd**

**REASONS
30 JULY 2024**

**APPELLANT LLEYTON GREEN
RESPONDENT HRNSW**

**AUSTRALIAN HARNESS RACING RULES
163(1)(a)(iii)**

DECISION

1. The decision of the Appeal Panel is that the appeal is dismissed and the appeal deposit is forfeited.

1. Mr Lleyton Green holds Grade A driver's licence with Harness Racing New South Wales (HRNSW), the highest category issued by that body. He has appealed against the decision of Stewards to suspend him from driving for 21 days. This suspension arose from interference occurring from near the 300 metres point in race 9 at the Menangle meeting held on 9 July 2024.
2. Mr Green was driving Bertie Jones and Mr Callaghan was driving Bettors Hope racing immediately up the track from from Bertie Jones.
3. After taking evidence from the two drivers and viewing replays of the race, Stewards asked Mr Green to answer a charge pursuant to AHRR 163 (1)(a)(iii), namely that "A driver shall not cause or contribute to any interference." The particulars of the charge were stated as:

"that at a point near the 300 metres, that you, Lleyton Green, the driver of Bertie Jones, have directed your runner up the track away from a two-wide line, up into a three-wide line, when not clear of Bettors Hope and as a result, you've placed your offside wheel underneath Bettors Hope, placed that runner in a very awkward position, resulting in Mr Callaghan to have to steady his runner at that stage of the race. And then as you got wider on the track and you made some attempt to keep your horse down the track, you've then resumed driving Bertie Jones and have failed to make sufficient effort to prevent your runner from shifting further up the track shortly thereafter, resulting in Bettors Hope receiving a second check and having to be taken away by its driver, and subsequently, Bettors Hope has raced roughly."
4. Mr Green pleaded not guilty to the charge.
5. Mr Paul was Chairman of Stewards at the meeting and observed the race from the Chairman's tower looking down the main straight. He said that, just near the 300 meters it appeared that Mr Callaghan was attempting to maintain his position wider on the track and it was evident that Bertie Jones was looking to get wider on the track and applied significant pressure to the inside of Bettors Hope. As Bertie Jones appeared to get the benefit of an advantage over Bettors Hope it continued to shift wider on the track causing Mr Callaghan to take his horse away and it "ran roughly" as a result.
6. Mr Paul invited those present to question him but neither driver did so.
7. Mr Callaghan was then invited to give his evidence. He said that he was trying to follow another runner, which had accelerated quite quickly toward the front of the race, as he was passing Bertie Jones Mr Green elected to try to move him up the track. Then, when he had gained a fair advantage over him, his horse "kind of slipped through a bit, and, yeah, I got a slight check". He agreed that his horse raced roughly as a result of the check.
8. Mr Green then gave evidence to the effect that as he got wheel to wheel with Bettors Hope he was able to shift Bettors Hope wider and get on to the back of the runner that horse had been attempting to follow. Just as he got out his horse may have just ducked out and run up the track a little bit more than he he had intended and Mr Callaghan would have had to "just check off".
9. The videos of the race were then viewed and the drivers invited to add any further evidence. Mr Callaghan, in response to a question from the Chairman confirmed that his horse had "run relatively straight throughout that section of the race". Mr Green submitted that the videos "proved" his earlier evidence and submitted it showed that his horse ducked out for no reason

and went further up the track than he needed. It showed that he had his left hand outside the sulky drawing on the left rein to try to keep the horse down the track. He agreed that his offside sulky wheel was inside Mr Callaghan's racing line "a little bit". The Chairman then asked whether he could see a clear gap between Bettors Hope's nearside hind leg and his offside sulky wheel and he replied "not really". Mr Green further submitted that Mr Callaghan's horse had his head turned in so if there had been any danger one would have thought he would have checked away at that point. There followed a lengthy exchange between the Chairman and Mr Green in which the latter maintained that he was able to fairly move Mr Callaghan's horse up the track and then his horse ducked out further than he needed notwithstanding his efforts to keep him down the track. He denied that he had set the horse on a course wider than he needed.

10. He explained that he drove the horse on with the whip because, had he stopped in an effort to straighten the horse there may have been trouble given the proximity of Mr Callaghan's wheel. Mr Green was then questioned about the position of his left arm, at one point outside his sulky trying to keep the horse down the track but later his left arm moves forward and in. He maintained that he continued to attempt to steer the horse down the track.
11. At that point the Stewards adjourned. When they returned a short time later they returned and announced the charge and sought a plea from Mr Green. He was invited to present any further evidence. He observed that Bettors Hope never galloped and any interference was minor and due to his horse's racing manners, being a tendency to hang out, which he said were well known. He was asked whether there was more he could have done, given his knowledge of the horse when initially steering him up the track. He denied that there was more and said he did all he could to try to keep his horse running straight. Mr Callaghan was not asked any further questions.
12. The Stewards then announced their decision. In essence they concluded that Mr Green had initially set his horse on an acute angle and placed significant pressure on Bettors Hope and once he had cleared that runner there was only one option and that was that his offside sulky wheel would race inside the racing line of that runner. That is what occurred. From that point, the Stewards concluded, Mr Green had failed to make sufficient effort to correct Bertie Jones causing Bettors Hope to be checked and race roughly. The Stewards found him guilty of the charge.
13. On the matter of penalty, Mr Green submitted that he had just come back from a month's suspension and he was attempting to pay off his mortgage and suspensions made that difficult. He agreed that he had had four suspensions in the previous 12 months.
14. The Stewards looked to the circumstance of the incident, the check to Bettors Hope causing that horse to race roughly and observed that it was more by good luck than good management that that was all that happened noting the duty they had to ensure the safety of drivers and horses. They acknowledged that drivers were expected to compete but were expected to do so fairly with the requisite level of care. The Stewards considered the penalty guidelines, which provide a starting point of 21 days in these circumstances, and Mr Green's driving record which was described as poor relative to other drivers.
15. The notice of appeal did not indicate whether it was against conviction, penalty or both. Before the Panel Mr McDowell who appeared with Mr Green confirmed it was an all grounds appeal. Mr Day, on behalf of HRNSW, took no objection so the appeal proceeded on that basis.

16. Mr Day tendered a bundle of documents consisting of the Respondent's written submissions, the transcript of the Steward's Inquiry and the Offence Report for Mr Green. He also tendered the various video angles of the subject race. The additional evidence on behalf of Mr Green was: a report from an Acupuncturist Savarna Coles dated 11 July 2024 indicating that on examination that day the horse presented with jarring in the nearside front fetlock causing pain in the local area and referring up into the shoulder and sternum; a summary said to indicate Bertie Jones record of hanging/shifting out; a notice from HRNSW dealing with the decision to move the 'push out pole' at Menangle from the 600 metre point to the 400 metre point effective from 15 November 2014; and two videos of incidents in which interference had been caused and the driver had been reprimanded.
17. Mr Day took the panel to the replays of the race and pointed to the areas of concern of the Stewards. He argued that the Stewards had been correct in their observations about the circumstances in question and the penalty imposed.
18. Mr McDowell addressed the particulars of the charge laid by the Stewards and argued that there were two allegations — first, as to the attempt to "push out" and second, as to subsequent movement up the track causing secondary interference. The Panel notes that there is only one charge and the Particulars are to be read in that light. They allege a course of conduct which is all but continuous and the secondary interference is to be seen as a failure to mitigate the circumstances.
19. He contended quite strongly as to the first part of the Particulars that Mr Green had executed a perfect "push out" in accordance with the rules and therefore he could be guilty of any wrongdoing in that respect. As to the second he argued that Mr Green had done everything he could to keep his horse straight and it was Mr Callaghan, who had resented being "pushed out" and steered his horse down the track rather than moving up the track where he was under no restriction. He referred to the horse's well-known tendency to hang or shift out and contended that tendency was exacerbated by the lameness identified in the report from Savarna Coles.
20. We note that Mr Callaghan was not called before the Panel and that, before the Stewards it was not suggested that he had resented being pushed out. He therefore had no opportunity to respond to that suggestion. In any event it appeared to the Panel on review of the video that Mr Callaghan did no more than attempt to hold his line.
21. The Panel notes that drivers are obliged by Rule 149 of the AHRR to take all reasonable and permissible measures to ensure that their horse is given every opportunity to win or obtain the best possible placing. That Rule, apart from its internal limitations, is also subject to other Rules including Rule 163. The Panel recognises that there was no suggestion before it or indeed before the Stewards that Mr Green was not entitled, at the time he attempted to push out, to do so. The Panel further notes that Mr Callaghan was entitled to attempt to hold his line. Mr Green was obliged to attempt his manoeuvre with the requisite level of skill and care. The Panel accepts that on this occasion he failed, given his knowledge of the racing manners of his horse, to do so. The Panel accepts that the course on which he set Bertie Jones when he attempted to push out was too sharp even for a horse who didn't have the tendency to hang out. The Panel is satisfied that the Stewards were correct in their assessment of the circumstances.

22. On the matter of penalty, The Panel again considers that the Stewards were correct in their assessment of the appropriate penalty. Mr Green was not entitled under the guidelines for a discount for a guilty plea or for his driving record. Indeed, as to the latter, the observation made by the Stewards, about the necessary deterrent effect of penalties, Mr Green's record may be an aggravating rather than a mitigating factor in the future if his record does not improve. The fact that Bettors Hope did not gallop is relevant but the Panel notes that the guidelines provide for a higher starting point in such circumstances. The Panel did not find the videos of other incidents of great help given that there was a lack of detail provided about the circumstances of each offence or of the record of the driver involved.

23. For these reasons the Appeal is dismissed. The appellate deposit is forfeited.

Mr P Kite SC – Convenor

Mr B Judd – Panel Member

Mr D Kane – Panel Member

30 July 2024