

**NEW SOUTH WALES
HARNESS RACING
APPEAL PANEL**

**APPEAL PANEL MEMBERS
P Kite SC
W Picken OAM
B Judd**

7 January 2025

**APPELLANT MAT RUE
RESPONDENT HRNSW**

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

DECISION

The Appeal Panel makes the following orders:

- 1. Appeal allowed.**
- 2. The suspension ordered by the Stewards is set aside.**
- 3. The charge against Mr Rue alleging an offence against AHRR 163(1)(a)(iii) is dismissed.**
- 4. The appeal deposit is to be refunded.**

1. Mr Mathew Rue holds a Grade A driver's licence with Harness Racing New South Wales (HRNSW), the highest category issued by that body. He is highly experienced having driven in more than 7,500 races and has driven more than 1,100 winners. He has appealed against the decision of Stewards to suspend him from driving for 7 days. This suspension arose from interference occurring just inside the 500 metres point in Race 5 at the Bathurst meeting held on 18 December 2024.
2. Mr Rue was driving He Aint Fakin which started at the price of \$6.00 and finished fifth. Ms Ross was the driver of Myra Dawn which was racing immediately up the track from He Aint Fakin at the time of the incident.
3. After taking evidence from the two drivers and viewing replays of the race, Stewards asked Mr Rue 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 you, Matt Rue, the driver of He Aint Fakin in Race 5 at Bathurst Harness on Wednesday, 18 December 2024, when leaving the 500 metres, when shifting your runner up the track, has contributed to Myra Dawn going off stride. Stewards when considering that, did take into account your horses racing manners."

4. Mr Rue pleaded not guilty to the charge but was subsequently found guilty.
5. Mr Rue did not dispute that contact was made with Myra Dawn. He maintained that his horse was travelling better than Myra Dawn and with the horses in front of him tiring he sought, carefully and gradually, to move up the track causing Ms Ross to do the same. The difficulty arose, on his evidence after he had achieved the one out position. His horse refused to run straight from that point. Despite his best efforts He Aint Fakin continued to drift up the track and contact with Myra Dawn occurred. He maintained that he did nothing wrong. He simply could not restrain his horse from hanging out. Mr Rue said that the trainer had used a bit on the horse with an extension "real long on (the off) side". He said that the horse "warmed up horrible" so he spoke to the trainer, who was also driving in the race, and told him the horse was boring out terrible in the warm up and asked what he wanted him to do. The trainer responded that the previous week the horse had "got in real bad" and the bit was intended to control that behaviour. Notwithstanding the warm up, Mr Rue said "the horse was pretty good in the run."
6. Ms Ross gave brief evidence before the Stewards largely corroborating Mr Rue's evidence. We note that, while Ms Ross was present, Mr Rue stated that Myra Dawn was "hanging in all over me" as well. Ms Ross was not asked to comment about that and did not volunteer to do so. The Panel further noted that the tiring horse immediately in front of He Aint Fakin also shifted out after Mr Rue had made his manoeuvre. Mr Rue said that that horse had contributed in a small way, perhaps 10%, to the incident, but the real problem was his horse's refusal to run straight.

7. In discussion with the Stewards Mr Rue said¹:

MR RUE: "I'm within my rights to move her out like I did. I'm not doing anything wrong.

THE CHAIRMAN: Hundred percent you aren't.

MR RUE: Look at that now, I'm actually out.

THE CHAIRMAN: Hundred percent you're....

8. On the appeal to the Panel Mr Rue was self represented and Mr Day appeared for Harness Racing NSW. The evidence before the Panel was essentially that before the Stewards. There was some elaboration by Mr Rue and Mr Day provided an analysis of the Race footage.
9. In a recent decision of the Racing Appeals Tribunal, *LLEYTON GREEN v HARNESS RACING NEW SOUTH WALES*, 21 October 2024 the Tribunal, his Honour G J Bellew SC, considered the offence created by AHRR 163 1(a)(iii). In that matter Mr Green had been found guilty by the Stewards of causing interference contrary to the Rule. An appeal to the Panel was unsuccessful and Mr Green appealed to the Tribunal. In that case, as in this, the fact of interference was not in issue.
10. In the course of that Determination his Honour observed that to *"cause an event is to make that event happen. An event may be caused by a positive act on the one hand, or by an omission to act on the other"*². In that case it was said the offence occurred by an omission to act. His Honour then observed that *"It follows that before I am able to find the offence proved, I must be satisfied: (i) of that omission; and (ii) that the omission was the cause of the interference."*³ It is also appropriate to note, as his Honour did⁴, that *"it is important to bear in mind that the onus lies on the Respondent to establish that the Appellant's conduct (or perhaps, his lack of conduct) was the cause of the interference"*. In this case the question is whether it contributed to the interference.
11. Having regard to these observations, the Panel asked Mr Day to identify whether it was alleged that Mr Rue had done something or omitted to do something which contributed to the interference. He submitted it was the former, viz, Mr Rue had taken an action which contributed to the interference. Mr Day was then asked to identify that action. It was alleged that, having the knowledge that the horse was *"boring out"* in the warmup he should not have sought to move up the track to force Ms Ross wider when his sulky wheel was slightly in advance of hers because of the increased risk of his wheel moving into close proximity with Myra Dawn's hind legs if the horse were to drift out.
12. Mr Day accepted, having regard to Mr Rue's obligation to ensure his horse had every opportunity to win the race or place as highly as possible, that had he not attempted to move up the track he would likely have been asked to explain why to the Stewards. Mr Day added that in his experience an explanation that the driver held a concern about safety would have been accepted by Stewards.

¹ Transcript p 9 lines 7-14

² Determination at para 28

³ *ibid* at para 28

⁴ *ibid* at para 17

13. The result is that, if the offence is to be proved the Panel has to find that Mr Rue should not have attempted to move his horse into a more advantageous position, notwithstanding how well it was travelling relative to the horses immediately in front and beside him because of a concern that, if he did steer the horse out it may refuse then to respond to his driving. That raises the question of Mr Rue assessing these matters in running. True, he had noted the warm up was terrible, but he also observed the horse was well behaved in the race up to that point. It is apposite in this regard to bear in mind another observation of his Honour in *GREEN*. He said⁵:

“Further in my view, there is a necessity to recognise that driving is not necessarily a counsel of perfection. A driver may be faced with a variety of situations in a race, which call upon the exercise of care, skill and judgment. Whether a particular response by a driver to a set of circumstances with which he or she is faced is appropriate or sufficient, or whether it amounts to some offence against the rules, will fall for determination according to what actually occurred.”

14. As was noted at the outset of this decision Mr Rue is a very experienced and successful driver. His disciplinary record is good, at least in so far as it was revealed to the Panel. His evidence and approach before the Stewards and before the Panel was straightforward and completely candid. He is not a person to cavil and did not do so. His view was that the move he made was legitimate and the Stewards appeared to agree with him. He said that if the horse had run straight he would have improved his position without incident. Contrary to his expectations the horse did not run straight and would not respond to his efforts to correct its course. Having regard to his experience the Panel accepts his contention that he did not contribute to the interference.

15. In a finely balanced case the Panel has come to the view that the actions of Mr Rue did not contribute to the interference. The appeal is therefore upheld.

16. The Panel makes the following orders:

1. Appeal allowed.
2. The suspension ordered by the Stewards is set aside
3. The charge against Mr Rue alleging an offence against AHRR 163(1)(a)(iii) is dismissed
4. The appeal deposit is to be refunded.

Mr P Kite SC – Convenor
Mr W A Picken OAM - Panel Member
Mr B Judd – Panel Member

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⁵ ibid at para 36