

**NEW SOUTH WALES
HARNESS RACING
APPEAL PANEL**

APPEAL PANEL MEMBERS

Hon W Haylen KC

Ms J Moore

Mr P Fletcher

RESERVED DECISION

2 APRIL 2024

APPELLANT LUKE MCCARTHY

RESPONDENT HRNSW

AUSTRALIAN HARNESS RACING RULES

163(1)(a)(iii)

DECISION

- 1. The Appeal is upheld and the suspension imposed by the Stewards is set aside.**
- 2. The appeal deposit is to be returned to Mr McCarthy.**

1. On 20th March 2024 NSW Harness Racing Stewards at Bathurst opened an inquiry into the reasons for the horse Crusader Miss being tightened for room and breaking gait near the 200m in race 6. Two drivers were called before the inquiry, namely, Mr Rickie Alchin, the driver of the favourite, Crusader Miss, and the driver of the horse Kima, Mr Luke McCarthy, the ultimate winner of the race.
2. During the Stewards inquiry Mr Alchin said that he noticed that Mr McCarthy's horse had commenced its run out wide "quite quick" and he felt that it was going to zip past the leader quickly and obtain an advantage over his horse, so he elected to "pop off" at that point to go into the running line. At this point Mr McCarthy was three wide and it looked like his horse ducked in as Mr Alchin was coming out and he got into restricted room from that point.
3. Mr McCarthy's evidence was that Crusader Miss got to one and a half wide while he was two and a half wide but Crusader Miss did not get to a full two wide run. He had the momentum going forward on Kima going into the corner. Both horses got tight and Mr McCarthy pulled Kima off Crusader Miss. They were both going for the same spot at the same time. Mr Alchin said that he eased his runner wider on the track knowing that Mr McCarthy was coming with momentum. Mr McCarthy said he was ahead of Mr Alchin when he commenced to move into the two wide run and so was more entitled to take that position. These points were repeated by the drivers during the course of the Stewards inquiry.
4. After hearing further argument the Stewards charged Mr McCarthy with a breach of AHRR 163, part (1) (a)(iii), " A driver shall not (a) cause or contribute to any (iii) interference". The particulars of the charge were: In race 6 at Bathurst on Wednesday, 20 March 2024, where you were the driver of Kima, in that at a point approaching the home turn, you have shifted that filly down the track when not sufficiently clear of Crusader Miss driven by Rickie Alchin, and as a result, Crusader Miss has been taken down the track and tightened for room, and a short distance later broke stride." Mr McCarthy pleaded not guilty to that charge.
5. In his submissions on penalty Mr McCarthy reminded Stewards that he was known to plead guilty if he believed that he was in error and that he was a cautious driver, especially with two year olds. He believed Mr Alchin was in the wrong in that he tried to squeeze out when he could not do so and so put himself in restricted room.
6. The Stewards responded by noting that Mr Alchin had established a run and shortly after Mr McCarthy started to come down the track and placed him in restricted room. It was conceded that Mr McCarthy turned his horses head out at that stage and that it may have put in a wrong step but that was because he was trying to come off Mr Alchin at that stage. Mr McCarthy was then found guilty of the charge. The Stewards noted that he had an extremely good record, with over 2000 drives since his last suspension that occurred in December 2021. The incident in the race was considered as a whole, considering the manners of both horses and the degree of interference. Mr McCarthy's drivers licence was suspended for seven days.

7. The Appeal Panel has found it difficult to establish exactly what happened at the 200m point of the race and to what extent each driver may have contributed to the incident that resulted in Crusader Miss being checked and breaking. The video of the race has been closely examined by the Panel in circumstances where there was no head on coverage of the race at this critical point and where the alleged interference occurred in a split second or so. These difficulties are increased by the observation that Crusader Miss appears to break shortly after Kima moves away from her at the crucial point under consideration. Clearly, the Stewards were entitled to scrutinise the circumstances around the breaking of Crusader Miss but the Panel cannot be comfortably satisfied that Kima shifted down the track when not clear of Crusader Miss, resulting in that horse being tightened for room, checking and breaking gate. It follows that the Appeal by Mr McCarthy is upheld and the suspension imposed by the Stewards is set aside. The Appeal Deposit is to be returned to Mr McCarthy.

Hon Wayne Haylen KC – Principal Member
Ms J Moore – Appeal Panel Member
Mr P Fletcher – Appeal Panel Member

2 April 2024