

HARNESS RACING VICTORIA (“HRV”)
RACING APPEALS AND DISCIPLINARY BOARD (“RAD BOARD”)

SHAYNE CRAMP

Appellant

-and-

HRV STEWARDS

Respondents

RAD BOARD:

MR BRIAN W. COLLIS Q.C. (Chairman)

MR KEVIN CARSON (Panel Member)

HEARING:

MONDAY 14 JULY 2014

REPRESENTATION:

MR SHAYNE CRAMP – Appeared for himself.

MR BRETT DAY – Appeared for HRV Stewards

1. **DECISION APPEALED**

On 13 June 2014 and 27 June 2014, H.R.V. Stewards convened an inquiry with respect to the drive of Mr Shayne Cramp of the horse “Philtra Phella” in Race 1 of the Mildura Harness Racing Meeting held on Friday, 13 June 2014.

On 27 June 2014, Mr Shayne Cramp was charged with a breach of Rule 149(1) of the *Australian Rules of Harness Racing* (“the Rules”) with respect to the abovementioned drive (“the said charge”).

Rule 149(1) of the Rules states as follows:

“A driver shall take all reasonable and permissible measures during the course of a race to ensure that the horse driven by that driver is given full opportunity to win or obtain the best possible placing in the field.”

On 27 June 2014, HRV Stewards provided Mr S. Cramp with the following particulars of the alleged breach of Rule 149(1) of the Rules:

- PARTICULARS – (Transcript – 27/06/2014, pp.19-20).

PARTICULAR ONE:

- (a) At the 1400 metre mark of the race (when the pace of the race up that point had been relatively slow),
- (b) Mr Cramp allowed “Philtra Phella” to remain in a position three (3) back on the marker pages;
- (c) This failure to change position allowed “Philtra Phella” to be covered by other runners including “Fergus McTavish” at or about that point;
- (d) It was both reasonable and permissible for Mr Cramp to have shifted “Philtra Phella” at or about that point from the peg line;
- (e) Such failure did not give “Philtra Phella” full opportunity to win the race or obtain the best possible placing in the field”.

PARTICULAR TWO:

- (a) At approximately the 400 metre mark of the race, Mr Cramp have driven “Philtra Phella” out to a three (3) wide position in an attempt to go around the horses in front of him;

- (b) Mr Shayne Cramp failed to persist with such manoeuvre, notwithstanding that minimal use had been made of “Philtra Phella” up to that point of the race; and
- (c) Mr Cramp moved “Philtra Phella” back down the track and attempted to drive through the horses head, including “Bella Hotshot” and “Fergus McTavish”;
- (d) As a result of this manoeuvre, interference was caused to “Philtra Phella” causing it to gallop and lose all chance in the race;
- (e) It was both permissible and reasonable for Mr Cramp to have persisted with manoeuvre to go around the horses in front of his horse at or about the 400 metres point of the race and his failure to do so did not give “Philtra Phella” full opportunity to win or obtain the best possible placing in the field as it would have allowed “Philtra Phella” a clear and uninterrupted run to the finish.

PLEA

- Mr Cramp pleaded “Not Guilty” to the said charge (Transcript 27/06/2014, p.20).

FINDINGS OF HRV STEWARDS

2. On 27 June 2014, HRV Stewards found Mr S. Cramp guilty of a breach of Rule 149(1) of the Rules with respect to both particulars provided (T., 27/06/2014, pp.20-21) and subsequently suspended Mr Cramp from driving for a period of eight (8) weeks (T., 27/06/2014, p.23) commencing at midnight on 5 July 2014.

NOTICE OF APPEAL

3. On 30 June 2014, Mr Cramp lodged an appeal with respect to the abovementioned decisions of HRV Stewards to find him guilty as charged and also with respect to the severity of the said penalty imposed by him.

DECISION OF THE RAD BOARD – 14 JULY 2014

4. The RAD Board allowed Mr S. Cramp's appeal with respect to HRV Stewards finding him guilty of a breach of Rule 149(1) of the Rules and quashed the conviction and suspension of his driver's licence.

REQUEST FOR WRITTEN REASONS FOR THE RAD BOARD DECISION – 14 JULY 2014

5. By letter dated 14 July 2014, Harness Racing Victoria required the HRV RAD Board to provide written reasons for its decision made on 14 July 2014 with respect to Mr S. Cramp's said appeal pursuant to Rule 50(8) of *the Victorian Local Rules of Harness Racing*.

EVIDENCE ADDRESSED TO THE RAD BOARD ON 14 JULY 2014

6. (a) Transcript of the evidence adduced at HRV Stewards Inquiry convened on 13 June 2014 and 27 June 2014 and the findings of HRV Stewards ("Exhibit 1").
- (b) The RAD Board was informed by HRV Stewards that "Philtra Phella" was the \$1.60 odds on favourite in Race 1 on 13 June 2014 (T., 14/07/2014, p.3). It was a six (6) horse field and "Philtra Phella" finished in last position (T., 14/07/2014, p.3), after starting the race in the extreme outside position. HRV Stewards informed the RAD Board that they did not intend to rely upon the betting in the said race other than "Philtra Phella" was favourite (T., 14/07/2014, p.3).
- (c) Video footage of Race 1 on 13 June 2014 ("Exhibit 2").
- (d) The lead time of the Race was 46.8 seconds which was 3.5 seconds slower than the average time for Races of this distance for Ouyen Meetings held at Mildura (T., 14/07/2014, p.4). See document headed Sectional times for Ouyen Meetings at Mildura ("Exhibit 3").

- (e) Soon after the start of the Race, “Fergus McTavish” broke gait and went to rear of the field.
- (f) After the field settled, Mr Cramp was positioned on the peg line three back from the lead from the 1800 metre mark to the 1400 metre mark.
- (g) HRV Stewards alleged that at or about the 1400 metre mark, Mr Cramp failed to assess that the horse “Fergus McTavish” had only lost limited ground and was improving to his outside.
- (h) Mr Cramp gave evidence (T., 14/07/2014, pp.21-22) that at or about the 1400 metre point of the race he became aware that he had problems with the horse’s ear plug cord and he had to rectify the same. It was during this process “Philtra Phella” was covered by “Fergus McTavish”. He gave evidence that if he had not rectified this gear problem the cord could have been entangled in one of “Philtra Phella’s” hind legs causing it to gallop. He tendered a HRV Stewards report with respect to Race 1 at the Ouyen Meetings at Mildura held on 16 May 2014 to the effect that a horse “Morton Plains” galloped as a result of a hopple shortener cord becoming entangled in the horse’s hind leg (“Exhibit 4”). Mr Cramp had referred to this gear problem in HRV Stewards Inquiry of 13 June 2014 (T., 13/06/2014, pp.10-11).
- (i) Having failed to move off the peg line at the 1400 metre mark, Mr Cramp demonstrated by way of video footage of the race, that his horse “Philtra Phella” was racing on the peg line at the 500 metre mark, but was not covered by any other horse at that point. At p.8 of T., 14/07/2014, he asked Mr Day whether at that point of the race (i.e. 500 metres from finish) “Philtra Phella” was then in a winning position. Mr Day replied “Yeah most certainly”. Mr Cramp then submitted that if his horse was in a winning position of 500 metres from the finish of the race, what was the relevance of his failure to move off the peg line when 1400 metres from the finish?

- (j) Mr Cramp further submitted that he did not persist at the 400 metre mark from the finish with his attempted run around the leaders because of genuine concerns he had that the horse would be able to successfully complete such manoeuvre because of what he was aware of the horse's previous race form, the fact that it was competing in a Class 2 Race for the first time, the quality of other runners in the race and the further fact that he believed he may have race even wider than three (3) wide. Furthermore, due to the relatively slowness of the first part of the race he was acutely aware that the pace would significantly quicken over the concluding stages of it. Consequently he elected to move back down the track and attempt to drive through the field as he believed at that point that was his best chance of either winning the race or obtaining the best possible placing in it.

Previous form of "Philtr Phella"

- (aa) Although Mr Cramp did not dispute that his horse was the odds on favourite in the race, it was his opinion that given its previous form it was "a false favourite". (He had previously stated this opinion at HRV Stewards Inquiry on 13 June 2014, T.p.3). When asked by Mr Carson on 14 July 2014 whether he knew the horse was odds on favourite before the race, Mr Cramp said he did not (T., 14/07/2014, p.25).
- (bb) Mr Cramp had trained "Philtr Phella" since 23/04/2014 and it had had its first start for him on 22/05/2014 (T., 13/06/2014, p.4). Since 22/05/2014 up until 13/06/2014 "Philtr Phella" exposed form was as follows:
- 22/05/2014 2nd of ten
 - 28/05/2014 2nd of ten
 - 31/05/2014 7th of seven
 - 06/06/2014 3rd of ten.

("Exhibit 5")

Prior to 23/04/2014 "Philtra Phella" commencing on 04/04/2013 "Philtra Phella" had won 5 races in approximately 31 starts, the last win being on 25/02/2014 at Echuca. All such wins were in Class 1 races or races of a lesser quality – see "Exhibit 6". Race one on 13/06/2014 was the first time "Philtra Phella" had competed in a Class 2 race – see its record "Exhibit 7" with respect to its previous 32 career starts.

(cc) Mr Cramp provided video footage of previous runs of "Philtra Phella" to demonstrate its previous form, namely:

- Shepparton – 02/05/2014 – when it finished 8th of 12 horses in a Class 1 race.
- Cobram – 09/05/2014 – when it finished 5th of 10 horses in a Class 1 race.
- Swan Hill – 22/05/2014 – when it finished 2nd of 10 horses in a Class 1 race.

QUALITY OF OTHER HORSES RACING IN RACE 1 – 13/06/2014"One Dog One Bone"

7. In its previous 20 starts it had raced in Class 2, 2/4, 3/5, 4/6 and 6/FFA races on occasions for one win and seven places.

"Givesabone"

In its previous 13 starts it had run in Class ½, 2, 2/3, 2/4 and 3/5 races for two wins and six places.

"Fergus McTavish N.Z."

In its previous 21 starts it had started Class 2/3 and 4/6 races on 19 occasions for two wins and four places – see "Exhibit 8".

HRV STEWARDS REPORT FOR MELTON – 13/06/2014 – “EXHIBIT 9”

8. In Race 3 at that meeting Mr Gavin Lang was questioned by HRV Stewards with respect to his drive of the horse “My Zach Bromac N.Z.” in that race. Mr Lang explained that he was aware that due to the moderate sectionals through the early and middle part of the race it was apparent to him that the last half of the race would be relatively quick and for that reason he elected to pursue racing between runners rather than being wide around the final turn. Furthermore, it was noted that the credentials of “My Zach Bromac N.Z.” as compared to other horses in the field were that he was a Class 1 horse racing against more superior assessed horses in the race. Mr Gavin Lang was not charged with respect to his driving tactics and Mr Cramp submitted that this provided some support for his tactics with respect to “Philtr Phella” prospects in Race 1 at Mildura on 13/06/2014.

TIPSTERS ASSESSMENT OF RACE 1 – MILDURA 13 JUNE 2014

9. Mr Cramp submitted that such assessment was most probably the correct assessment of “Philtr Phella’s” chances in the race. One tipster, Adam Hamilton, tipped the horse to run fourth and the other two, Messrs Steve Elliot and Blake Redden did not tip the horse to run in the first four placings of the race (noting this was a six horse field). The horse’s odds were assessed at 8/1: see “Exhibit 10”.

FURTHER SUBMISSIONS OF MR CRAMP

10. Mr Cramp further submitted that it appeared to him that if his horse had not broken gait when he attempted to run through the field he would not have been charged with a breach of Rule 149(1) of the Rules, and in answer to a question put to him by Mr Cramp at the inquiry

held on 13 June 2014, namely “Like had he have not galloped do you think he’s close enough to win the race?”, Mr Conder, Chairman of HRV Stewards replied “Never know”.

SUBMISSIONS OF HRV STEWARDS

11. A number of submissions based on the video footage of Race 1 at Mildura on 13 June 2014, evidence given the inquiries held on 13/06/2014 and 27/06/2014 (and in particular a written document referring to various parts of the transcript of such inquiries – “Exhibit 11”), the fact that Mr Cramp was a very experienced and successful driver (see “Exhibit 12”) and the statements of principle of Judge Goran in the matter of *Honan* supported the decision of HRV Stewards to find Mr Cramp guilty as charged.

DECISION OF THE RAD BOARD

12. The RAD Board gave due and appropriate consideration to the matters addressed at HRV Stewards inquiries held on 13 June 2014 and 27 June 2014 with respect to this matter the video footage of Race 1 at Mildura on 13/06/2014, the evidence and submissions of each of the parties this day (14/07/2014) including the documentary evidence and video footage referred to therein, the final submissions of Mr Daly at (T., pp26-28) and Mr Cramp (T., p28), the statements of principle of Judge Goran in the matter of *Honan* (26/10/1983) with respect to alleged breaches of Rule 149(1) of the Rules – see (T., p29 – 14/07/2014) and in particular the principle that Rule 149(1) of the Rules does not permit the mere substitution of the Stewards view as to how a particular horse should be driven, does not seek to punish a mere error of judgment, that the unreasonableness of a driving tactics must be culpable or blameworthy and a driver (whose experience is relevant) carries with him the weight of public money and the reputation of the sport, and found on the balance of probabilities adopting the principles stated in *Bringshaw* with respect to such onus of proof:

- (a) although HRV Stewards did not rely upon the betting with respect to Race 1 at Mildura on 13/06/2014, the RAD Board did not make any findings with respect to the vagaries of betting in general, but given the evidence the expectation of the betting public with respect to the prospects of “Philtra Phella” in Race 1 at Mildura on 13/06/2014 may well have been unfounded.
- (b) On 13/06/2014 “Philtra Phella” was competing in a Class 2 race for the first time having previously competed in Class 1 and 2 year old and 3 year old races up to that time having won five races in approximately 32 starts, the last win being on 25/02/2014. In its previous ten (10) starts prior to 13/06/2014, “Philtra Phella” had run four places (no wins) and six unplaced runs.
- (c) Mr Cramp is a very successful trainer and driver who had trained “Philtra Phella” since 23/04/2014 and the race on 13/06/2014 was its fifth race start since being trained by Mr Cramp.
- (d) Race 1 on 13/06/2014 was run at a relatively slow pace in the early and middle stages of the race.
- (e) At or about the 1400 metre mark of the race Mr Cramp was preoccupied with rectifying gear problems, which if not rectified, could have caused his horse to break gait. If his failure to move out from the peg line prior to being covered by “Fergus McTavish” was an error of judgment, the RAD Board finds that it was not a culpable or blameworthy error within the meaning of Rule 149(1) of the Rules and the RAD Board noted that all parties accepted “Philtra Phella” was in a winning position subsequently at the 500 metre mark of the race.
- (f) Mr Cramp’s driving tactics at or about the 400 metre mark to not persist with a run around the leaders and which presumably had he done so would have provided him with a clear and uninterrupted run to the finish, his decision to shift back down the

track and attempt to drive through the field due to Mr Cramp's stated concerns with respect to "Philtra Phella's" ability and credentials known up to that time (and notwithstanding minimal use had been made of the horse up to that point of the race), if it was an error of judgment it was *not* a culpable or blameworthy error within the meaning of Rule 149(1) of the Rules.

- (g) In making its decision the RAD Board was also aware of "Philtra Phella's" performances in its three races following 13/06/2014, namely two wins and one second.

13. Accordingly Mr Cramp's appeal was allowed by the RAD Board and the decision to find him guilty of a breach of Rule 149(1) of the Rules set aside as was his suspension to drive for a period of eight weeks.

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B.W. COLLIS Q.C.
Chairman

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K. CARSON
Panel Member

14 July 2014