

Non Raceday Inquiry - RIU v DJ Butcher 2 December 2011 - Decision dated 15 December 2011

Rules:

[869\(3\)\(b\)](#)

Repondent(s)/Other parties:

Mr DJ Butcher - Licensed Open Horseman

Name(s):

Decisions:

Rules:

869(3)(b)

**BEFORE THE JUDICIAL CONTROL AUTHORITY
UNDER THE RACING ACT 2003**

HELD AT AUCKLAND

IN THE MATTER of the New Zealand Rules of Harness Racing

BETWEEN Mr NG McIntyre – Stipendiary Steward
Informant

AND Mr DJ Butcher – Licensed Open Horseman

Defendant

Information No: A1009

Venue: Alexandra Park, Auckland

Judicial Committee: BJ Scott (Chairman), - AJ Dooley (Committee Member)

Appearing: Mr NG McIntyre, Mr DJ Butcher

Plea: Not admitted

Date of Hearing: 2 December 2011

NON RACEDAY HEARING - DECISION OF JUDICIAL COMMITTEE

1.1 The Informant Mr McIntyre lodged an Information at the Kaikoura Trotting Club Meeting on the 31st of October 2011 against Mr Butcher arising from his drive on OUR BOY SU in Race number 6 at that Meeting.

The Information was pursuant to Rule 869(3)(b) of the NZ Rules of Harness Racing.

1.2 The Information alleges that Mr Butcher allowed his horse OUR BOY SU to shift inwards on the run home causing tightening to STATESMAN driven by Mr AG Herlihy.

1.3 The Information was filed with the Registrar at the Kaikoura Trotting Club's Meeting on Raceday but was not served on Mr Butcher until the 8th of November 2011 at the NZ Metropolitan Meeting on that day. The Information was set down to be heard at Addington Raceway at 11.00am on Friday the 11th of November 2011. This was to be heard prior to the Race Meeting to be held at Addington Raceway that day. It was set down as a Defended Hearing.

1.4 Mr Butcher did not appear at that time but then appeared at the Judicial Room following Race 3 on that day.

1.5 The Judicial Committee of the day (quite rightly in our opinion) advised the parties that it was not prepared to hear a Defended Hearing during a Premier Race Meeting. The Committee suggested that the Hearing could take place following the final race on that day but Mr Butcher indicated that he would not be available because he was travelling to Auckland later in the day to drive at the Auckland Trotting Club's Meeting scheduled for that night.

1.6 The Judicial Committee on the 11th of November 2011 accordingly adjourned the hearing of the Information to a place, date and time to be appointed by the Judicial Control Authority.

1.7 The Hearing today deals with the charge against Mr Butcher under Rule 869(3)(b).

1.8 Mr Butcher did not admit the charge.

1.9 Rule 869(3)(b) states:

"No Horseman in any race shall drive carelessly."

Evidence for Informant

2.1 Mr McIntyre was the Chairman of the Stipendiary Stewards at the Kaikoura Trotting Club's Meeting on the 31st of October 2011.

2.2 He said that in the run to the finish, Mr Butcher driving OUR BOY SU was on the outside of STATESMAN (Driver AG Herlihy) and inside that horse was MALAK USWAAD (Driver RT May). He further said that Mr Butcher allowed his horse to run in forcing the sulky of STATESMAN onto the sulky of MALAK USWAAD AND as a result STATESMAN was tightened for room in the last 50 metres of the race.

2.3 Mr McIntyre said that OUR BOY SU was placed first and STATESMAN second but as a result of the tightening there was a Protest into the finish of the race and the Judicial Committee of the day reversed the placings.

2.4 Mr McIntyre then demonstrated the incident by use of the video films. He had two films available to him one of which appeared to be the Trackside view of the race and it gave virtually a side on view of the incident and the other of which was a head on view of the horses in the home straight. The latter film did not however appear to show all of the horses in the race throughout the length of the home straight.

2.5 Mr McIntyre identified the runners and then made the following observations:

(a) At the time of the incident Mr Butcher's inside sulky wheel was alongside the outside sulky wheel of STATESMAN. Mr McIntyre said that there was pressure from Mr Butcher pushing STATESMAN'S sulky inwards in the home straight.

(b) The result of that, according to Mr McIntyre, was that STATESMAN'S inside sulky wheel was then pushed inside the outer sulky wheel of Mr May's sulky. The inside sulky wheel of STATESMAN was lifted off the track for a short distance as a result of coming into contact with Mr May's sulky. Mr McIntyre said this was a result of the tightening caused by Mr Butcher.

(c) Mr May looked across to his outside at the time of the incident and in Mr McIntyre's opinion Mr May was trying to give Mr Herlihy some room.

2.6 Mr McIntyre (using the side on film) showed that Mr Butcher was still driving his horse out throughout the incident and that the horses involved then came clear of each other prior to the finish.

2.7 Mr McIntyre used the head on film to show the location of the horses and to show that STATESMAN had a clear run to the finish prior to the tightening.

2.8 Mr McIntyre said that it was a Driver's obligation to maintain a straight line in the run to the finish and that a Driver had an obligation to take corrective action after any interference is caused. He again said that Mr Butcher had moved inwards, had tightened Mr Herlihy's horse onto Mr May's horse and that Mr Butcher had not taken corrective action.

2.9 Mr Butcher by way of cross examination first asked Mr McIntyre if the films could be shown at the normal race speed. The films presented to the Committee were in slow motion. Mr McIntyre was in some difficulty in this regard although he endeavoured to show the side on film through his computer.

Mr Butcher expressed his dissatisfaction at the speed of the films.

Evidence by Mr Butcher

3.1 Mr Butcher said that in the run to the finish his horse had run straight and that Mr Herlihy had drifted out. He did say that his horse can have a tendency to run in and that is why it wears a pole on the inside. He said that his horse may have drifted in about a foot but he straightened it immediately.

3.2 Mr Butcher said that there was a lot of movement everywhere in the straight and this was clearly seen on the films. He said that Mr Herlihy's horse had moved out towards his horse. He also said that on race day Mr Herlihy said that his horse had started to run away when it was getting tight.

3.3 Mr Butcher again said that there was minimal movement but if any it was from his horse and that he took immediate action in that he had not allowed his horse to shift inwards as was alleged. He said the speed of the films does not show this properly.

3.4 Mr Butcher said, in answer to cross examination, that his horse had essentially kept a straight line although it might have drifted in a little but that he took immediate corrective action and continued on a straight line to the winning post. He also said again that the films showed that there was a little bit of movement from everywhere.

Summary by Mr McIntyre

4.1 Mr McIntyre by way of summary said that the side on view of the film showed that Mr Butcher did not take immediate corrective action in that he had failed to maintain a straight course. He said that the result of the driving was that pressure was put on Mr Herlihy's horse and that Mr Butcher had an obligation to keep his horse straight. He said that he didn't do so in that accordingly his driving falls within the provisions of this Rule and was careless.

Summary by Mr Butcher

5.1 Mr Butcher by way of summary said that he felt that he had driven his horse in a straight line. He conceded that it may have drifted in a little and may have tightened Mr Herlihy but that was only very briefly and that he took immediate corrective action. He said that he wanted the Committee to see the films at normal race speed to show that any tightening was only very brief.

Reasons for Decision

6.1 The Committee has listened to the evidence of both parties and has viewed the films many times.

We note that neither of the films were shown to us at race speed and this was a matter that Mr Butcher expressed his concern at.

It is fair to say that Mr McIntyre is under some handicap because of the quality of the films. This is not picture quality but rather the fact that one film is the side on version and it is hard to identify inwards movement with any certainty from that film. The head on film does not show all of the horses all of the way down the straight and it is difficult to rely on this film.

In fact OUR BOY SU is not shown in the head on film until just before the incident takes place. It is not possible for the Committee to know if there had been tightening over some distance and in that regard the head on film is of no help at all.

6.2 The one thing that the films do appear to show however is that there was some movement outwards prior to the incident from MALAK USWAAD and it may be that when Mr May looked across it was because of the outward movement of his horse.

6.3 The films also showed movement from a number of horses in the straight.

6.4 The films, in our view, appear to show Mr Herlihy angling his horse outwards prior to the incident. He had commenced his run outside Mr May's horse but he may have been endeavouring to run wider in the straight as a result of the outwards movement of Mr May's horse.

6.5 As we have said there appears to be movement by several horses in the straight and Mr Butcher may well have moved in but the films shown to us today do not allow us to establish this with any certainty.

6.6 The evidence we have today apart from the oral evidence of the parties is solely based on the films and as we have said they are of poor quality and inconclusive. We note that Mr Herlihy was not called to give evidence today and accordingly we have to rely on the films of the incident.

6.7 There are other horses that contribute to the incident that we are dealing with and on the basis of the evidence presented to us it is difficult for us to lay the blame solely on Mr Butcher.

6.8 We do not believe that the charge has been proven to the required standard.

Decision

We accordingly dismiss the charge against Mr Butcher.

Penalty:

N/A refer above

Dated this 15th day of December 2011

BJ Scott AJ Dooley
Chairman Committee Member