



INTERNAL REVIEW DECISION

(Internal Review Decision Notice in response to an Application for Internal Review)

PART 1: Details of Internal Review	
Internal Review Number:	Internal Review 0066-17
Applicant's Name:	D Graham
Original Decision:	Breach of Rule 149(2) of the Australian Harness Racing Rules
Original Decision Makers:	S Shinn, K Wolsey, K Daly
Date of Original Decision:	21 August 2017
Internal Review Decision:	Original decision on charge and penalty confirmed
Internal Review Decision-Maker:	Mr Kane Ashby, Internal Adjudicator, Queensland Racing Integrity Commission
Date of Internal Review Decision:	11 September 2017
PART 3: Summary of Internal Review Application	
<p>The Applicant, Mr Darrel Graham, driver of CORRINYAH CONMAN in Race 3 at Albion Park on 15 August 2017, was found guilty of a charge under Australian Harness Racing Rule 149(2) at an adjourned stewards' inquiry on 21 August 2017.</p> <p>Australian Harness Racing Rule 149(2) states:</p> <p><i>"A person shall not drive in a manner which in the opinion of the Stewards is unacceptable."</i></p> <p>The stewards' report of 21 August 2017 states:</p> <p><i>"... Mr Graham drove in a manner which in the opinion of the stewards was unacceptable in that shortly after the start he restrained that gelding from a favourable one out one back trailing position to a less favourable position three back on the marker peg line to finish in sixth place beaten 8.8 metres.</i></p> <p><i>Mr Graham pleaded not guilty.</i></p> <p><i>Stewards considered Mr Graham's submissions in support of his plea, however were of the view that the charge could be sustained and formally found him guilty of the charge as issued. Under the circumstances Stewards deemed the appropriate penalty be a suspension of Mr Graham's licence to drive in races for a period of 4 weeks commencing midnight, 22 August 2017."</i></p> <p>The Applicant sought a review of charge and penalty.</p>	



PART 4: Reasons for Internal Review Decision

Stewards' opened an inquiry into the Applicant's driving tactics on CORRINYAH CONMAN following Race 3 at Albion Park on 15 August 2017. The stewards in summary alleged the Applicant restrained CORRINYAH CONMAN from a favourable one out and one back position to a less favourable position three back the marker pegs. The inquiry was subsequently adjourned until 21 August 2017 to enable stewards to review various aspects of the race and betting records.

During the initial inquiry conducted on 15 August 2017, the Applicant stated "*--I wasn't able to cross down to the fence, cross the 1 horse, it was a bit of a step up in grade for this fellow, he's been racing at Redcliffe and under \$1000 races here in the C4s and I just thought his best spot in that race was three fence when it was available.*"

In response to a question from the Chairman "*—the one-one is quite often the most valued position ----*" the Applicant stated "*It just all depends what sort of horse you're on, too. You know. So, he's not that strong a horse. Yeah, well, they've gone the last half in 56.6 or something, like he was sort of - he was struggling there to - sort of to keep up down the back straight, you know, so.*"

Mr Daly (Stipendiary Steward) provided evidence stating "*--I was at the 400 and I must admit out of the gate - took hold out of the gate, the 1 horse kicked up, you went with the 1 horse for a bit, then you took hold, let Dixon's go ---- which was always going to be the death seat. In the market, it's been racing at Redcliffe, I know, but it's been winning from the death and I would have thought on the back of that horse would have been a better spot than three the pegs.*"

In response to a question "*You mentioned about the class, your fellow, did he race in a C2 and better at Albion Park on the 11th? ---- today's a C2 and better, so would you say the same class?*" the Applicant stated "*Yeah, oh, well, sort of different sorts of horses, you know. I think today's was a better class of horse*".¹

When further questioned "*when you were restraining him to the position three pegs, were you aware of which horse was then taking up the one-one as you vacated that position?*" the Applicant stated "*No, not really. I knew - well, I knew both of my horses - other horses had drawn to my outside--.*"²

The adjourned inquiry conducted on 21 August 2017 heard the Applicant advised the stewards pre-race of the intended driving tactics for his three runners in the race noting "*--you told us that you were going to take a look off the gate with him, with Corrinayah Conman, and you did have another runner in the race, which was ultimately the winner, My Ultimate Fella, where you explained - asked that he'd probably go back at the start, which he did.*" The Chairman stated "*I think of some concern to the stewards, the principal concerns possibly are that whether the one-out one-back position would have been more advantageous to you rather than going to the three back on the peg line. Very often the one-out one-back is considered the best spot, where you've elected to go back to three on the pegs.*"³

¹ Transcript of stewards' inquiry dated 15 August 2017, page 2 and 3

² Transcript of stewards' inquiry dated 15 August 2017, page 4

³ Transcript of stewards' inquiry dated 21 August 2017, page 8



The inquiry heard POMPIDOU was a “*tough animal*” and from a three-wide draw positioned in the death seat, which was consistent with recent starts and has previously positioned in a three-wide position if it can’t find the death.⁴

The reviewer finds, considering the context of how the face unfolded, the Applicant’s actions in restraining his horse from a favourable one-line position trailing POMPIDOU to three back the pegs placed him at a disadvantage and provided the stablemate and eventual winner MY ULTIMATE FELLA (NZ), which started from the four-wide line, the one-one position.

The Applicant’s submissions in defence of the charge in summary state “*An attempt was made to drive the horse in question similar to previous starts. When it became apparent this was not going to be possible, I elected to drop to the fence so as to not cover any more ground than was necessary. In my opinion the horse was not capable of figuring in the place getters if not securing the easiest run possible. This was not only my opinion, the professional form analyst and price assessor employed by UBET assessed this horse on disclosed form against the rest of the field to be the least likely to win this race at \$51. The horse was given a soft run on the fence had an uninterrupted run from the 200m to the finish post, was urged with the whip for the last 200m and was beaten 8.8m from the winner. Had the horse been driven off the fence as the stewards have suggested, I was of a least cover another 14m. Had I had an uninterrupted run this would have meant I would have finished a least 22m from the winner.*”⁵

Subsequent to viewing the race footage, the reviewer finds the Applicant driver of CORRINYAH CONMAN started from a two wide position on the front line. Shortly after the start, the Applicant physically restrained his horse to a position three back the pegs. CORRINYAH CONMAN remained in that position throughout the race and consequently was held up rounding the home turn, before shifting to the outside of FIRE AND ICE at the top of the home straight in an attempt to gain clear running. The Applicant was provided with ample opportunity from his two-wide draw to position his horse in the one out one back position trailing POMADU, but elected to continue to restrain his horse and moved into a position less favourable three back the pegs. This allowed MY ULTIMANT FELLA to take full advantage of the one out one back position and ultimately win the race. The reviewer finds by not capitalizing on the one out one back position, CORRINYAH CONMAN raced a pair further back, and on the pegs, at a disadvantage as opposed to positioning in the one-one position, which ultimately would have provided CORRINYAH CONMAN with cover throughout the race and importantly the option of improving into clear running at the Applicant’s disposal.

The inquiry heard CORRINYAH CONMAN’s usual racing pattern was to show gate speed and race in a forward position. Betting records on the race showed no unusual betting activity.

The reviewer finds, irrespective of the horse’s starting price, the Applicant is required to drive all horses in a manner that is acceptable and leaves no room for query. The reviewer acknowledges the logic the wider a horse races the more ground it covers. Notwithstanding, the reviewer finds in the context of any race, drivers are required to capitalize on opportunities that present and unfold during a race and by continually restraining CORRINYAH CONMAN from a

⁴ Transcript of stewards’ inquiry dated 21 August 2017, page 9

⁵ Internal Review Application dated 21 August 2017



favourable draw to three back the pegs when a clear opportunity presented to position CORRINYAH CONMAN in the one-one trailing a noted death horse in POMPIDOU was unacceptable in the circumstances.

In weighing up the evidence, including the Applicant's submissions and context of the race, the reviewer is satisfied the drive was unacceptable in the circumstances and therefore finds the charge is proven.

The reviewer acknowledges racing is a sport that survives on wagering and the punter and connections are entitled to obtain a fair run for their money invested. The Applicant's disciplinary history is exemplary under rule 149(2) with no prior offence. The standard penalty for a breach of rule 149(2) in Queensland incur penalties between three and eight weeks' suspension.

In weighing up the matter of penalty, consideration was provided to the precedent penalty scale, the Applicant's respectable disciplinary history under this rule and the not-guilty plea. The reviewer finds the original four week suspension falls into the lower end of the penalty scale and, in considering the context of the race and actions of the Applicants drive, is not satisfied a further reduction in penalty is proven and therefore confirms the original decision on charge and penalty.

PART 5: Review Rights following Internal Review Decision

In accordance with section 246 of the *Racing Integrity Act 2016*, as the applicant for an internal review of the original decision, you are able to apply to the Queensland Civil and Administrative Tribunal (QCAT) for an external review of the internal review decision.

An external review is commenced by lodging the appropriate forms with QCAT. In accordance with section 33 of the *Queensland Civil and Administrative Tribunal Act 2009*, an application for an external review of an internal review decision is to be made within 28 days from the day this internal review decision notice is provided to the applicant.

For further information regarding the processes for an external review of the decision, please contact QCAT:

Queensland Civil and Administrative Tribunal

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