



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 0065-17
Applicant's Name:	P Matis
PART 2: Decision History	
Original Decision:	Breach of Rule 156(3) of the Australian Harness Racing Rules
Original Decision Makers:	M Ross, R McRae, R Cressey
Date of Original Decision:	5 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 Paul Matis, driver of ZENMACH NZ in Race 2 at Marburg on 5 August 2017, was found guilty of a charge under Australian Harness Racing Rule 156(3).</p> <p>Australian Harness Racing Rule 156(3) states: "A driver shall not use a whip in an unapproved manner."</p> <p>The stewards' report from 5 August 2017 states: "Stewards questioned P Matis, trainer of ZENMACH (NZ), winner of the event, in relation to the gelding's seemingly improved performance in comparison to its previous two starts in Australia. Mr Matis, explained that ZENMACH (NZ), had suffered from a quarter crack in its previous campaign which had now healed. He further added ZENMACH (NZ) had been working well prior to the event and was confident that it would run a forward race. Stewards noted the comments of Mr Matis."</p> <p>"P Matis was fined \$400 for the contravention of AHR Rule 156 (3) for using his whip in an unapproved manner in that he applied the whip continuously on ZENMACH (NZ) in the early stages of the home straight. Stewards further ordered that the previously suspended \$200 fine issued on 20th July for the contravention of the same rule would now apply."</p> <p>The Applicant sought a review of charge and penalty.</p>	
PART 4: Reasons for Internal Review Decision	
<p>The Applicant submitted detailed submissions in defence of the charge in summary stating "The stewards decided that I applied the whip continuously on Zenmach NZ in the early stages of the home straight. In making this decision the stewards failed to consider fully the explanations provided by me and had predetermined the outcome. The decision was based upon observations that were not in accordance with all the facts and not in accordance with looking at the race film from all angles. Alternately, if all the information was considered by the stewards they</p>	



failed to apply the appropriate weight to the information and explanations provided by me. The race film viewed from the appropriate angle should support my explanations that the whip was used correctly and the fact that the horse was hardly, (if at all), actually hit with the whip. Rule 156 (3) has no practical or theoretical application without reference to rule 156 (4) (a) to (g), yet the stewards have seen fit to apply a charge of \$400 plus \$200 from my first offence, without proper regards to the rules and the facts. Further, the Stewards report is incomplete and simply relies upon Rule 156 (3) without substantiation. The stewards emphasised during the enquiry my continuous use of the whip and that I did not allow the horse time to respond. They failed to realise and take into account appropriately my explanations. In particular, but not limited to the following:

- 1. The whip was used by me in accordance with all of the limbs of rule 156 (4) and therefore rule 156 (3) has no application.*
- 2. The whip was used in a wrist and elbow action to threaten and urge the horse forward without actually hitting the horse.*
- 3. The horse was given sufficient time to respond as the whip was not applied to the horse. That is, the horse was not hit with the whip, hence a response time is not applicable. Alternately if the horse was moderately touched with the whip this would have only occurred 2 to 3 times (if any) resulting in adequate response time, as the horse progressively improved its run all the way down the home straight to the finish.*
- 4. The horse was given sufficient time to respond given the short straight of the Marburg tack. In fact, the horse responded all the way down the short straight even though he was not continuously urged forward or threatened for the entire length of the straight to the finish line.*
- 5. My whip use was no worse than the whip use of the other drivers in the same race and the other drivers in the other races on the day, yet the stewards singled me out for special discriminatory attention. Further, drivers in the same race, (and other races) hitting their horses hard with the whip 4 to 6 times have been given the green light of approval even though they have punished their horses far more than the punishment, (if any) applied to my horse.*
- 6. What constitutes the "continuous application of the whip", (rule 156 (4) (g))? There is no objective yardstick to assist drivers (and stewards) in this regard.*
- 7. What constitutes "time to respond", (rule 156 (4) (g)) when the whip is applied to a horse? There is no objective yardstick to assist drivers (and stewards) in this regard. Accordingly, inconsistent charges have been made by stewards acting upon subjective interpretations of events; the way they feel on the day and their attitude to the driver in question.*
- 8. What constitutes the "application" of the whip? Does this mean that the horse has to be actually hit or something else? Again there are no clear objective yardsticks in this regard to assist drivers (and stewards).*
- 9. The steward's case against me is based upon the unknowns detailed at 6, 7 and 8 and treating these factors as if they belong to objective, consistent and transparent platform.*
- 10. The stewards did not inspect my horse post-race to assess whether in fact it had been hit with the whip and/or suffered in any way from being urged to do its best running down the home straight to the finish. An inspection would have revealed that the horse had no whip marks on its rump and pulled up well.*



11. *The way I used the whip on 05/08/2017 can be compared to the way other drivers have used the whip on other occasions and no clear, objection and consistent decisions have been made by stewards.*

12. *In my opinion the stewards have failed to demonstrate an understanding of practical reality and horsemanship regarding the use of the whip in my case and are lacking transparency, objectivity and consistency in making the charge against me. Perhaps the lack of appropriate benchmarks as described at points 6, 7 and 8 explains this unsatisfactory state of affairs. Accordingly, the charge against me should be dismissed as their case against me is unfounded and unjust.¹*

During the stewards' inquiry the Applicant in summary stated "Well, I was just touching him. I wasn't hitting him. I never really hit him. Seriously I was just going like that. Just tapping him. I never hit him at all." The Applicant added "I don't think it's that bad, to be honest. I mean, I have driven worse than that and I wasn't appropriately charged but I could make the comment that it's probably borderline."²

The reviewer acknowledges the Applicant was charged under Rule 156(3), the particulars being that coming around the home corner on ZENMACH, the Applicant applied the whip in a continuous manner a number of times without allowing the horse time to respond.³ Rule 156(4)(f) relevantly provides that for the purposes of Rule 156(3), a driver shall be deemed to have used the whip in an unapproved manner "if the whip is applied continuously and/or without allowing the horse time to respond."

Subsequent to viewing the available race footage, the reviewer is satisfied the Applicant used the whip in a continuous manner and without allowing the horse time to respond. The race footage is compelling in that it shows the Applicant hit ZENMACH with the whip continuously for a period rounding the home corner and into the straight. The reviewer does not accept the Applicant's submissions, in particular, that "the horse was hardly, (if at all), actually hit with the whip."

Each case is determined on its merits and circumstances. In weighing up the evidence, including the Applicant's submissions and provisions under the rule, the reviewer is satisfied the Applicant's actions constitute a breach of the aforementioned whip rule and therefore confirms the charge is proven.

The Applicant's disciplinary history notes a reprimand (of \$200) that was suspended for 56-days in July 2017 and prior to that a fine of \$600 in January 2016. The standard precedent for a whip breach under this rule is a minimum fine of \$200. The reviewer is satisfied, having considered the penalty scale in totality, that the penalty applied in the circumstances is consistent 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.

¹ Internal Review Application dated 18 August 2017

² Transcript of stewards' inquiry dated 5 August 2017, page 2 and 3

³ Transcript of stewards' inquiry dated 5 August 2017, page 4



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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