

DECISION

Racing Integrity Act 2016, sections 252AH, 252BM

Review application number	RAP-144	
Name	Bryse McElhinney	
Panel	Mr K J O'Brien AM (Chairperson) Mr D Kays (Panel Member) Ms L Hicks (Panel Member)	
Code	Harness	
Rule	Australian Harness Rules AHR 156(2)(a) <i>A driver shall only apply the whip and/or the rein in a wrist only flicking motion whilst holding a rein in each hand with the tip of the whip pointed forward in an action which does not engage the shoulder.</i>	
Penalty Notice number	PN-011375	
Appearances & Representation	Applicant	Self represented
	Respondent	R McRae instructed by Queensland Racing Integrity Commission
Hearing Date	10 April 2025	
Decision Date	10 April 2025	
Decision	Pursuant to 252AH(1)(a) the Racing Decision is Confirmed <i>(delivered ex tempore)</i>	

Reasons for Decision

- [1] Mr Bryse McElhinney is a licenced harness racing driver. On 4 April 2025 he was the driver of the horse Rock Supreme in Race One in the Albion Park Paceway programme. Following the race Mr McElhinney was found guilty of an offence against Australian Harness Racing Rule AHR 156(2) and received by way of penalty a 14 days suspension of licence. Pursuant to Section 252AB of the *Racing Integrity Act 2016*, Mr McElhinney now seeks a review of that decision.
- [2] AHR 156(2) provides as follows:
- (2)(a) A driver shall only apply the whip and/or the rein in a wrist only flicking motion whilst holding a rein in each hand with the tip of the whip pointed forward in an action which does not engage the shoulder.*
- (b) for the purposes of sub-paragraph (a), "wrist only flicking motion" means:-*
- (i) Ensuring no force is generated by the use of the elbow or shoulder when applying the whip.*
- (ii) The forearm is not raised beyond forty-five degrees relative to the racing surgence.*
- (iii) Not applying the whip with overt force.*
- [3] The application of this rule has been the subject of education and explanation within the harness racing industry. It is explained in the video presentation issued by Harness Racing Australia¹ and in the industry note to harness racing participants issued by the Queensland Racing Integrity Commission in August 2018² to all harness racing participants.
- [4] The particulars of the charge against the Applicant allege that he:
- Used the whip in more than flicking motion whilst driving Rock Supreme in race 1 at Albion park in the run to the finish*
- [5] In his application for this review, the Applicant states that he does not believe that he should have been punished as his action was no worse than in recent drives. He contends also that the penalty imposed was excessive.
- [6] At the Stewards' Hearing, the Applicant said of his driving on the occasion in question that "It was definitely not as bad as what I have been given time for". When reminded that this was his seventh offence for a breach of this rule, he replied "I am aware of that, but I've driven out like that before and nothing's being said. That's definitely not as bad as it can be."
- [7] Before this Panel, the Applicant has maintained those arguments, submitting that he did not use overt force and that he's driving on the subject occasion was no worse than the driving of other drivers on other occasions. He does not, as we understand his submissions, seem to dispute his guilt of the charge he merely says that similar behaviour in the past has not resulted in a charge. That, of course, is not a defence, it may be only a matter of good fortune that he has not been charged on those other occasions.

¹ Document #12 – Respondent's index of documents

² Document #13 – Respondent's index of documents

- [8] He makes reference also in his submissions to the heat of the contest and the associated rise in adrenaline associated with a close finish. Those matters do not justify any departure from compliance with the carefully drafted rules.
- [9] This Panel of course, must form its own view of the racing in question. It is submitted for the Respondent that the Applicant's application of the whip was not a flicking motion of the type that the rule envisaged and as demonstrated in the video presentation referred to above. It is submitted for the Respondent that the race footage shows that the application of the whip was not a risk only flicking motion insofar that there was an application of elbow and wrist, and not wrist only.
- [10] It is submitted also that the race footage, which we have examined on numerous occasions depicts the bending of the Applicant's elbow and the bending of the elbow was not only the use of the wrist.
- [11] The Panel's own view of the race footage establishes to our satisfaction that upon entering the straight, the whipping action of the Applicant becomes more pronounced with visible force being added to his previous whipping action. On a number of occasions in the straight he uses his whip in a manner that engages his elbow and shoulder, contrary to the flicking motion identified in Rule AHR 156(2)(b). We are satisfied that the charge is established on the evidence.
- [12] The penalty guidelines provide for a 14 day suspension of licence in the case of someone such as this Applicant who has seven relevant breaches of rule AR156 in the preceding 12 months. In our view there is simply no basis demonstrated here for any departure from that outcome. As has been submitted for the Respondent, the purpose of the rule is to limit the force with which a whip can be applied, while still allowing its principal use as a means of communication between the driver and the horse.
- [13] The circumstances of this case, in our view, demonstrate the clear importance of both specific deterrence and general deterrence. It is also important in a case such as this that we'd be mindful of what may be called on-course integrity. The clear purpose of the whip rule is to maintain public confidence in racing, ensuring the integrity of all persons involved with racing, and safeguarding the welfare of the animals involved.
- [14] For these reasons, we consider that this application for review should be dismissed, and it is the order of the Panel that the racing decision the subject of this application is confirmed.
- [15] This matter is presently the subject of a stay, pending the determination of the matter. The period of 14 days suspension of licence should operate from midnight on the 10 April 2025 up to and including 24 April 2025