

### STEWARDS INQUIRY DECISION

**Date of Decision:** 20<sup>th</sup> April 2021  
**Stewards Panel:** Ray Murrhiy, Steven Shinn (Advisor), Ben Plunkett (Advisor)  
**Name:** Rhys Nicholson  
**Track/Race:** Elwick - 2021 Ladbrokes Tasmania Cup Final – Race 7  
**Date:** 13<sup>th</sup> March 2021

AHRR 174

**Rule no:**

(1) Where a driver is found guilty of an offence under a rule contained in part 9 and the offence relates to the way in which the driver has driven or behaved or controlled or failed to control the driver's horse at the start or during a race, the Stewards in relation to the race in which the offence occurred may give the driver's horse a lower placing or disqualify it for such period they think fit.

(2) A disqualification under sub rule (1) or alteration of placings does not affect settlement of bets or wagers.

**Inquiry Decision:**

BULLYS DELIGHT is relegated from its first (1<sup>st</sup>) placing to fourteenth (14<sup>th</sup>) placing in the Ladbroke's Tasmanian Pacing Cup Final conducted at Ladbrokes Park, Elwick on the 13<sup>th</sup> March 2021.

**FACTS:**

On 13<sup>th</sup> March 2021, the horse BULLYS DELIGHT contested and finished in first placing in the \$75,000 Ladbrokes Tasmania Cup Final (the Race) over 2579 metres, conducted at Ladbrokes Park, Elwick, Tasmania. BULLYS DELIGHT was a 6-year-old gelding bred and raced in partnership by Mr Jim Kefalas and Mr Phillip Winder. The horse was trained by Harness Racing Victoria (HRV) licensed trainer Mr John Nicholson and was driven by his son Mr Rhys Nicholson who is also a trainer/driver licensed by HRV. All parties under the Australian Harness Racing Rules (the Rules) and more specifically AHRR 299 are deemed to have knowledge of and are bound by the Rules.

Subsequent to the finish of the Race and before the declaration of the all-clear Mr Heath Woods driver of second placed THE SHALLOWS and Mr Conor Crook, driver of third placed LIP READER lodged protests against BULLYS DELIGHT being declared the winner on each of three grounds in the home straight, namely:

- (1) Interference by BULLYS DELIGHT shifting out,
- (2) Mr Rhys Nicholson dropping his right foot from the sulky stirrup and contacting the offside hind leg of BULLYS DELIGHT on numerous occasions (a practice known as hocking) and
- (3) Mr Rhys R Nicholson utilising his whip on a large number of occasions with more than a wrist only flicking motion, generating force from his shoulder and elbow.

The Stewards dismissed all protests when they found:

- Ground (1) Although BULLYS DELIGHT shifted out some distance in the run to the line the interference was minimal. Taking into account the finishing margins of 4.6m x 6.4m they could not be satisfied that had the interference not occurred the placings would have been affected.

- Grounds (2) & (3) Whilst finding that Mr Rhys Nicholson had “hocked” BULLYS DELIGHT on numerous occasions and had utilised his whip on numerous occasions outside what is prescribed under the Rules, they could not be comfortably satisfied that had this not occurred the placings would have changed.

The all clear was given on the judge’s placings, however all parties were notified that an inquiry would be conducted as to whether AHRR 174(1) should be invoked.

Later that night and following the final race on the programme Mr Rhys Nicholson pleaded guilty to two Stewards charges concerning his driving or behaviour in the home straight on the final occasion in the Race namely:

- Charge (1): Under AHRR 168(1)(e) of improper driving in that he dropped his right foot from the sulky stirrup and deliberately made contact with the hind leg of BULLYS DELIGHT (hocking) on numerous occasions.
- Charge (2): Under AHRR156(2)(a) of utilising his whip with more than a wrist only flicking motion whilst engaging force from the elbow and shoulder as well as failing to maintain a rein in each hand.

Penalties:

In determining the penalty Stewards took into account that the breaches occurred in a feature race, Mr Rhys Nicholson’s driving record and what they determined as his blatant disregard for the rules in both instances.

- Charge (1) \$2,000 fine plus drivers licence suspension of 4 race dates.
- Charge (2) \$1,000 fine plus drivers licence suspension of 8 race dates.

No appeals have been lodged and the suspensions were ordered to be served cumulatively.

## **INQUIRY:**

### **Authorisation of an Independent Person to Conduct an Inquiry**

Under the powers of AHRR 300 and AHRR 181 the Controlling Body in Tasmania, being the Office of Racing Integrity (ORI), Acting Director Tony Latham authorised Mr Ray Murrhly, a Steward of some 50 years standing in the racing codes including a term as Chairman of Stewards in Tasmania, to exercise all the powers conferred by the Rules to inquire into and determine any matter or occurrence arising out of or connected with the Race.

By notices of the 1<sup>st</sup> & 7<sup>th</sup> of April 2021 the owners, trainer and driver of BULLYS DELIGHT were advised that their presence was required at an Inquiry (the Inquiry) to be conducted on 13<sup>th</sup> April 2021 at the ORI Launceston office. At the Inquiry they would be afforded the opportunity to call such evidence and make such submissions as to the exercise of powers available under the Rules to disqualify or relegate the first placing of BULLYS DELIGHT in the Race.

Such considerations pursuant to AHRR 174(1) and/or AHRR 258(1) & (2) being relative to the way Mr Rhys Nicholson had driven or behaved during the race, having been found guilty by Stewards of two breaches of Part 9 of the Rules, namely AHRR 156(2)(a) and AHRR 168(1)(e).

### **The Inquiry**

At 10:00am on Tuesday 13<sup>th</sup> April 2021 at ORI offices, Launceston the Inquiry was conducted whereby Mr Rhys Nicholson appeared, gave evidence and made submissions. Mr Rhys Nicholson was accompanied by support person Mr Phillip Ford, a licensed stable hand. Owners Mr Jim Kefalas and Mr Phillip Winder were granted leave to give evidence and make submissions by video conference from Victoria. Trainer Mr John Nicholson on medical grounds was also given leave to give evidence and make submissions via video conference from Victoria.

Raceday Stewards Mr Steven Shinn and Mr Ben Plunkett were present in the Inquiry room as Advisors but did not play any part in the proceedings.

At the Inquiry, three Stewards patrol videos of the Race were viewed, and the official Steward's report was entered into evidence. Mr Rhys Nicholson submitted images of examples of hocking in other races.

The Inquiry was adjourned so that the Appointed Steward might give full regard to the evidence and to the submissions.

## **FINDINGS:**

In determining whether or not to exercise the powers available under AHRR 174(1) to disqualify or relegate the placing of BULLYS DELIGHT pursuant to the way Mr R Nicholson drove or behaved in the home straight in the Race, the Appointed Steward gave regard to the nature of the offences, the gravity of the violations and all attendant relevant circumstances. This availability of the powers under AHRR 174 were enlivened when BULLYS DELIGHT'S driver was found guilty of two offences under Part 9 of the Rules.

The starting point of considerations, in the opinion of the Appointed Steward being the intent of the Rules to apply equally to all competitors in the race, but also to provide an ethical foundation for the conduct of the race itself and for the welfare of the horse.

The submission that the Appointed Steward should be bound by the decision to dismiss all protests and to give the 'All Clear' on the order of placings by the raceday Stewards is rejected. In the opinion of the Appointed Steward an examination of the drafting of AHRR 174 indicates that the intention is not that a protest ruling be a determinant relevant to the exercise of powers under this rule.

AHRR 174 states:

- (1) *Where a driver is found guilty of an offence under a rule contained in part 9 and the offence relates to the way in which the driver has driver or behaved or controlled or failed to control the driver's horse at the start or during a race, the Stewards in relation to the race in which the offence occurred may give the driver's horse a lower placing or disqualify it for such period they think fit.*
- (2) *A disqualification under sub rule (1) or alteration of placings does not affect settlement of bets or wagers.*

This particular rule clearly contemplates and provides for alteration to the order of placings beyond the signalling of all clear. It firstly requires findings by the Stewards of a rule violation under Part 9 of the Rules against a driver before the disqualification or relegation powers can be triggered. Raceday protests as a matter of necessity must be expediently determined in advance of any consideration of driver infractions. Secondly, sub-rule (2) quite obviously only contemplates alterations to placings after the 'All Clear', as it provides that any disqualification or relegation of placing under this rule does not affect settlement of bets. The presumption being that the 'All Clear' will have been given and bets settled prior to the powers of Part (1) of this rule being invoked.

Further, the Appointed Steward rejects the submission that the principle to be applied to the invoking of the powers available under AHRR 174 are that contained in AHRR 176(6), namely that the Appointed Steward would need to be comfortably satisfied that had the two violations of the Rules not occurred, that the other horses would have finished ahead of BULLYS DELIGHT.

AHRR 176(6) states:

*Where a protest has been lodged in accordance with this Rule and a horse or its driver causes interference to another horse or its driver and the Stewards are of the opinion that the horse interfered with would have finished ahead of the first mentioned horse had such interference not occurred they shall place the first mentioned horse immediately after the horse interfered with.*

This was the test applied by the raceday Stewards as released in the official Stewards report, when in determining the protests they stated " *although Stewards were able to confirm that Mr. Nicholson had indeed 'hocked' BULLYS DELIGHT numerous times in the home straight as well as utilising his whip on numerous occasions outside the requirement of the rules, Stewards could not be comfortably satisfied that had this not occurred the placings would have changed.*"

This is the principle applicable only to protests involving interference to other horse(s) and in the opinion of the Appointed Steward is not the correct test under the Rules to be applied to determine protests involving hocking or whip use.

When considering the circumstances of the breaches, the Appointed Steward took into account submissions by Mr Rhys Nicholson of a personal nature. Of relevance, is that he is an experienced horseman with almost 1,000

race drives to his credit and is a person fully conversant with the hocking and whip rules. It is also relevant that the Race is the most prestigious pacing event conducted in Tasmania, offering \$75,000 total prize moneys and attracting a heightened Australia wide viewing and wagering interest.

The gravity of a finding of whip use beyond what is prescribed by the Rules of a rein in each hand, wrist only flicking with the tip of the whip pointed forward and with the forearm not raised beyond 45 degrees, is well understood today by members of the harness racing industry from a welfare and level playing field perspective.

Serious and flagrant infractions of whip misuse also bring into focus the "social licence" extended by the wider community which allows State harness racing authorities the statutory power to conduct the racing which provides both income and interest to its participants.

Also, the quantum of the Steward's penalty that being 4 weeks suspension of licence to drive plus a fine of \$1,000 being at the highest end of the ORI guidelines for whip breaches, indicates the most serious view taken by the raceday Stewards of the gravity of this breach. Leaving aside whip use occurring prior, the videos of the race display over 20 whip strikes of his horse in the 200 metre home straight at Elwick by Mr Rhys Nicholson, whereby he engaged force from his elbow and shoulder, contrary to that permitted by the Rules.

Considering the gravity of the offence under part (e) of AHRR 168(1) of improper driving relative to the hocking violation, it appears arguable that the seriousness of a driving offence in this rule is categorised in ascending order namely:

- (a) careless,
- (b) reckless,
- (c) incompetent,
- (d) intimidatory,
- (e) improper,
- (f) foul or
- (g) likely to endanger a person or horse.

Stewards found the actions of Mr Rhys Nicholson to be deliberate and the Inquiry submission by Mr Rhys Nicholson that the occurrence was accidental is rejected. The videos confirm over 20 deliberate contacts in the home straight between Mr Rhys Nicholson's right foot and the off hind leg of BULLYS DELIGHT. The quantum of the penalty of 2 weeks suspension of licence to drive plus a \$2,000 fine being at the very highest end of the scale for hocking offences, indicates the view taken by raceday Stewards of the gravity of this particular violation.

The actions of hocking and whip use described by the raceday Stewards as Mr Rhys Nicholson's "blatant disregard for the rules" were in the opinion of the Appointed Steward invoked in a mindset of improving and/or sustaining the efforts of BULLYS DELIGHT to a victory at any cost.

Importantly both violations bring into serious focus issues of horse welfare. The welfare implications of the force and whip action employed in the home straight by Mr Rhys Nicholson is self-evident, but also the hocking offence brings into play serious welfare considerations as previously commented upon by the higher authority, namely the Tasmanian Racing Appeals Board. Chairman Mr. T Cox in the May 2008 appeal by Mr. A Rawlings against hocking charges found;

*"this is a serious set of offences. Conduct of this nature not only seeks to obtain an unfair advantage but interferes with the gait of the horse, having the potential to cause injury to persons or horses."* Also at the July 2016 appeal of Mr. J Walters against a hocking finding, the Chairman, Mr. T Cox, said at Paragraph 6, *"Before this Board the stewards confirmed that the appellant was in breach of the rule because they had found that he pushed his foot forward, deliberately, in an attempt to clip the drive's hind legs and quicken its gait. The practice is called "hocking." The practice is very dangerous and, in my view, worthy of significant penalty if found to have taken place."*

**DECISION:**

The Appointed Steward determines that the way Mr Rhys Nicholson drove or behaved in the home straight in the Race involved deliberate and egregious violations of the Rules, being so far outside of what is permitted for the conduct of harness racing that they would be viewed as an affront by any fair-minded person.

The Appointed Steward invokes the powers of AHRR 174 and determines that BULLYS DELIGHT be given a lower placing in the Race. Accordingly, BULLYS DELIGHT is relegated from its first placing to fourteenth placing in the Ladbroke's Tasmanian Pacing Cup Final conducted at Ladbrokes Park, Elwick on the 13<sup>th</sup> March 2021, with the first four placings now to read:

1<sup>st</sup> Place: THE SHALLOWS

2<sup>nd</sup> Place: LIP READER

3<sup>rd</sup> Place: EARL JUJON

4<sup>th</sup> Place: IZAHA

Under AHRR 174(2) there is to be no effect of this ruling on settlement of bets and wagers.