

IN THE MATTER OF AN APPEAL UNDER THE ENABLING LEGISLATION OF THE
LEGISLATURES OF PRINCE EDWARD ISLAND, NOVA SCOTIA, AND NEW BRUNSWICK
ESTABLISHING AN ATLANTIC PROVINCES HARNESS RACING COMMISSION AND UNDER
THE RULES AND REGULATIONS OF THE ATLANTIC PROVINCES HARNESS RACING
COMMISSION.

Appeal Heard at Kensington, Pe, October 30, 2024

BETWEEN: Adam Merner
APHRC License Z08475
APPELLANT

AND: Danny Mackinnon
Senior Racing Judge
Northside Downs, Oct 19, 2024
Race 10
RESPONDENT

PRESENT:

A panel consisting of Commissioners Jacinta Campbell (PEI), Dawn Hubbard (NB), and Stefan Decoursey (NB) convened to hear the appeal. Mr. Decoursey chaired the appeal but did not vote. Cindy Doucette, Administrative Assistant and Financial Officer, and the Director of Racing Mitch Murphy appeared for the Commission Administration. Mr. MacKinnon represented himself as did Mr. Merner.

The Appeal Hearing was conducted under the provisions of Section 7.3 of the Rules of Standardbred Harness Racing as adopted by the Atlantic Provinces Harness Racing Commission.

The Chair introduced all present and confirmed with the parties their acceptance of the jurisdiction of the APHRC to hear the appeal and deliver a written decision in due time.

There being no objections, the Chair asked if there were any preliminary matters. There being none, the Respondent was asked to proceed.

POSITION OF THE RESPONDENT

Mr. MacKinnon introduced into evidence a YouTube video of Race 10 at Northside Downs on October 19, 2024. The video was tagged as exhibit 5. Mr. MacKinnon noted that this was the top class at Northside of winners over \$1000 last 5 starts.

Mr. MacKinnon also outlined the rule violations that judges felt that Mr. Merner did not comply with and therefore was sanctioned. All 3 judges agreed there was interference.

Rule 303 – A driver shall not commit any of the following acts, which are considered TYPE 1 offenses against the rules:

(5) Crowd a horse by “putting a wheel under him.”

(9) Impede the progress of another horse or cause it to break from its gait.

Specifically, Mr. MacKinnon testified that Mr. Merner, the driver of Baconabiscuit, was in violation of Rule 303 (5)(9) and forced Jeremy Baker, the driver of Q TS Charlie, to strike multiple pylons and to have to check his horse at or about the ¼ pole. Mr. MacKinnon testified to what he observed by providing oral comments while the video was shown multiple times. When questioned whether judges looked at the backstretch camera, Mr. MacKinnon testified that they did but it was no help.

Mr. MacKinnon called Mr. Jeremy Baker (0B5684) as a witness. Mr. Baker testified that Q TS Charlie is quick off the gate and often is leading or near the lead at the ¼ pole. As Q TS Charlie left from the rail in Race 10, on October 19 at Northside Downs he was in the lead at the 1/8 and heading for the quarter. Mr. Baker testified that Mr. Merner was in the first over position and both drivers were challenging for the lead. At or about the ¼ pole Mr. Baker testified that Mr. Merner put a wheel under the front legs of Q TS Charlie causing him to have to check his horse quite hard to avoid an accident with Mr. Merner.

Under cross examination from Mr. Merner, Mr. MacKinnon was asked if the judges thought it was a violation, why was the inquiry sign not posted at that time or anytime during the race?

POSITION OF THE APPELLANT

Mr. Merner testified that he was not in violation of Rule 303 (5) or Rule 303 (9). While he acknowledged that both drivers were trying to attain the lead going into a sharp turn just past the ¼ pole he did not put a wheel under Mr. Baker’s horse or force Mr. Baker’s horse to

hit or be inside multiple pylons at or about the quarter pole. Mr. Merner testified that he was clear by one quarter of a length when he moved his horse to the one position after clearing Mr. Baker and Q TS Charlie. Mr. Merner further testified that the race from the 5/8ths to the 3/4ths also saw Mr. Baker strike several pylons with a horse alongside.

Mr. Merner testified that he was not shown the backstretch view during his hearing with the judges. Mr. Merner testified he asked about the backstretch video during his hearing with the judges after the races on October 19, 2024, but was told it was not working

Mr. Merner called Redmond Doucet (402E60) as a witness. Mr. Doucet was the driver on the horse Rotten Ronnie in Race 10, October 19, 2024, at Northside Downs. Rotten Ronnie left from post position two and was immediately behind Q TS Charlie and Mr. Baker as they raced to the quarter pole. Mr. Doucet testified that in his view Mr. Merner did not put a wheel under the horse driven by Mr. Baker and did not force him down the racetrack to encounter or go inside the pylons. At no time did Mr. Doucet feel that Mr. Merner was impeding progress for Mr. Baker.

Mr. Doucet further testified that the ¼ turn is very sharp at Northside and its slightly downhill and can come upon drivers rather quickly. Mr. Doucet felt that Mr. Merner's horse was bearing out for the entire race, while Mr. Baker's horse was bearing in.

APPEAL PANEL DECISION

The Appeal Panel spent considerable time reviewing the video evidence and testimony. The panel questioned why the inquiry sign was not lit when the alleged infraction occurred?

Senior Racing Judge MacKinnon indicated in his testimony footage from the backstretch camera was of little consequence because of its positioning. The panel assumed for technical reasons the footage was not made available to Mr. Merner during his hearing with the judges on October 19, 2024. The footage was not available to the panel.

Mr. Redmond Doucet's testimony that Mr. Baker's horse Q TS Charlie bore in most of the race was supported by video evidence of contact with eight (8) pylons throughout the race. This included between the 1/8 and ¼ poles, at or around the ¼ pole, in the 3/8th turn and between the 5/8 and 3/4th poles.

The video evidence does not support that Mr. Baker had to hard check his horse, or that Mr. Merner impeded his progress when he cleared and crossed over. The evidence supports that Mr. Baker made a safety conscious decision to have Mr. Merner clear and to settle Q TS Charlie in the two hole.

For these reasons, the Appeal Panel voted unanimously to uphold the appeal of Mr. Merner.

Placing and purse monies shall be dealt with accordingly.

For the Appeal Panel

A handwritten signature in black ink that reads "Mitch Murphy". The signature is written in a cursive, flowing style.

Mitch Murphy

Director of Racing

Kensington, PE. October 31, 2024.