

**RACING PENALTIES APPEAL TRIBUNAL**  
**REASONS FOR DETERMINATION**

**APPELLANT:** GARY HALL JR

**APPLICATION NO:** 24/4472

**PANEL:** MR ROBERT NASH (CHAIRPERSON)

**DATE OF HEARING:** 17 JULY 2024

**DATE OF DETERMINATION:** 24 JULY 2024

**DATE OF REASONS FOR DETERMINATION:** 29 January 2025

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**IN THE MATTER OF an appeal by GARY HALL JR against the decision of the Racing and Wagering Western Australia Stewards of Harness Racing to suspend him for 8 weeks for breach of Rule 149(2) of the Rules of Harness Racing.**

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Mr G Hall Snr represented the Appellant (who also represented himself).

Mr B Lewis represented the Racing and Wagering Western Australia Stewards of Harness Racing.

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1. By Notice of Appeal dated 5 July 2024, Gary Hall Jr (hereafter '**Appellant**') appealed against two decisions of the RWWA Harness Racing Stewards ('**Stewards**').
2. The first decision appealed against was the decision of the Stewards to suspend him from driving in harness races for a period of 5 weeks following a finding that when driving YOUR SO FINE in Race 2 at Gloucester Park on Friday 7 June 2024, he breached HR 149(2) by driving in a manner that was in the opinion of the Stewards unacceptable. In relation to that matter, the Appellant appealed against the penalty imposed but not against the conviction.
3. The second decision appealed against was the decision of the Stewards to convict and suspend him from driving in harness races for a period of 5 weeks (with 2 weeks of the suspension to be served concurrently with the penalty given in respect of the first decision) for driving WILDWEST in Race 6 at Gloucester Park on Friday 7 June 2024, in a manner that was in the opinion of the Stewards unacceptable, in breach of HR 149(2). In relation to that matter, the Appellant appealed against both the conviction and the penalty imposed.

4. The hearing of the Appeal was convened before me at short notice on 17 July 2024, so that the matter could be determined expeditiously.
5. At the Appeal:
  - a) the Appellant was represented by his father, Gary Hall Sr, albeit he also made submissions himself; and
  - b) the Stewards were represented by Chief Steward, Brad Lewis.
6. Following the Appeal hearing on 17 July 2024, I published the determination on 24 July 2024:

*“For reasons that will be published in due course:*

- (a) *I dismiss the appeal against penalty imposed in respect of the first charge arising in respect of the Appellant’s drive of YOUR SO FINE in Race 2 at Gloucester Park on Friday 7 June 2024.*
- (b) *I dismiss the appeal against conviction imposed in respect of the second charge arising in respect of the Appellant’s drive of WILDWEST in Race 6 at Gloucester Park on Friday 7 June 2024.*
- (c) *I find that the temporary absence of one of the Stewards during the Inquiry phase dealing with the Appellant’s drive of WILDWEST in Race 6 at Gloucester Park on Friday 7 June 2024, was not such as to result in a breach of the rules of natural justice or procedural fairness such as would warrant the subsequent charge and conviction in respect of that drive to be overturned or set aside.*
- (d) *I allow the appeal against the penalty of 5 weeks suspension imposed in respect of the second charge arising in respect of the Appellant’s drive of WILDWEST in Race 6 at Gloucester Park on Friday 7 June 2024. I substitute a penalty of 3 weeks suspension, 2 weeks of which are to be served concurrently with the penalty imposed on the Appellant in respect of his drive on YOUR SO FINE in Race 2 at Gloucester Park on Friday 7 June 2024.*

***Accordingly, the total penalty of 8 weeks suspension is reduced to 6 weeks suspension.***

***Since the suspension commenced on 2 July 2024, it will expire on 13 August 2024.”***

7. The following are my reasons for decision. I will deal with the appeal against conviction first, and then the appeals against penalty.

## **APPEAL AGAINST CONVICTION**

### **WILDWEST (Race 6, Gloucester Park, 7 June 2024)**

8. In the determination published on 24 July 2024, I dismissed the Appellant’s appeal against his conviction in respect of the charge that related to his drive of WILDWEST in Race 6 at Gloucester Park on Friday 7 June 2024 (**‘Race 6’**).
9. HR 149(2) provides that: *‘A person shall not drive in a manner which in the opinion of the Stewards is unacceptable.’*

10. In Race 6, the Appellant's horse, WILDWEST was the favourite to win. WILDWEST had drawn second from the inside of the track with GALACTIC STAR on the inside. From the start, the Appellant drove WILDWEST hard in order to try to take the lead from GALACTIC STAR. WILDWEST managed to take the lead after passing GALACTIC STAR down the home straight for the first time. After taking the lead the Appellant appreciably slowed WILDWEST down allowing stablemate, DIEGO, to go by on the back straight. WILDWEST thereafter ran with the cover of DIEGO in front until the final home turn. STEEL THE SHOW in the meantime managed to come along the outside, passing WILDWEST and challenging DIEGO from the outside for the lead. DIEGO managed to keep the lead. As they rounded the final turn, WILDWEST needed to move on the outside in order to try to pass both STEEL THE SHOW and DIEGO. WILDWEST managed to get past STEEL THE SHOW but lost to DIEGO by about half a horse length.
11. The Stewards found that the Appellant had driven WILDWEST in a manner that was in their opinion unacceptable, in that after crossing to the lead near the winning post on the first occasion he slowed the speed of WILDWEST prior to entering the back straight to such an extent that DIEGO was able to go to the lead leaving WILDWEST in a trailing position. The Stewards' opinion was that by doing that the Appellant had thereby foregone the advantage of leading and controlling the pace of the race.
12. HR 149(2) makes it clear that it is the opinion of the Stewards, not the Tribunal, that matters.
13. As Mr Mossenson, a longstanding former Chairperson of this Tribunal, stated in *Staeck (Appeal 699)* and in *Young (Appeal 703)*, where a relevant Rule is qualified by the words '*...In the opinion of the Stewards...*':

*".....the test in all of these types of cases is not what impression members of the Tribunal may form for themselves of the quality of a ride based on any argument which may be pressed for an appellant as supported by the opinion submitted by the rider's counsel or representative. Rather, the ultimate test in these types of matters is whether the Tribunal has been persuaded that the Stewards have fallen into error in reaching the conclusion which they did on the basis that their decision was so unreasonable that it is untenable and it should be interfered with."*
14. Further, in *Staeck*, Mr Mossenson presciently observed in the context of a thoroughbred appeal, which is of equal force when this Tribunal considers appeals against qualitative assessments made by the Stewards of drives in Harness Racing:

*"This Tribunal clearly is not in a position to evaluate the quality of rides and tactics employed by jockeys during races in the same manner as the members who constitute Stewards' panels. The Stewards are employed by RWWA for their knowledge and experience of the racing industry particularly riding techniques, tactics and racing practices. Stewards are appointed for their qualifications and familiarity of many aspects of the industry. This includes their acute understanding of the need to protect the safety and welfare of both horse and rider as well as the public betting implications of how races are conducted and run. The Stewards attend all race meetings affording them the benefit of viewing the races live from various vantage positions around the track. Their bird's eye view is conducive to the proper evaluation process of races. The Stewards are empowered to interview and take evidence from the participants first hand as part of the inquiry process. The Stewards are placed in the best position to judge the demeanour and credibility of those persons who come before them."*

15. I also adopt what Mr Mossenson also said in the case of *Lewis (Appeal 721)*:

*“As has repeatedly been stated in appeals which involve rules creating offences containing the words ‘in the opinion of the Stewards’, any assessment provided by others, including any of the drivers in the race and independent observers however qualified, may well be admissible and highly relevant, but such evidence cannot necessarily determine an outcome. The Stewards must reach their ultimate conclusion as to guilt or innocence based on the totality of the evidence. It is their decision that counts.”*
16. The Stewards are employed to apply and enforce the Rules because of their undoubted knowledge and expertise. They observe driving tactics in countless races and have a highly developed understanding of what constitutes an unacceptable drive. In addition, they not only have the opportunity to view the races live from their elevated positions but also to study the videos, hear the appellant’s case and consider all of the facts and circumstances.
17. In considering an appeal against a conviction under HR 149(2), the Tribunal will only interfere with a Stewards’ determination if it is 'clearly unjust', 'arbitrary', 'capricious', or 'unreasonable' in the sense that no Stewards acting reasonably could have formed the opinion: see *Minister for Immigration & Citizenship v SZMDS [2010] HCA 16, per Crennan and Bell JJ at [130]*.
18. The Appellant’s counsel, Gary Hall Sr, very ably argued that the decision to allow DIEGO to go through was to provide cover for WILDWEST so that the horse could have a breather after its initial effort and to preserve its energy for the end of the race. He argued it was a reasonable judgment call made by the Appellant in the course of the race with the aim of giving his horse every possible chance to win. In the end, WILDWEST ran second to DIEGO. It was emphasised on the Appellant’s behalf that in most instances where there is an alleged breach of HR 149(2), the horse ended up last or second last. In this case, it was argued that the tactics adopted by the Appellant could not be criticised given that WILDWEST featured in the finish and ultimately placed second.
19. The points made on behalf of the Appellant were forcibly made. In essence, his argument was that there was a proper racing rationale for allowing DIEGO to go to the front without challenge, so as to provide cover for WILDWEST until the run for the finish.
20. The Stewards were of the opinion, that by deliberately allowing DIEGO to take over the lead, the Appellant had foregone the substantial advantage WILDWEST had in the race. The Appellant had gone out of his way to allow DIEGO to go through by overtly looking back and considerably slowing the pace down to allow her past. They considered that action changed the complexity of the race. They considered the Appellant’s action to be a significant error of calculation.
21. The difficulty for the Appellant is that in order to succeed in his appeal against conviction he needed to satisfy me that the Stewards decision was so demonstrably wrong that no Stewards could reasonably have formed the opinion that they did. I was not satisfied that the Appellant had discharged the heavy onus involved in establishing that.

### *Absence of Mr Webster*

22. The Appellant also challenged the conviction on the ground that one of the three Stewards, namely Mr Webster, was absent for a period of time during the Inquiry phase in relation to Race 6. It appears that his absence was over a period covered by about 6 pages of transcript, although it is not altogether clear.
23. Mr Hall Sr contends that the Stewards who are conducting the Inquiry should not be coming and going from the hearing potentially missing vital evidence.
24. There is no doubt that the Stewards were obliged to afford procedural fairness to Mr Hall. The critical question is what the content of that requirement is. The answer, in part, depends on the procedures prescribed for the Stewards and a consideration of the rules that govern the discharge of their functions.
25. In the racing context, procedural fairness generally requires that proper notice of a proposed decision is given to the person potentially adversely affected by it, that the potentially affected person has a reasonable opportunity to be heard, and that the Stewards remain open to persuasion despite the fact that under the Rules they have often have the roles of witness, prosecutor, judge and jury: *Fletcher v Racing NSW [2019] NSWSC 358, [80]*.
26. The fundamental requirement of procedural fairness is directed to avoiding practical injustice: *Defendi v Sziglieti [2019] WASCA 115, [48]*.
27. There is a critical distinction between the Inquiry phase of a Stewards' hearing and the phase that follows the decision to charge a person with a breach of the Rules.
28. Rule 181 provides that the Stewards may conduct inquiries and investigations into any occurrence or matter arising out of or connected with a race in such manner as they think fit.
29. The Inquiry phase is investigatory by nature. Although it is preferable that the Stewards do not come and go, it may sometimes be unavoidable or necessary having regard to exigencies and the performance of their duties during race meetings.
30. In my view, the short absence of Mr Webster during the Stewards' Inquiry, was not such as to deprive the Appellant of procedural fairness, it did not impugn the ultimate findings made, nor did it give rise to any practical injustice.
31. For the reasons set out above, I dismissed the appeal against conviction.

### **APPEALS AGAINST PENALTY**

#### **YOUR SO FINE (Race 2, Gloucester Park 7 June 2024)**

32. The Stewards found the Appellant guilty of a breach of HR 149(2) for driving YOUR SO FINE in an unacceptable manner in Race 2 at Gloucester Park on 7 June 2024 and suspended him for 5 weeks.
33. YOUR SO FINE was the short-priced favourite for the race.

34. The Stewards were of the opinion that the Appellant had not made a sufficient attempt to relinquish the lead after his drive was challenged for the lead by NAVY STREET (driven by Mr Warwick) early on in the race allowing the challenge to continue on over a sustained period leading to the two horses having a substantial margin over the rest of the field but ultimately leaving them in a state where they tired heavily towards the finish with the Appellant's drive, the favourite, being well beaten and coming second last.
35. The Stewards in considering penalty had regard to the Appellant's good record and his high standing as a leading driver in Western Australia. They noted that the penalties for similar offences ranged from 2 to 8 weeks suspension. They also noted that the other driver involved, Mr Warwick, was a hobby driver, whereas the Appellant was an experienced professional. Mr Warwick pleaded guilty to the charge made against him, whereas the Appellant had pleaded NOT GUILTY. It was also significant that the Appellant's drive was the short-priced favourite whereas Mr Warwick's was not.
36. In reaching the penalty, Stewards had regard to the fact that the Appellant relied on racing for his income and had a dependent child. They clearly appreciated that there would be a significant financial impact for the Appellant as a consequence of any suspension.
37. Mr Warwick received a 4 weeks suspension for his drive.
38. Having viewed the footage of Race 2 on a number of occasions, having regard to the range of penalties ordinarily applicable, and after considering the matters in both the transcript of the Stewards' Inquiry and what the parties contended at the hearing of the Appeal, I did not consider there was any error shown in the Stewards exercise of the discretion in imposing a penalty of 5 weeks suspension nor was it shown to be manifestly excessive.

**WILDWEST (Race 6, Gloucester Park, 7 June 2024)**

39. The penalty imposed by the Stewards on Mr Hall in respect of Race 6 was also 5 weeks suspension.
40. In my view, imposing a penalty of that length in all the circumstances was too severe and was manifestly excessive.
41. In my view there were significant differences between the first charge (Race 2) and second charge (Race 6) which were not adequately taken into account by the Stewards, in assessing the appropriate penalty for the second charge.
42. First, unlike in the case of Race 2, in Race 6 it was apparent that the Appellant's drive featured competitively in the finish, running second. The drive in Race 2, which resulted in the Appellant's horse, the favourite, not being able to run out the race competitively was, in my view, far more likely to damage the image of racing in the eyes of the public, than the drive in Race 6 where his drive featured in the finish.
43. Secondly, the Appellant not only strongly defended the propriety and reasonableness of the decisions he made in Race 6, he was supported in that by his father, Mr Hall Sr, who was the trainer of the horse.

44. Penalties for breaches of Rule 149(2) since 2018 have ranged from reprimands up to 8 weeks suspension.
45. I have had regard to the range of penalties imposed and have considered the approach former Chairpersons of this Tribunal have taken in reviewing penalties imposed for breaches of HR 149(2) in cases like *Lewis (Appeal 787)* and *Young (Appeal 835)*.
46. A suspension of 5 weeks signifies offending towards the more serious end of the spectrum. Five weeks suspension was an understandable penalty in respect of Race 2, but in my view it was an excessive penalty to impose in respect of Race 6.
47. In the circumstances, I considered the 5 week suspension was manifestly excessive in all of the circumstances of the case. In lieu, I considered a suspension of 3 weeks fairly reflected the seriousness of the drive in Race 6 in comparison to the drive in Race 2.
48. In terms of whether any part of the suspension in respect of the drive in Race 6 should be served concurrently, I was of the view that 2 weeks of the suspension should be served concurrently with the penalty imposed in respect of Race 2 for the same reasons given by the Stewards.
49. Therefore, the total suspension was reduced from 8 weeks to 6 weeks.



**ROBERT NASH, CHAIRPERSON**

