

RACING PENALTIES APPEAL TRIBUNAL DETERMINATION

APPELLANT: MR GARY EDWARD HALL (JR)
APPLICATION NO: A30/08/808
PANEL: MR P HOGAN (PRESIDING MEMBER)
DATE OF HEARING: 5 JANUARY 2018
DATE OF DETERMINATION: 5 JANUARY 2018

IN THE MATTER OF an appeal by GARY EDWARD HALL (JR) against the determination made by Racing and Wagering Western Australia Stewards of Harness Racing on 22 December 2017, imposing a suspension of seventeen days for breach of Rule 163(1)(b) of the Racing and Wagering Western Australia Rules of Harness Racing.

Mr Gary Edward Hall (Sr) represented Mr Gary Edward Hall (Jr).

Mr Denis Borovica represented the Racing and Wagering Western Australia Stewards of Harness Racing.

ORAL REASONS FOR DETERMINATION ON THE DAY OF HEARING:

1. In this case the appellant appeals against the imposition of the RWWA Stewards of Harness Racing decision made on 22 December 2017 imposing a 17-day suspension for a breach of rule 163(1)(b) and by that rule a driver shall not make another horse cover more ground than necessary, subject to local rule 164, which doesn't apply here, because what occurred in this particular race was nowhere near the designated spot and time of the race.
2. What happened in this case was that the stewards issued a charge that night. The

particulars were said to be that you were racing around the first turn when Mr Hall, who was the driver of Eric Roosevelt, he'd shifted that gelding from a position to a position one horse away... but not clear of Mr Lewis' driver Rapid's Delight, who was racing to the outside and as a result of the shift, Rapid's Delight was made to cover more ground than necessary, forcing it from its one-wide position to a three-wide position. I've paraphrased that, but that's what it was. It was a cover more ground charge.

3. I have seen the vision here today and, indeed, earlier as well. That seems like an accurate description put by the stewards and to that charge, the appellant pleaded guilty. I am told that he did so thinking that he would probably be reprimanded or, at least, not suspended for 17 days and he spoke a little bit in mitigation at the time, pointing out that in his view, again my words, that it was at the lower end of the scale. The covering extra ground went on for no longer than a stride or two, he said. He said there wasn't a hell of a lot in it and he said that Rapid's Delight got to the same spot as he was always going to be in without interference.
4. Something happened before the penalty was actually imposed and Mr Hall came back into the – having gone outside, came back into the stewards' room, having realised that he might be suspended instead of reprimanded, so he spoke to the stewards about a reprimand instead and by way of parity referred to the previous race – not the previous race – a race a short time before when driver Mr Purdon was reprimanded rather than suspended on a fairly similar set of circumstances, says Mr Hall.
5. The stewards then reiterated they take each case on their merits and decided that there would be a suspension. The type of penalty imposed in accordance with rule 160, 256, and having decided that it was going to be a suspension, then imposed – calculated it according to the penalty guidelines in the group racing policy, which is kind of a mathematical thing designed to ensure certainty and that's a good thing that certainty is in the system.
6. The position here on the appeal is that there won't be a different penalty imposed unless it can be demonstrated that the stewards were in error in some way or that the penalty itself was manifestly excessive. It is true that there is a range of penalties provided for by the rules and is sometimes imposed by the stewards and this tribunal on driving offences and driving offences of this sort.
7. Stewards have imposed penalties of 26 days upheld on appeal in a recent case. Stewards have also imposed a disposition, not a penalty, by way of a reprimand in the previous case referred to in this very case, namely Mr Purdon. The appellant's penalty here for 17 days,

once it's decided that there should be a suspension instead of a reprimand, in my view that penalty is excessive so as to demonstrate error, bearing in mind the way – bearing in mind the particulars as articulated by the stewards on the hearing and my own view of the racing incident.

8. I am mindful of the fact that I shouldn't be imposing my own opinion on a case in substitution for the stewards, however, I can't escape the fact that it seems to me on all of the evidence, including the stewards' description, the particulars and my view of the race and, indeed, as well the type of race – type of offence which can in fact attract a reprimand, namely that drive by Mr Purdon, I think the stewards' discretion did miscarry.
9. It falls then to me to reimpose a penalty. It is, in my view, an offence which deserved seven days. The seven days, appeal allowed, suspension set aside – seven days.



PATRICK HOGAN, PRESIDING MEMBER

