

REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: KODY THOMAS CHARLES
APPLICATION NO: A30/08/673
PANEL: MR D MOSSENSON (CHAIRPERSON)
DATE OF HEARING: 10 MAY 2007
DATE OF DETERMINATION: 10 MAY 2007

IN THE MATTER OF an appeal by Kody Charles against the determination made by the Racing and Wagering Western Australia Stewards of Harness Racing on 20 April 2007, imposing 22 day suspension for breach of Rule 163(1)(a) of the Australian Rules of Harness Racing.

Mr G Winston appeared for Mr Charles.

Mr L S Austin appeared for the Racing and Wagering Western Australia Stewards of Harness Racing.

BACKGROUND

This matter came on before me on 10 May 2007. I dismissed the appeal. I now publish my reasons.

Mr Charles was convicted by the Racing and Wagering Western Australian Stewards of Harness Racing on 20 April 2007, following an inquiry into an incident which occurred in Race 4 at Gloucester Park on that day.

At the outset of the inquiry, Mr Austin, Deputy Chief Steward Harness, who chaired the inquiry, stated that:

'...I viewed this incident from the tower adjacent to the winning post which afforded me a fairly head-on position and it appeared that Mr Charles, you were racing about four back in the one-wide line, racing to your inside closest to the rubber uprights was yourself, Mr Hall with FRANCO AMON. You've attempted to shift wider getting into the front straight, approximately half way up the straight, I felt you probably almost got the position in the one-wide line. Mr Charles, you were racing outside at the time and you've attempted to hold your ground. This continued for some way until such time as the pressure got so great that your fellow broke gait, Mr Hall, but a couple of things. Firstly, I thought that you were, you couldn't go back because KOBIAHI MARU had moved through to your inside and secondly, I don't know whether you got all the way out but certainly most of the way out and then Mr Charles, you've disappeared in your efforts to hold your ground to throw your cart back at Mr Hall, at which time Mr Hall broke gait '.

The other two Stewards who were present did not observe the incident. Mr Hall was called on to describe the incident which he did in the following terms:

'Yeah, that's pretty much how it happened. I was always attempting to get out from the peg line. I did, as you say, I, when Mr Charles, first I think when I first pushed him, he sort of basically went up a bit, or his horse might have run out and then has, has sort of come down which is sometimes to your advantage to help you hold the other horse in but as he's come back down, my horse started going a bit rough. I did want to go back, I sort of realised I was going to lose it, the position, I sort of lost the battle and I was going to pull off, or I did pull off but as you say the horse up the inside had taken the, taken the run which was probably, you know, it was looking like it was going to present itself but wasn't fully there. So, I had two choices either go back and, and sort of take his position and probably do to him what I, what happened to me in the long run which was, I've clipped the wheels, but he was going a bit rough before, before he actually fully broke up and the horse is, is a very bad knee knocker, so I have probably have to put it down to that but I never actually had it in that situation before so it's hard to say. I've never had to, had to push out with him so, basically I don't think that....

... if I got him out in one, one movement, you know and that then I'd, I'd say he wouldn't have, he obviously wouldn't have broken up but he was, I don't think he actually broke up from the, he sort of broke up once I'd really lost the position I was looking for a place to go, he went rough prior to that from, from obviously the pushing and shoving, but like I say, he's, it's not the best gaited horse and obviously you've got to watch him, you know, sort of pushingbecause he's not, he's not the greatest horse to be getting shoved around. But when I, first made the push and Mr Charles wasn't resisting that heavily at that stage, I, he was fine but as when he come back down and really applied pressure that was when he got into trouble.'

Mr Charles was then called on to comment which he did as follows:

'Yeah, I was racing outside Mr Hall. He probably got level with me, started to push, definitely didn't move me out a whole way, may have moved me out a fraction and then Mr Hall, when we got into that corner, Mr Hall's horse did pace a little bit rough and dropped back a little bit but....

... up to there I was back in front and I just got back into my position once Mr Hall dropped off a little bit. Mr Hall, I don't know probably didn't look back but there was, wouldn't never have been room for Mr Jelf to go up the inside.'

After taking further evidence, the Stewards made the following statement:

'Mr Hall, Mr Charles, after taking into consideration all the evidence as put forward both by firstly the observations of myself as the Steward viewing the incident adjacent to the winning post and also considering the observations ... the evidence put by Mr Hall and also the evidence put by yourself, Mr Charles, we do feel the films support both the Stewards and the evidence of Mr Hall therefore we do believe you have a charge to answer, Mr Charles, under the provisions of Rule 162(1)(a) which says: a driver shall not cause or contribute to any crossing, jostling or interference and the specifics on this occasion being racing in the front straight to receive the bell when attempting to hold your ground after Mr Hall had taken you wider out of your racing position, you have continued to apply that pressure downwards or inwards and in so doing you have tightened the ground sufficiently to cause contact to the front legs of the drive of Mr Hall being FRANCO AMON at that time. Do you understand the nature of the charge and where it occurred?'

Mr Charles pleaded not guilty after acknowledging that he did understand the nature of the charge and where it occurred.

The Stewards found Mr Charles guilty and invited an address on penalty. This led to the Stewards stating the following conclusions:

'...when we consider penalty, there's a number of factors we've got to consider. And the first thing we do consider is, is the degree of carelessness or culpability if you like, of yourself and it's in low, mid to high and we do believe that the carelessness on this occasion was mid to high. We also believe the interference suffered by Mr Hall's horse and other runners was high when you consider that the others behind were checked in the incident. We can't consider your plea because you pleaded not guilty to the charge and in effect that's not an acknowledgement of the incident in itself. But certainly these, in determining penalty, we start, interference usually starts somewhere about 28 days and can get up to higher, if you like, particularly going in the first corners. However, on today's account, we do believe the starting point is somewhere around 25 days. As I said the only thing that we can take into consideration here is your good driving record, and it is a good driving record because you've had 135 drives in 18 weeks and all you've had in that time is just a reprimand for bringing the pace off, not under this rule. So we do believe that warrants some, some acknowledgement and therefore we, we've given you a dispensation of three days. We do believe your suspension is a period of 22 days. That suspension will be deferred until midnight on Tuesday so you can complete your driving engagements, at which time at midnight your suspension will commence and that will take you all the way up to the 16th of May 2007 and you're free to drive again on the 17th of May.'

THE APPEAL

In his notice of appeal Mr Charles asserts that he is “... *not guilty for this offence, the stewards have got it wrong. The pressure has come from the inside where there was insufficient room. Under Rule 163(3) a driver shall trail with the head of the driver’s horse behind the seat of the sulky being trailed. And this is what I done.*”

Mr Winston argued with his usual clarity and energy and invited me to watch the video and interpret the incident on the basis that both parties contributed to what had occurred. Further, Mr Winston pressed the point that due to other things that were happening in the race with Mr Jelf taking Mr Hall’s position when Mr Hall attempted to move, that it caused a dangerous situation to occur and tightening to take place. I was invited to conclude it was basically the actions of the two other drivers and not Mr Charles which were responsible for the undesirable consequences that followed.

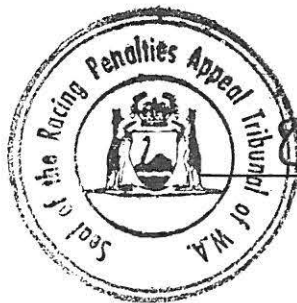
In the course of the appeal, I did draw Mr Winston’s attention to the wording of the charge and asked him whether he had any comments in relation to it. I was conscious of the fact that the wrong Rule number had been quoted, the actual offence had not been specified in the charge and nor had the actual offence been properly specified. Mr Winston offered no comment in relation to the wording. As previously mentioned at the Stewards’ inquiry after the charge had been laid Mr Charles had stated he understood the nature of the charge. The grounds of appeal did not raise any issue with respect to this aspect of matters. After having invited Mr Winston to examine and comment on the wording and he having not expressed any concerns, I was satisfied that it would be improper for me to take the matter any further. The appellant was not taking a technical point in his appeal, as the argument was based solely on the quality of the ride. The propositions advanced for Mr Charles were directed towards the appropriate way one should interpret and apply the evidence and interpret the actions of the drivers involved in the incident as reflected in the video. Mr Winston pressed his interpretation of the driving by reference to the tactics employed, the position of the respective horses at the time of the incident, which driver had and actually held the position and the behaviour of the horses involved.

In response Mr Austin put an entirely different interpretation on what occurred in the race at the relevant time. In summary he argued:

- This was not simply a case of holding position within reason but rather one of applying great pressure which continued for some way and caused Mr Hall’s problems.
- Mr Charles had lost position for some distance and in his efforts to regain it forced Mr Hall to move.
- At the Stewards’ inquiry Mr Hall eventually had “pretty much agreed” as to how the incident happened.
- The pressure from Mr Charles caused the horse to ride roughly and it was not caused by knee pressure.
- The film of the race, which was shown to me, supported the observation of the Stewards.
- This was not simply a racing incident.

I was not persuaded by the arguments made by Mr Winston. Rather I was satisfied that the Stewards were entitled to reach the conclusion they did of the incident. I was not persuaded the Stewards were in error in their assessment of the incident. No error on the part of the Stewards was established.

I therefore dismissed the appeal.



Dan Mossenson

DAN MOSSONSON, CHAIRPERSON