

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPLICANTS: IAN DOUGLAS SWAIN, DOUGLAS
GEORGE HARVEY & RONALD
MERVYN CONNOR

APPLICATION NO: A30/08/456

PANEL: MR J PRIOR (PRESIDING MEMBER)

DATE OF HEARING 13 MAY 1999

DATE OF DETERMINATION: 13 MAY 1999

IN THE MATTER OF an application for leave to appeal by Messrs I D Swain, D G Harvey and R M Connor under section 13(1)(d) of the Racing Penalties (Appeals) Act against the determination made by the Western Australian Trotting Association Stewards on 26 March 1999 in relation to a protest following the running of Race 6 at Gloucester Park on that date.

Mr I D Swain appeared for the applicants.

Mr W Delaney appeared for the West Australian Trotting Association Stewards.

This is an Application for Leave to Appeal.

This application is to be determined under sections 13(1)(d) and 13(2)(d) of the *Racing Penalties (Appeals) Act*. There must be a public interest in leave being granted. Further, because the granting or refusing of leave is an exercise of discretion, it is appropriate to take into account the prospects of success, should leave be granted.

The applicants are the owners of *LADY ASTRA* which ran in Race 6, at Gloucester Park on 26 March 1999. *LADY ASTRA* was placed second in the race behind *GOLDEN GODDESS*.

The driver of *LADY ASTRA*, Mr L B Harper lodged an objection against *GOLDEN GODDESS* being declared the winner. The grounds of the objection were that the whip action by the driver of *GOLDEN GODDESS*, Mr W R Reid, racing towards the front straight on the final occasion, caused *LADY ASTRA* to shy and break gait. It is not clear whether there was a protest or the matter was treated by the Stewards as a protest.

Following an inquiry, the Stewards dismissed the objection and declared *GOLDEN GODDESS* the winner. The Chairman stated:

"We've viewed the film on a number of occasions and we don't believe in the circumstances that we could entertain your protest, therefore, we are dismissing the protest and are upholding the Judge's placings."

The applicants now seek leave to appeal against that decision.

The grounds for the application as drafted on the Notice of Application for Leave to Appeal dated 6 April 1999 are as follows:

"As joint owners of the horse 'LADY ASTRA' are denied natural justice as a result of the WATA Stewards' decision to not conduct a formal protest hearing. ie did not call the other driver concerned or allow full evidence from L B Harper. (Explanation attached)"

The explanation attached stated:

"While Mr Harper was still giving his account of the incident and a full explanation of how his horse 'LADY ASTRA' suffered interference, a Steward was heard to call all clear.

The video evidence clearly shows the driver of 'GOLDEN GODDESS', with whip hand behind his head upwards, on the next stroke of his whip 'LADY ASTRA' breaks stride and loses 3 lengths.

By his own admission the Chief Steward states that the whip action contributes to 'LADY ASTRA' breaking stride – and by video evidence it clearly shows illegal use of the whip."

These grounds of appeal at the hearing were further amplified to:

1. There was no protest or details of the protest publicly announced pursuant to Rule 420(a)(i);
2. An owner of LADY ASTRA was not aware of the protest;
3. The "all clear" was delivered whilst Mr Harper was still talking at the inquiry;
4. There was no evidence heard from the Driver Reid (GOLDEN GODDESS), yet he was outside the Stewards' Room;
5. The Stewards did not use all the race patrol films available at the inquiry, or give sufficient weight to such patrol films; and
6. The evidence disclosed clearly an offence under either Rule 472 (a), (b) or (c).

FACTS

At the commencement of the protest hearing, the Stewards and Mr Harper viewed some of the films of the incident. They did not have the benefit of enhanced or slow motion footage but were obliged to deal with the matter expeditiously as the "all clear" had been delayed, as this was in the public interest.

After viewing the films, the Chairman of Stewards stated:

"It does appear that your horse might have reacted to Mr. Reid's whip action, but his whip action wasn't an unacceptable whip action."

Mr Harper, the driver of the Applicants' horse, was given ample opportunity to make submissions.

Both parties agreed that LADY ASTRA had not been struck by Mr Reid's whip.

Neither Mr Reid nor any other witnesses were called.

THE LAW

Rule 420 of the Rules of Harness Racing states:

“(a) The Stewards shall, upon notification of the protest immediately:

- (i) publicly announce the names of the horses involved in the protest and the short grounds for the protest;*
- (ii) conduct a formal inquiry and call such evidence as they deem necessary; and*
- (iii) give a decision which, in their opinion, reflects a fair result.*

...

(c) The following persons shall be entitled to be present at the inquiry:

- (i) the owner (in person or by his agent), the trainer and driver, of the horse against which the protest is made and of the horse on behalf of which the protest is made; and*
- (ii) any person entitled to be present at the inquiry shall also be entitled to address the Stewards, but may only ask questions of witnesses at the discretion and by invitation of the Stewards.”*

Rule 472 states:

“When carrying or using a whip any reinsperson who, in the opinion of the Stewards –

- (a) draws the hand using the whip above the reinsperson’s shoulder;*
- (b) allows the whip to project outside the confines of the reinsperson’s sulky;*
- (c) allows the whip to obstruct, hinder, impede or interfere with any other reinsperson or horse;*

...

commits an offence.’

DETERMINATION

Appeals which concern breaches of rules couched in the “opinion of the Stewards” do not often succeed because the Appellant must show it was an unreasonable opinion in the circumstances. The Stewards expertise is also recognised. Substituting contrary opinions of others is not enough to succeed.

Having seen the race footage provided by the Applicants at this hearing and considering the tests already mentioned for these types of appeal, I consider that this matter is of questionable merit. The Stewards had less material to derive their opinion at the inquiry. In any event, I can see nothing special or unusual in the circumstances of this case, which raise a particular public interest in this proposed appeal being heard before this Tribunal.

I am not satisfied the Applicants were denied natural justice. The Stewards notified the course announcer of the basis for the inquiry. The Applicants were properly represented at the inquiry by their driver, Mr Harper, who was the person who initiated the inquiry, by his objection. The inquiry proceeded by the Stewards considering the relevant evidence available after Mr Harper was given a fair opportunity to be heard. After adjourning to consider the matter, the Stewards advised the Applicants’ representative of their decision and signalled the “all clear”. Although Mr Harper

continued to express to the Stewards his opinion of the incident, it cannot be said that the Stewards announced the "all clear" while submissions or evidence were still being put forward.

In all respects, the Applicants were given a fair hearing.

For these reasons, leave to appeal is refused.

John Prior



JOHN PRIOR, PRESIDING MEMBER