

DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: RICHARD POLAK

APPLICATION NO: A30/08/664

PANEL: MR J PRIOR (PRESIDING MEMBER)
MR A MONISSE (MEMBER)
MR S PYNT (MEMBER)

DATE OF HEARING: 20 DECEMBER 2006

DATE OF DETERMINATION: 20 DECEMBER 2006

IN THE MATTER OF an appeal by Richard Polak against the determination made by the Racing and Wagering Western Australia Stewards of Harness Racing on 17 November 2006 imposing a 4 month suspension for breach of Rule 149(1) of the Australian Rules of Racing.

Ms L Polak appeared for the Appellant.

Mr B Delaney appeared for the Racing and Wagering Western Australia Stewards of Harness Racing.

This is a unanimous decision of the Tribunal.

The appeal against penalty is upheld. The penalty imposed by the Stewards is varied from four months suspension to three months suspension.



JOHN PRIOR, PRESIDING MEMBER

THE RACING PENALTIES APPEAL TRIBUNAL
REASONS FOR DETERMINATION OF MR J PRIOR
(PRESIDING MEMBER)

APPELLANT: RICHARD POLAK

APPLICATION NO: A30/08/664

PANEL: MR J PRIOR (PRESIDING MEMBER)
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Ms L Polak appeared for the Appellant.

Mr B Delaney appeared for the Racing and Wagering Western Australia Stewards of Harness Racing.

Introduction

This matter was heard by the Tribunal on 20 December 2006. At that hearing the appeal against conviction for breach of Rule 149(1) of the Rules of Harness Racing was unanimously dismissed, but the Tribunal allowed the appeal against penalty substituting three months suspension, in lieu of the penalty imposed by the Stewards of four months suspension.

These are my reserved reasons for dismissing the appeal against conviction, but allowing the appeal against penalty.

Background

A hearing before the Racing and Wagering Western Australia Stewards of Harness Racing ("the Stewards") took place on 23 November 2006 into the driving tactics adopted by the Appellant when driving Paekakariki Express in Race 9 of the Del Basso Smallgoods Stakes at Gloucester Park on 17 November 2006.

The hearing was conducted by four Stewards. The Appellant appeared at the hearing with his trainer, Ms Maryann White.

The particulars of the charge against the Appellant were the following:

"After losing considerable ground at the start causing you to settle at the rear of the field, some considerable distance from the leaders, you have commenced a three wide move in front straight on the first occasion. You have driven forward with the whip in an unreasonable and unsuccessful attempt to gain the lead of one wide line, resulting in the gelding tiring badly over the final 900 metres of the event. These tactics were contrary to Paekakariki Express's previously demonstrated conservation pattern. By driving in this manner you failed to take all reasonable and permissible measures to ensure that Paekakariki Express was given full opportunity to win or obtain the best possible placing in the race".

The Appellant did not enter a plea to the charge, with the Chairman of the Stewards proceeding on the basis of a "not guilty" plea.

After considering all the evidence the Stewards found the charge proven:

"We are satisfied that the tactics adopted on Paekakariki Express were totally unreasonable in the circumstances. It certainly would have been reasonable and permissible for the gelding to have been driven much more conservatively given both its previously demonstrated pattern and the ground that you have lost at the start. In addition you have failed to place sufficient weight on the regular racing pattern of other runners, particularly Mista Tigga the leader and Alberts Fantasy which raced at the lead of the one wide line, accordingly we find the charge sustained that is we find you guilty".

Rule 149 of the Rules of Harness Racing states as follows:

"Race to win or best placing

- (1) A driver shall take all reasonable and permissible measures during the course of a race to ensure that his horse driven by that driver is given full opportunity to win or obtain the best possible place in the field.
- (2) A driver shall not drive in a manner which is in the opinion of the stewards is unacceptable.
- (3) A driver who fails to comply with sub rule (1) or (2) is guilty of an offence."

Appeal Against Conviction

At the hearing of this appeal the representative of the Stewards advised the Tribunal that the evidence that the Stewards relied on in considering whether the Rule had been breached were the patrol films. These films were accepted into evidence as Exhibit 1 in these proceedings.

Other evidence before the Stewards indicated that there was nothing physically wrong with the horse Paekakariki Express, it having been the subject of a veterinary examination following the race.

I am satisfied in considering the submissions of the Stewards on the hearing of this appeal and reading the transcript of the hearing before the Stewards on 23 November 2006, that although the trainer Ms White was fined \$500.00 under Rule 209 for providing false information to the Stewards, that her evidence and the Rule which she was convicted of had no impact on the Stewards decision to find the charge against the Appellant proven.

In the submissions before this Tribunal the representative of the Stewards referred to the test set down by Judge Goran in W. Honan (New South Wales Harness Racing Appeals Tribunal 26.10.83) dealing with Rule 223(b). This test has been adopted by this Tribunal in appeals concerning breaches of similar rules in Western Australia (see Appeal No 413 S J Miller v Western Australian Turf Club Stewards). I am satisfied that it was an appropriate test for the Stewards to consider when considering if Rule 149(1) had been breached in this matter.

The Stewards who heard the matter at first instance collectively viewed the patrol footage (Exhibit 1), considered the test that I have referred to above before all concluding that Rule 149(1) had been breached by the Appellant.

Having considered the transcript of the proceedings before the Stewards on 23 November 2006, Exhibit 1 and the submissions for the Appellant, I am not satisfied that the decision that the Stewards arrived at was unreasonable or as a result of some error. The fact that

Paekakariki Express was beaten by 275.85 metres behind the rest of the field confirms the Stewards' decision. For these reasons the appeal against the conviction should be dismissed.

Appeal Against Penalty

As to the appeal against penalty the Tribunal was provided with a table of Offences and Penalties for Offences under this Rule (Exhibit 2). This table includes the penalties of six and eight weeks suspension imposed for the two previous breaches of the Rule by the Appellant in the first half of 1995. In addition to these breaches on 13 January 2006 the Appellant breached Rule 149(2) and was suspended for eight weeks.

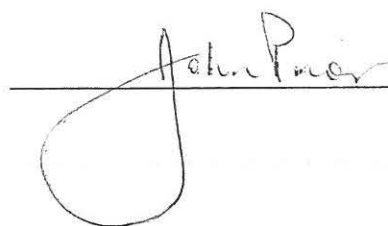
The Appellant's representative effectively made a submission that the penalty was manifestly excessive in the circumstances. She accepted that this was the Appellant's fourth offence and highlighted that the most severe penalty imposed in this State for an offence of this nature to date was four months suspension.

The previous maximum penalty imposed for breaching Rule 149(1) was three months suspension on Mr Gary Hall (Senior) on 28 December 2001. It was accepted at the hearing before the Tribunal that this penalty was for a third offence, but also that Mr Hall was a senior driver.

When considering the range of penalties imposed in Exhibit 2 and in particular, placing proper weight in the fact that this Appellant was 21 years of age and a junior driver, I am satisfied 4 months suspension the Stewards imposed on him was manifestly excessive.

In those circumstances, I am satisfied that an appropriate penalty, when giving proper weight to the relevant circumstances that apply to this case, was three months suspension.

For these reasons I would allow the appeal against penalty and substitute a penalty of three months suspension.

 **JOHN PRIOR, MEMBER**

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR A E MONISSE (MEMBER)

APPELLANT: RICHARD POLAK

APPLICATION NO: A30/08/664

PANEL: MR J PRIOR (PRESIDING MEMBER)
MR A E MONISSE (MEMBER)
MR S PYNT (MEMBER)

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Ms L Polak appeared for the Appellant.

Mr B Delaney appeared for the Racing and Wagering Western Australia Stewards of Harness Racing.

I have read the draft reasons of Mr J Prior, Presiding Member.

I agree with those reasons and conclusions and have nothing to add.



A E Monisse

ANDREW MONISSE, MEMBER

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR S PYNT (MEMBER)

APPELLANT: RICHARD POLAK

APPLICATION NO: A30/08/664

PANEL: MR J PRIOR (PRESIDING MEMBER)
MR A MONISSE (MEMBER)
MR S PYNT (MEMBER)

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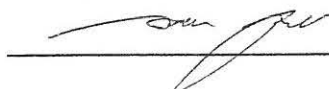
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STEVEN PYNT, MEMBER