

RACING PENALTIES APPEAL TRIBUNAL DETERMINATION

APPELLANT: MS MADELEINE CLAIRE YOUNG

APPLICATION NO: A30/08/814

PANEL: MR R NASH (PRESIDING MEMBER)

DATE OF HEARING: 23 MAY 2018

DATE OF DETERMINATION: 23 MAY 2018 (Oral Reasons)
31 MAY 2018 (Written Reasons)

IN THE MATTER OF an appeal by MADELEINE CLAIRE YOUNG against the determination made by Racing and Wagering Western Australia Stewards of Harness Racing on 2 May 2018, imposing a suspension of four weeks for breach of Rule 149(2) of the Racing and Wagering Western Australia Rules of Harness Racing.

Mr C Voak represented Ms Young.

Ms B Scott represented the Racing and Wagering Western Australia Stewards of Harness Racing.

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1. Madeleine Young, the Appellant, is a licensed reinsperson under the Racing and Wagering Western Australia Rules of Harness Racing ("Rules").
 2. By notice of appeal dated 14 May 2018, the Appellant appealed to this Tribunal against the penalty imposed by the RWWA Stewards ("Stewards") on 2 May 2018 in which they suspended the Appellant's licence for four weeks for a breach of rule 149(2) of the Rules.
 3. Rule 149(2) is in the following terms:

"A driver shall not drive in a manner which in the opinion of the Stewards is unacceptable."

4. After completing their Inquiry on 2 May 2018, the Stewards charged the Appellant with a breach of Rule 149(2) which was particularised as follows:

"[the Appellant] as the driver of ESTOCADA in Race 5 at Albany on the 16th of February 2018 in the back straight on the first occasion ... did restrain [her] horse and lost ground and in the opinion of the Stewards this was unacceptable."

5. The Appellant pleaded guilty to the charge and was suspended for a period of four weeks. She had served 12 days of that suspension by the time this matter came on for hearing.
6. At the hearing of the Appeal I gave Mr Chris Voak, another licensed reinsperson, leave to represent the Appellant.
7. Ms Barbara Scott, Chief Steward, appeared for the Stewards.
8. There were five grounds of appeal. For the purposes of these reasons for decision it is only necessary to refer to ground 3, save to say that grounds 1, 2, and 4 were against conviction, and ground 5 was against penalty.
9. Appeal ground 3 was in the following terms:

"The Stewards have conducted a delayed inquiry using aggressive questioning techniques to elicit "Yes-No answers" to produce a likely specific outcome. The aggressive nature of the questions to myself and ignoring of submissions and admittances on my behalf have led to an unwilling guilty plea."

10. Although the terms of ground 3 are somewhat prolix, the significant aspect of the ground for the purposes of these reasons for decision is that it contends that the guilty plea entered by the Appellant before the Stewards was an unwilling plea, and accordingly was not made of her own free choice.
11. It was necessary for that aspect of the appeal to be considered first in order to ascertain if and how the remainder of the grounds of appeal needed to be dealt with.
12. At the outset of the appeal I raised with Mr Voak and Ms Scott that it was my view that if the appeal was successful on ground 3, then I considered that I would have to remit the matter back to the Stewards for rehearing. That is because a charge under Rule 149(2) is a charge based on the Stewards' opinion that the driving under consideration was unacceptable. If the

guilty plea was to be set aside, then it may be that Ms Young would seek to call evidence in her defence and, it is equally possible, the Stewards may also want to call further evidence. The Stewards' opinion as to whether the driving was unacceptable would only be known once they had heard any evidence adduced in Ms Young's defence and any further evidence they may consider is necessary to be heard in the context of dealing with a not guilty plea.

13. Ms Scott stated that the Stewards agreed that if ground 3 was upheld then the matter ought to be remitted to the Stewards for rehearing. Mr Voak did not indicate any dissent to that view.
14. The Tribunal has power to refer a matter back to the Stewards for rehearing under section 17(9)(b) of the *Racing Penalties (Appeals) Act 1990*.

Should the guilty plea be set aside?

15. This Tribunal should be very circumspect before setting aside any plea of guilty.
16. I have had regard to the decision of the High Court in *Meissner v The Queen* [1995] HCA 41; (1985) 184 CLR 132 at 141 to 142 in considering this issue.
17. A person who is charged with an offence has a right to plead guilty or not guilty. In doing so, the plea must be the product of their own free choice.
18. If a person makes a plea of guilty under undue pressure or in circumstances where he or she considers they do not have a free choice, then the plea should be set aside and the matter should be retried or reheard.
19. During the Inquiry the Appellant was assisted by Mr Trevor Warwick, a highly regarded and decorated reinsperson and trainer in the harness racing industry. Mr Warwick expressed strong opinions and robustly put arguments in defence of the Appellant's driving.
20. Mr Voak submitted that despite Mr Warwick's assistance the Appellant was intimidated and felt she had no choice but to plead guilty when she was charged. I raised with Mr Voak that there was no evidence of that before the Tribunal and inquired whether he proposed to seek leave to call the Appellant to give evidence about that. After a period of deliberation, Mr Voak made an application on behalf of the Appellant to call her to give evidence in the Tribunal hearing about the circumstances of her plea. The Stewards did not oppose that application, and I accordingly allowed the application.

21. The Appellant gave sworn evidence that she felt intimidated by the way the Stewards Inquiry was conducted.
22. The Appellant said that she had formed the view that the Stewards were not willing to be dissuaded from the views they appeared to have about the matter, namely that she did not have a proper basis to restrain her horse causing it to lose ground in the Race. She said she got that impression from the manner in which the Stewards did not appear to accept the views and opinions expressed by Mr Warwick in support of her driving.
23. The Appellant said she had only ever been to about four Stewards' inquiries in her entire career, and had never been charged with any kind of offence before. She said she did not know how the matter was going to proceed if she pleaded Not Guilty.
24. It is apparent from the transcript of the Inquiry that the Appellant seemed to rely on Mr Warwick's opinions and advocacy during the Inquiry up to the point that she was charged.
25. After hearing from the Appellant and Mr Warwick, the Stewards adjourned the Inquiry so they could deliberate. After a period of deliberation, the Stewards called the Appellant, who was accompanied by Mr Warwick, back into the Stewards' room.
26. When the Appellant returned there was the following exchange between, the Presiding Steward, Mr Jasprizza, and the Appellant (T12):

JASPRIZZA

'Thanks Ms Young. Stewards have given consideration to your evidence put forward. Obviously on the night at Albany and then again today. In this situation you made a deliberate and intentional decision to pull your horse up when you'd seen Mr Justins pull out of the race when you had no authority or reason to do so. And as such you have a charge to answer to and that is under Rule 149(2) which reads:

A driver shall not drive in a manner, which in the opinion of the Stewards, is unacceptable.

The particulars being, that you Madelaine Young as the driver of ESTOCADA in Race 5 at Albany on the 16th of February 2018 in the back straight on the first occasion, you did restrain your horse and lost ground and in the opinion of the Stewards this was unacceptable. Do you understand the rule that's been read to you?

YOUNG

Yes

JASPRIZZA

And the particulars?

YOUNG

Hmm hmm

JASPRIZZA

I'll ask you to plead to the charge.

YOUNG

Guilty'

27. The above charging process is quite normal for Stewards' inquiries and normally poses no difficulty for those involved. In contrast, in normal criminal proceedings where charges are preferred, an accused person is given a period of time to consider and take advice in relation to any charge.
28. The Appellant did not seek an adjournment and did not seek advice before entering her plea. Mr Warwick does not appear to have said anything or offered any counsel to her at this critical point in time, although he may have felt he had no business in doing so.
29. It is perhaps understandable that in the circumstances the Appellant, as she says, believed she had little choice but to plead guilty. The Stewards had expressed unreservedly in their preamble to the charge that she had made the deliberate decision to pull her horse up when she had no authority or reason to do so.
30. I observed the Appellant in the witness box to be a person somewhat intimidated by the environment of the court room and tentative in responding to questions. She struck me as an honest and straightforward witness, albeit apprehensive and uncertain in her demeanour. That impression is consistent with her being inexperienced in such matters and never having dealt with any form of disciplinary offence before.
31. I accept that the Appellant felt intimidated at the time the charges were put to her and, in her own mind, she felt she had little choice but to plead guilty.

32. I should add here that I did not consider that the manner in which the Stewards conducted the Inquiry or charged the Appellant was in any way improper. I am, however, required to consider the quality of the plea made and whether it was a genuine expression of guilt on the part of the Appellant.
33. I am satisfied that the manner and circumstances in which she was charged were such that by reason of her inexperience, her feelings of intimidation, and the impressions she had subjectively developed about the hopelessness her situation, resulted in her will being overborne by the occasion.
34. I am satisfied that the plea of guilty was made in circumstances where the Appellant did not make it out of a genuine consciousness of guilt.
35. In the circumstances, I am of the view that the plea of guilty must be set aside and ground 3 of the appeal should be upheld on that basis.
36. In reaching that conclusion I do not wish to in any way impugn the conduct of the Stewards. They had conducted the Inquiry quite reasonably and had taken steps to ensure that the Appellant had the assistance of Mr Warwick.
37. The matter must now go back to the Stewards for rehearing.
38. It would be desirable for it to be reheard by a differently constituted panel of Stewards in order to avoid any perception of bias. However, I do not direct that to happen since it may be impractical.
39. Accordingly:
- a) The Appeal against conviction is allowed on the basis of ground 3, namely that guilty plea entered by the Appellant was an unwilling plea, and accordingly was not made out of a genuine consciousness of guilt.
 - b) The conviction of the Appellant is quashed.
 - c) The charge against the Appellant under Rule 149(2) is referred back to the Stewards for rehearing.



ROBERT NASH, PRESIDING MEMBER

