

RACING PENALTIES APPEAL TRIBUNAL DETERMINATION

APPELLANT: GARRY MAXWELL JOHNSON

APPLICATION NO: A30/08/815

PANEL: MR P HOGAN (ACTING CHAIRPERSON)

DATE OF HEARING: 25 MAY 2018

DATE OF

DETERMINATION: 8 JUNE 2018

IN THE MATTER OF an appeal by GARRY MAXWELL JOHNSON against the determination made by the Racing and Wagering Western Australia Stewards of Harness Racing on 8 May 2018 to impose a six week suspension of his reinsperson's licence for breach of Rule 149(2) of the Racing and Wagering Western Australia Rules of Harness Racing.

Mr GM Johnson appeared in person.

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

Introduction

1. This is an appeal against conviction.
2. On 8 May 2018, the Racing and Wagering Western Australia ("RWWA") Stewards of Harness Racing ("the Stewards") convicted the appellant and suspended him for 6 weeks for a breach of Rule 149(2) of the Rules of Harness Racing ("the Rules"). The Rule is in the following terms:

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

Background Facts

3. The race in question was Race 5 over 2242 metres at Narrogin on Saturday 28 April 2018. The Appellant drove SPOILT DILINGER, Ms Roberts drove ALLAMERICAN QUEEN, and Mr Miller drove LOT TWENTY ONE. The lead time of the race was 45.6. The lead time on average for that track was on average about 48.
4. The Stewards heard evidence and watched the race film on the evening of the race. They adjourned and then resumed the inquiry on 8 May. On that day, the Stewards charged the Appellant. The specifics of the charge were put at pages 3 to 4 of the transcript of the inquiry ("T3-4"):

"The specifics of the charge are Mr Johnson, are that in Race 5 over 2240 metres, 42 metres at Narrogin on the 28th of April 2018, Mr Johnson when you drove SPOILT DILINGER. After commencing from Barrier 4, you remained in a four-wide position while initially working forward of EXCUSE ME SIR, which was driven by Callan Suvaljko and after then clearing that gelding, prior to entering the home straight on the first occasion, you've then been obliged to race in a three-wide position, this point to the outside of LOT TWENTY ONE, which was driven by Mitchell Miller who was in the two-wide line and ALLAMERICAN QUEEN driven by Deni Roberts, who was leading the event on the marker peg line. With your challenge in that three-wide position continuing the length of the home straight. You've remained in this three-wide position Mr Johnson for the remainder of the event until racing out of the home straight when receiving the bell. At this point SPOILT DILINGER has begun to tire and give ground to the field to be beaten by fifty seven metres and it's the view Mr Johnson that, as I've outlined in those specifics, in the opinion of the Stewards your drive was unacceptable."

5. In finding the charge proved, at T11-12, the Stewards said:

"Mr Johnson having found you Guilty, the Stewards are of the view that your driving tactics on SPOILT DILINGER, where you were in a three-wide position after making a sustained challenge to lead the event, were unacceptable. As established in the evidence from the observing Steward, Mr Jasprizza and that of Mr Miller and Ms Roberts, there was clear indication to you that the leader of the one-wide line and the leader of the race would not be handing up to SPOILT DILINGER, which was a \$51 chance in the race. Mr Johnson you've then continued to drive SPOILT DILINGER

along in an attempt to cross these runners. As a result of your challenge to LOT TWENTY ONE, Mr Miller has increased the tempo of the race entering the home straight on the first occasion by asking his horse to quicken in an attempt to hold its position and keep you in that three-wide position and as a result he was unable to maintain that racing position and ultimately dropped out of the race at the five hundred metre mark to be beaten fifty two metres. ALLAMERICAN QUEEN, which was driven by Ms Roberts was the \$1.80 favourite. It continued to receive pressure when leading from LOT TWENTY ONE and SPOILT DILINGER and as a result it too began to tire before the home turn and was beaten six and half metres to run third. Now Mr Johnson, Stewards acknowledge your initial challenge and looking for a forward position however we believe that it was reasonably open to you. To expect that once you were aware the leaders would not hand up to you, that you make a far earlier attempt to restrain SPOILT DILINGER in an effort to have it recover. This would have also given the leaders the chance to settle. Your evidence that the challenge was in the early stages of the race and because of that the other drivers won't hand up is not supported by either the vision or the exposed form of the horses involved. And it was reasonable in all the circumstances for you to restrain your drive and you elected not to and rather you've continued to allow SPOILT DILINGER to race level, on level terms with the leaders at this stage of the race. Further Mr Johnson, by your own admission, you had not done your own form for the race and in your words "you got it wrong". It is evidenced by the form...on your horse ... ALLAMERICAN QUEEN and LOT TWENTY ONE, for the reasons I've outlined to you, Mr Johnson, the Stewards are of the opinion that under all of the circumstances your drive wasn't acceptable to the required standard."

6. It can be seen from the specifics of the charge, and the reasons for finding the charge proved, that one of the Stewards' concerns about the Appellant's drive was the effect it had on the other two runners in question, namely ALLAMERICAN QUEEN and LOT TWENTY ONE. The focus on that outcome, at the end of the Stewards' reasons, led to the Appellant lodging his ground of appeal in the following terms:

"I don't believe that my actions in this race altered the end placing results"

Disposition of the Appeal

7. At the hearing of this appeal, Ms Scott put forward three reasons why the Stewards were justified in reaching their conclusion.

8. Firstly, Ms Scott submitted that there was evidence that the Appellant had not done his "due diligence" or studied the form of the horses he was trying to take the position from. The Appellant admitted as much at T8:

"SCOTT: Alright. And what do you know about LOT TWENTY ONE? The horse Mr Miller drove. What do you know about that horse?"

JOHNSON: Not a lot.

SCOTT: So did you do your form before the race?

JOHNSON: Ahhhh not as, not as, like I normally do, this, this stint because I've been working.

SCOTT: Mmm hmm. So would

JOHNSON: But normally, normally I do and I would've thought that because it was early in the race that he would've taken a trail,...."

9. Secondly, Ms Scott submitted that it had been made clear by the other two drivers as early as 300 meters from the start that they were not going to surrender their positions. This was evidenced other drivers calling out to Mr Johnson, the lead time itself, and the recent form of LOT TWENTY ONE.
10. Thirdly, Ms Scott submitted that Mr Johnson failed to restrain when he ceased his challenge, so as to allow SPOILT DILINGER some respite. That was something which Mr Johnson admitted at T8 on 8 May:

"....by letting her sit out there. That's, that was my mistake was letting

her sit out there but it was not my mistake to make that forward move."

and:

"...but I did err in the second move when I, when I should've pulled her

back and but as, as I said originally, I cannot, at that stage of the race, I could not see the position, my position, finishing position being any different...."

11. There was evidence which supported all of the Stewards findings. In reply, Mr Johnson at the Appeal had no real answer. He said in effect that the Stewards had not accepted his explanation for his drive. That is not a sufficient ground for a decision of the Stewards to be

set aside. The Rule is expressed to be "*in the opinion of the Stewards*". The Stewards decision can only be set aside if no panel of Stewards acting reasonably could have reached that decision. This is not one of those cases.

12. The appeal is dismissed.



PATRICK HOGAN, ACTING CHAIRPERSON

