

REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: ALLEN CHRISTOPHER LEWIS

APPLICATION NO: A30/08/502

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR J PRIOR (MEMBER)
MR R NASH (MEMBER)

DATE OF HEARING 20 JUNE 2000

DATE OF DETERMINATION: 20 JUNE 2000

DATE REASONS PUBLISHED: 20 JULY 2000

IN THE MATTER OF an appeal by Mr A C Lewis against the determination made by the Western Australian Trotting Association Stewards on 11 May 2000 imposing a fine of \$5,000 for breach of Rule 149(1) of the Rules of Harness Racing.

The appellant represented himself.

Mr W J Delaney appeared for the Western Australian Trotting Association Stewards.

Background

Following the running of Race 8, the First Class Services Stakes at Gloucester Park on 3 April 2000 the Stewards decided to open an inquiry into the driving tactics adopted by Mr Lewis who drove GRECIAN FELLA. GRECIAN FELLA started second favourite at 5/2 and finished in eighth place in a field of 10. The inquiry was held over four days on 11 and 18 April, 2 and 11 May 2000.

At the commencement of the inquiry the Chairman, Mr W Delaney stated the terms of the inquiry as follows:

"It would be fair to point out that we are interested in the explanation for your driving tactics and there are probably three areas that are of concern to the Stewards, that" initially your decision to go to the marker posts instead of remaining in the one wide line, then why you didn't attempt to improve your position with a three wide run anywhere from about the 1,200 metre mark and finally why you've elected to persist with the inside runs over the concluding stages instead of shifting wider on the track to follow Mr De Campo's drive Heavens Advocate. If you could explain your tactics with those three points in mind."

Video footage was shown of some previous and subsequent runs of GRECIAN FELLA. After hearing evidence given by Mr Lewis, the Chairman of the Stewards' inquiry issued the following charge:

"Mr Lewis, Rule 149 Part (1) says:

'A driver shall take all reasonable and permissible measures during the course of a race to ensure that the horse driven by that driver is given full opportunity to win or obtain the best possible position in the field.'

The Stewards are issuing a charge against you under the provisions of that Rule and the specifics of the charge are that your failure to obtain a position in the one wide line in the early stages of Race 8, the First Class Service Stakes at Gloucester Park on Monday, the 3rd of April 2000, resulted in you settling in a less favourable position than would have been the case had you done so. Once you had failed to do so, your failure to commence a three wide move at any stage from the 1,200 to the 400 metre mark meant that you failed to take all reasonable and permissible measures during the course of the race to ensure that Grecian Fella was given full opportunity to win or obtain the best possible position in the field."

Mr Lewis pleaded not guilty to the charge. The inquiry continued and further evidence was heard from Mr Lewis, Mr F Kersley who drove in the race in question, Mr Schrandt, a part-owner of GRECIAN FELLA, Mr K Nolan, the trainer of GRECIAN FELLA and Mr G Winston.

At the resumed inquiry on 11 May 2000 the Chairman of Stewards announced a finding of guilty in the following terms:

"You pleaded 'Not Guilty' and the inquiry was adjourned until the 2nd of May 2000. On that occasion you presented further evidence and we also heard from Messrs. Kersley, Schrandt, Nolan and Winston.

Mr Kersley spoke in general terms of the best way to drive a sit and sprint horse, essentially a horse needed to be driven on luck. He also commented on how he had driven Aussie Evita in the race.

Mr Schrandt confirmed the instructions issued to you some weeks prior, that you were to bring the horse home over the last four, five – six hundred at the max.

We had Mr Nolan on the telephone and he stated that he thought the horse could've been out and running in that field. He also in other stages of his evidence stated that he felt that Grecian Fella could've been in the one wide line in the early stages. He also stated in his opinion it didn't matter where he was, he thought it was a big drop in class. Further on he referred to 'when Scottish Destiny broke I thought well this is just made for him and I did think he was tough enough to run the 25.'

Mr Nolan, unlike Mr Kersley, stated 'I don't think you have to drive him on luck, I think the horse will just make his own.'

In Mr Winston's evidence, he conceded that you had more options if you raced in the one out queue.

At various stages of the inquiry we have reviewed video tape replay of the race and other races in which Grecian Fella has competed.

Throughout the inquiry you have given explanation for adopting the tactics that you did on Grecian Fella. You have explained that you did not remain in the one wide line in the early stages, because of the pace being set at that time.

You also indicated you did not regain a position in the one wide line racing into the back straight on the first occasion, because of the likelihood of Grecian Fella being obliged to race at the lead of that line. A position which would not suit, as the horse could over-race in that position, particularly if he was inside a horse which raced forward three wide. You regained the position in the one wide line when the horse began to race keenly.

You've indicated that given the instructions issued by connections some weeks earlier, you did not consider commencing a forward move racing into the bell and racing towards the back straight on the final occasion you elected to move to the inside of Heavens Advocate to take advantage of an anticipated move by Mr De Campo in the back straight. You indicated that as a result of Mr De Campo attempting to move to the inside of Mr Kersley in restricted room, rather than around him, you were hampered for a clear run at vital stages. As a result you did not commence to race in the clear until racing towards the front straight when you elected to look for a split between runners, rather than switch wide and run the risk of losing ground.

We have carefully considered all evidence tendered. It is our opinion that you erred in your tactics in the early stages. Your best option at that stage was to have remained in the one wide line in an effort to obtain a trailing position. That opinion was arrived at on how Grecian Fella had been driven in recent starts, which in turn was based on instructions previously issued by connections. We are satisfied that by not remaining in the one wide line or regaining that position prior to being covered by Heavens Advocate racing into the back straight on the first occasion, you have missed an opportunity to obtain a more favourable position than what you eventually ended up with and you have conceded that point during the inquiry.

We accept your explanation for not commencing a forward move from the 1,200 metre mark to the winning post with a lap to travel. Given the discussion with connections some time earlier, it was reasonable for you to remain one wide unless an opportunity to obtain a three wide trail presented itself.

We were unable to accept your explanation for dropping to the marker posts and taking the run to the inside of Heavens Advocate racing into the back straight on the final occasion. It was our opinion that by far the most reasonable option at that time was to remain in the clear which would have enabled you to commence a forward move outside runners as you saw fit.

It is our opinion that you have underestimated the ability of Grecian Fella relative to the majority of the field, you have driven in a manner too reliant on the movement of Mr De Campo in the back straight on the final occasion. Had you placed yourself in the clear in the back straight we would have been satisfied that you had fulfilled your obligations under this Rule, whilst still driving to the owners instructions.

This panel therefore is unanimous in finding you guilty of having failed to take all reasonable and permissible measures during the course of the race to ensure that Grecian Fella was given full opportunity to win or obtain the best possible position in the field."

The Stewards then invited Mr Lewis to make submissions in respect of an appropriate penalty. After they retired the Chairman announced the penalty as follows:

“A penalty must do three things:

- It must punish the wrongdoing.*
- It must deter the offender from re-offending; and*
- It must deter other drivers from offending.*

Now obviously deterring the offender from re-offending isn't a consideration in this stage, because the likelihood of you being placed in this situation in the future, to our mind, is most unlikely.

An error of this magnitude for a driver of your experience with a good record would ordinarily attract a suspension of six weeks.

We readily acknowledge your unblemished record over many years, which deserves consideration, we therefore are modifying our penalty downward and we are extremely mindful of the ramifications of a suspension on you and therefore are imposing a fine of \$5,000.”

Mr Lewis appealed against both the conviction and the penalty. After hearing the matter the Tribunal unanimously upheld the appeal, quashed the conviction and announced it would publish its reasons in due course.

REASONS FOR UPHOLDING APPEAL

Rule 149(1) places 2 clear obligations on a driver engaged in a race. The first is to take ‘*all reasonable measures*’. The second is to take ‘*all permissible measures*’. These must be employed at all stages during the course of the race for the express purpose of ensuring that all drivers give their horses ‘*full opportunity to win or obtain the best possible position*’. This rule, unlike some other rules regarding the quality of drives, is not expressed to be ‘*in the opinion of the Stewards*’. The fact that this rule contains no such provision means the role of the Tribunal in arriving at its own assessment of the quality of the driving employed and, if thought appropriate, in overruling the Stewards is less difficult than it would otherwise be.

At the outset of the appeal Mr Lewis sought a ruling as to the actual part of the race which was relevant to the Stewards’ conviction. In so doing he put it to the Tribunal that he was seeking clarification as to whether it was only between the 600 and 400 metre marks that his driving tactics had been called into question which would consequently mean he would need only to address that part of the race in argument in the appeal. Mr Delaney responded by indicating that the Stewards had no problem with Mr Lewis’ driving in relation to the early part of the race. In so doing Mr Delaney acknowledged that essentially it was appropriate for Mr Lewis only to proceed upon the basis of that part of the race which Mr Lewis had identified. Mr Delaney referred to some passages on pages 138 and 139 of the transcript and indicated that it was correct to have Mr Lewis deal only with the driving which was employed in the early part of the back straight the last time.

In the light of those comments Mr Lewis proceeded and restricted himself to that isolated part of the race which had been identified. Mr Lewis supported his presentation by means of a novel demonstration on a pin up board. Using cut out models representing the horses and drivers of the relevant participants Mr Lewis presented to the Tribunal a series of scenarios illustrating the implications of what would have happened had he shifted ground in the race in the context of the 3 nearby drivers. In so doing Mr Lewis took the opportunity of describing and illustrating the range of options which he asserted had flashed through his mind during that part of the race being the possible avenues which could have opened up depending on what eventuated in front of him. Mr

Lewis explained that the circumstances so transpired that at the critical time in the race he ended up with no control over the situation to be able to go forward and improve his horse's position. Basically he argued that the only sensible decision open to him was to stay put close to the rails, to watch things unfolding in front of him and upon an opportunity presenting itself to make his move.

Once Mr Delaney began his submissions in response it quickly emerged that he in fact was not simply relying on what happened as from the 600 metre mark. Mr Delaney elaborated on this by clarifying that the Stewards at the inquiry had not simply dealt with events which occurred in the back straight the last time. Mr Lewis protested upon hearing this. After due consideration of what, in effect, amounted to a false start to the appeal the Tribunal resolved not to limit Mr Delaney to what had occurred in the race between the 600 and 400 metre marks. In these unusual circumstances the Tribunal considered it only appropriate to allow Mr Lewis to begin his argument again. Consequently Mr Lewis proceeded to expand on his earlier submissions and his demonstration with the models. Further, he referred the Tribunal to films to show examples of how he had successfully driven on two occasions by taking an inside run. The point he made was that, depending on what ultimately transpired in a race, an inside run in some circumstances was not detrimental to a driver's prospects of winning the race. Mr Lewis argued that he had driven appropriately in the race in question based upon both his instructions and the fact that his horse had a tendency to hang down and would be difficult to pull out and make ground.

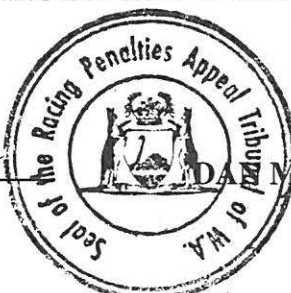
In reply Mr Delaney argued that the 2 races shown in the film had no real relevance because the quality of the fields were not comparable with the race in question. The Tribunal viewed the film of the race in question accompanied by commentary from Mr Delaney and heard a short submission. Neither the commentary nor the submission from Mr Delaney directly addressed the underlying logic of Mr Lewis' argument nor the supporting modelling exercise.

At the end of the submissions the Tribunal was left with the clearest impression that Mr Lewis, a particularly experienced and successful driver, had in fact made a reasoned judgment and appropriate assessment during the course of this race and that, in the circumstances confronting him, it was appropriate to remain in the position which he held. He had weighed up all his options in a reasonable fashion and had driven appropriately in all of the circumstances. On the other hand the Stewards failed to put forward any persuasive argument in reply. There was nothing said by the Stewards in response to Mr Lewis' arguments to vindicate their decision. No proper explanation was given to the Tribunal for their findings. Although the Stewards generally relied on the transcript and on the race footage they did not address head on the argument and the reasoning put forward by Mr Lewis. Indeed the explanation supported by demonstration using the models was not addressed at all.

Further, in arriving at its determination the Tribunal was influenced by the wording of the charge in the light of the Stewards' stated findings. As set out above in the particulars which the Stewards provided in laying the charge they specified they were concerned with Mr Lewis' failure to obtain a position in the 1 wide line in the early stages of the race as well his failure to commence a 3 wide move at any stage from the 1,200 to the 400 metre mark. In the ultimate findings they concluded that he had '*erred in ... tactics in the early stages*'. However, the reasons do not state with any precision why the driving was unreasonable.

The Tribunal was impressed by and influenced by Mr Lewis' explanation. The Tribunal was satisfied that Mr Lewis in fact discharged his driving obligations during the whole of this race. Further the Tribunal was satisfied the Stewards had erred in their assessment of the driving tactics employed by Mr Lewis.

Dei Mossenson



DAVID MOSSONSON, CHAIRPERSON