

**REASONS FOR DETERMINATION OF**  
**THE RACING PENALTIES APPEAL TRIBUNAL**

**APPELLANT:** GARY EDWARD HALL JNR  
**APPLICATION NO:** A30/08/610  
**PANEL:** MR P HOGAN (PRESIDING MEMBER)  
**DATE OF HEARING:** 7 APRIL 2004  
**DATE OF DETERMINATION:** 7 APRIL 2004

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**IN THE MATTER OF an appeal by Gary Edward Hall Jnr against the determination made by the RWWA Stewards of Harness Racing on 7 March 2004 imposing 6 weeks suspension for breach of Rule 149(1) of the Rules of Harness Racing.**

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Mr G E Hall Snr was granted leave to represent the Appellant.

Mr M J Skipper appeared for the RWWA Stewards of Harness Racing.

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On 7 April 2004 I upheld the appeal and quashed the conviction. I now publish my reasons for allowing the appeal.

**Background**

Following the running of Race 3 at Gloucester Park on 5 March 2004, the Stewards opened an inquiry into the tactics adopted by Mr Gary Hall Jnr, the driver of THE FALCON STRIKE. THE FALCON STRIKE, a \$1.30 favourite, finished second in the race to BUCK THE ODDS, an outsider. The winning margin was 2.3 metres.

Prior to this race, THE FALCON STRIKE was the nominal favourite in pre-post betting for the Inter Dominion Series which was to commence at Gloucester Park on 12 March 2004.

Called to the inquiry were:

Gary Hall Jnr      Driver of THE FALCON STRIKE  
Gary Hall Snr      Trainer of THE FALCON STRIKE

The Chairman of Stewards stated at the outset:

*'Thanks, take a seat Mr. Hall. THE FALCON STRIKE – I don't suppose he was well supported because there was not much point in betting on him the odds he was, but obviously the short-priced favourite in the race. I think your Father alerted punters to his fitness (Inaudible). But as I watched the race I thought in the final turn he didn't use a lot of vigour. The other Stewards advised me that you used sufficient. Do you have any comments you would like to make regarding the way you drove the horse and the performance of the horse.'*

Evidence was given by Mr Hall Jnr and Mr Hall Snr. The video of the race was viewed on numerous occasions. The inquiry was adjourned.

At the resumption of the inquiry on 10 March 2004 the Chairman requested Mr Hall Snr to produce reports from his farrier and veterinarian regarding a stone bruise suffered by THE FALCON STRIKE. Mr Hall Snr handed up the following report from his farrier:

*'To whom it may concern, on the 20<sup>th</sup> February 2004 I was called to shoe THE FALCON STRIKE. On examination of the horse's near side fore hoof I found a slight pulse and bruising in the median heel. I parred away the bar and sole area and applied a heel pad and (inaudible) poultice. Signed LN Vogue, Farrier.'*

Mr Hall also handed up correspondence from Dr Mike Davies of the Belmont Horse Hospital dated 10<sup>th</sup> March as follows:

*'To whom it may concern – THE FALCON STRIKE. I confirm that I have examined the horse on a number of occasions during this preparation. It was examined on the 17<sup>th</sup> February 2004 for a low grade lameness in the left fore leg. Investigations did not reveal the cause of the lameness, but the horse was booked to the farrier two days later. I next examined the horse on the 22<sup>nd</sup> February, at the Hall stables at which time the horse was sound. He had been fitted with a pad under the shoe after the farrier had found a bruise in the foot. This horse was sound at the time of racing and on subsequent examinations on several dates he has remained sound. I do not consider that this problem has compromised the horse's race performance at all.'*

Mr Hall Snr was subsequently fined \$1,000 for a breach of Rule 30(2) of the Rules of Harness Racing for failing to notify the Stewards that the stone bruise has interrupted the training of THE FALCON STRIKE. No appeal came before this Tribunal on that matter.

The Chairman announced the charge against Mr Hall Jnr in these terms:

*'Mr. Hall ... we have reviewed the film on a number of occasions and after doing that and also considering your explanation for the tactics you adopted, we are issuing a fine – sorry a charge against you under the provisions of Rule 149 which states under the heading: "Race to win or best placing" Part 1. The driver will take all reasonable and permissible measures during the course of a race to ensure that the horse is given the full opportunity to win or obtain the best possible placing in the field.' The specifics of the charge are that in the circumstances of this particular race, and driving this particular horse, you failed to take all reasonable and permissible measures by not urging THE FALCON STRIKE forward up onto the leader BUCK THE ODDS after you obtained the lead of the one wide line and in so doing you failed in your obligation to drive objectively and test THE FALCON STRIKE to ensure, that if it was good enough it could win or obtain the best possible placing.'*

After Mr Hall Jnr pleaded not guilty the Chairman stated:

*'By way of clarification the Stewards are saying that after you obtained the lead of the one wide line, in our view it would have been reasonable for you to allow THE FALCON STRIKE to rate up to the outside of BUCK THE ODDS and in all the other circumstances of the race, bearing in mind the fitness of the horse, but also the capabilities of this horse, test not only BUCK THE ODDS but THE FALCON STRIKE.'*

Further submissions were made by both Mr Hall Snr and Mr Hall Jnr. The Chairman of Stewards announced their findings as follows:

*'The Stewards find you guilty as charged. We don't think the manner in which you have driven the horse in the first and second quarter of the last mile, in the circumstances of this race, and driving this particular horse you did take an objective view of the driving and take all reasonable and permissible measures to have him finish in the best place possible. The Stewards now have to decide an appropriate and I will preface that by saying you have conducted yourself well in the inquiry. You have given a plausible explanation, but which at the end of the day we don't accept. Essentially it boils down to a case, in our view, of you taking somewhat of a subjective view of this particular race, in the circumstances you have found yourself in, and you don't have that luxury. As I said before your error of judgement – you are entitled to make an error in judgement, but we feel in these circumstances the error was sufficient for us to issue you a charge and find it sustained.*

...

*No one knows the horse better than you. So in deciding penalty we will be mindful of those circumstances. The other thing in mitigation, to a certain extent, is the fitness level of the horse. But that's only mitigating because of the fact that you were aware that the horse wasn't coming into the race with his level of fitness as such that he couldn't be driven – or to use a term "given a gut buster" but, that doesn't diminish your responsibility as the driver. But in all the circumstances if we were to rate the error of judgement on a scale of one to ten, in our view, you are looking at the level of five.'*

In announcing the penalty the Chairman stated:

*'After much deliberation on penalty, it is also a unanimous decision that you should be suspended for 28-days. However, we are taking the view that there are fairly special circumstances in this particular matter. However, the decision to suspend the effect of that penalty until midnight – or the penalty will take effect on the 27<sup>th</sup> March and you will be eligible to drive again on the 24<sup>th</sup> April. Against this decision, you have 14-days in which to appeal to the Racing Penalties Appeals Tribunal.*

*However, it is important that we point out that in making that decision it's not a precedent and should in no circumstances be seen a precedent. The decision was based on the particular circumstances of your offence and the circumstances of the upcoming Inter Dominion Series.'*

## **The Appeal**

The grounds of appeal are:

1. Stewards failed to take into account the horse was first up.

2. *Stewards failed to take into account the improved form of the winner BUCK THE ODDS.*
3. *Stewards failed to take into account the unfitness of the horse even though they fined the Trainer for presenting the horse in that manner.*
4. *Stewards have not given time to any driver for driving a horse in the manner I did.'*

Mr Hall Snr at the outset of his submissions requested permission to show the Tribunal the video replay of BUCK THE ODDS winning a heat of the Inter Dominion Championships on 12 March 2004. Mr Skipper, on behalf of the Stewards, raised no objection on the basis that he wished the Tribunal to view THE FALCON STRIKE winning a heat of the series on the same night.

Whilst I did view both races, little can be gained in the determination of this appeal given that these races were held after the Stewards' inquiry was completed.

Mr Hall Snr addressed all the grounds of appeal in his submissions. He conceded that the inquiry centred entirely on the tactics of Mr Hall Jnr once he had made a three wide run to put THE FALCON STRIKE into the race.

In summary, he stated that the Stewards failed to take into account that THE FALCON STRIKE was first up after a lay off of 5 weeks, that it had missed 10 days work due to a stone bruise, that it was not 100% fit due to the impending Inter Dominion Championships and it had previously been beaten first up. The exceptional run of BUCK THE ODDS, well driven by Mark Reed, was also said to be a significant factor.

As to his son's driving tactics, he maintained that by taking THE FALCON STRIKE three wide into the one wide line, he had put the horse into the race. He was certainly not aware of any other driver who had fallen foul of this Rule for driving in a similar manner. He believed that pushing THE FALCON STRIKE harder when it reached the one wide line to get closer to BUCK THE ODDS would have made no difference to the result. Both the Hall's thought that the main danger in the race was LOMBO LA FE FE.

Mr Skipper, for the Stewards, relied predominately on the fact that it was the Stewards' belief that Mr Hall Jnr should have been closer to BUCK THE ODDS at the bell to truly test both runners.

The Chairperson of this Tribunal said in the Lewis matter (Appeal 502) when discussing Rule 149(1):

*'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 that it would otherwise be.'*

I have perused the transcript of the Stewards' inquiry, watched the video of the race in question on several occasions and heard submissions from Mr Hall Snr and Mr Skipper.

It is clear that this inquiry was technical in nature and relied heavily on the sectional times for the race. As Mr Austin from the Stewards' panel said on 5 March, the long suit of THE FALCON STRIKE is his strength and his stamina, and the lead up time of 39<sup>1</sup>/<sub>2</sub> was not particularly fast. As the Chairman noted, the slower earlier pace meant that THE FALCON STRIKE could have come at the end, notwithstanding his level of fitness. At this first stage

the inquiry, namely 5 March, the focus of the Stewards' inquiry was a concern that Mr Hall Jnr did not use a lot of vigour on the final turn. At least that was the concern of the Chairman, although the other Stewards watching that race had advised the Chairman that they thought there was sufficient vigour. At the resumed inquiry, when the charge was laid, it can be seen that the specifics were slightly different.

Both Gary Hall Snr and Gary Hall Jnr advanced reasons at the inquiry why THE FALCON STRIKE was beaten into second place, by such a margin. The reasons were repeated in submissions before me and included:

- THE FALCON STRIKE was not one hundred percent fit;
- THE FALCON STRIKE had always beaten BUCK THE ODDS in the past;
- They underestimated BUCK THE ODDS;
- The 3<sup>rd</sup> quarter was run in a fast 28.4, when LOMBO LA FE FE came in;
- Gary Hall Jnr did not expect to have to put any more pressure on BUCK THE ODDS to beat that horse.

Although this is not an exhaustive summary of the evidence, it is clear that Mr Hall Jnr had turned his mind to every relevant circumstance, both before the race and during the race as it unfolded. The Stewards accepted that he conducted himself well at the inquiry, and gave a plausible explanation. They categorized his drive as containing an error of judgement, of sufficient degree to warrant a conviction. At T24 to T25, the Chairman was delivering the reasons for conviction, and said:

*'As I said before, your error in judgement – you are entitled to make an error in judgement, but we feel in these circumstances the error was sufficient for us to issue you a charge and find it sustained.'*

What is of concern to me is that later in the reasons, the Chairman said:

*'But in all the circumstances if we were to rate the error of judgement on a scale of one to ten, in our view, you are looking at the level of five.'*

After making the above comments, the Chairman went on to invite Mr Hall Jnr to comment on penalty. It is clear enough therefore that the rating of the error as five out of ten was in relation to the conviction, not the penalty. With all due respect to the Stewards, this seems to me to demonstrate that in fact Mr Hall Jnr should not have been convicted. He could only be convicted if the evidence was sufficient on a balance of probabilities. At five out of ten, the balance did not favour conviction. Put another way, the Stewards were in doubt, and they should have given Mr Hall Jnr the benefit of the doubt. In allowing the appeal, I rely on that opinion of the Stewards, and as well on the evidence of Mr Hall Jnr and Mr Hall Snr.

In determining this appeal, I have to decide whether, whether the Stewards were reasonable in maintaining that Mr Hall Jnr should have pushed THE FALCON STRIKE harder to get closer to BUCK THE ODDS at the bell.

Mr Hall Jnr did put THE FALCON STRIKE into the race and he did drive the horse with the whip at the bell when LOMBO LA FE FE made a move on the outside. The skilful drive by Mark Reed on BUCK THE ODDS was a significant factor throughout the race.

In all the circumstances, I am satisfied that the Stewards were in error in finding that Mr Hall Jnr failed to take all and reasonable measures throughout the race to ensure that THE FALCON STRIKE finished in the best possible position. Nothing has been demonstrated by the Stewards to satisfy me that had Mr Hall Jnr attempted to position THE FALCON STRIKE closer to the BUCK THE ODDS at the bell, the result would have been any different.



For the above reasons, the appeal is upheld and the conviction is quashed.



PATRICK HOGAN, PRESIDING MEMBER

