

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF
MR D MOSSENSON (CHAIRPERSON)

APPELLANT: MORGAN LEE WOODLEY
APPLICATION NO: A30/08/653
PANEL: MR D MOSSENSON (CHAIRPERSON)
DATE OF HEARING: 25 MAY 2006
DATE OF DETERMINATION: 26 MAY 2006

IN THE MATTER OF an appeal by Morgan Lee Woodley against the determination made by Racing & Wagering Western Australian Stewards of Harness Racing on 13 May 2006 imposing a twenty three day suspension for breach of Rule 163(1)(a) of the Rules of Harness Racing.

Mr M L Woodley appeared in person.

Mr R J Oliver appeared for the Racing & Wagering Stewards of Harness Racing.

Background

On 13 May 2006 the Racing & Wagering Stewards of Harness Racing conducted an inquiry into an incident which occurred in the back straight on the final occasion in Race 6 at Narrogin. Both Mr M Woodley, the driver of LORINDA, and Mr D Young, the driver of OUR ROKO, were called to the inquiry.

At the outset of the inquiry Mr Denney gave evidence in the following terms:

'I viewed the race from the stand in the back straight racing towards my stand on the final occasion and that is in the back straight on the final occasion. Mr Woodley had been racing in the one wide line, Mr Young with OUR ROKO was racing three wide, his horse was racing truly holding its correct line. Mr Woodley has then shifted abruptly from the one wide line wider on the track to endeavour to gain a clear run and in doing so he has contacted the front leg of Mr Young OUR ROKO who was racing to his outside. I believe the incident was caused by Mr Woodley shifting wider on the track abruptly when not clear of the front legs of Mr Young's drive.' (para 2 of the transcript of the inquiry)

As a consequence of the contact OUR ROKO broke gait. Mr Young was the first of the drivers to be asked to comment. He stated:

'My of the events sir at that point was my bloke was getting down quite a bit and as Mr Woodley has moved out it didn't feel it abruptly it was just to my bloke getting down the track and I have probably the last little bit of Mr Woodley's movement was abrupt when the contact was made and the initial move was only abruptly just that I have tried to get him off just as he has got off sort of told Mr Woodley I didn't felt it was overly abrupt. His racing manner was hard he's pretty well all over the place even though he has had a fair few starts and he just wanted to get down the track at that stage, that is pretty well how I felt it had happened.' (para 6)

Unfortunately it is not entirely clear from this passage precisely what Mr Young was trying to convey by way of response to Mr Denney's comments. There appears to be two underlying elements being conveyed. I interpret the above passage to mean Mr Young had experienced some difficulty with his horse. Further, it appears reasonably clear Mr Young was describing the last part of Mr Woodley's movement as probably having been abrupt, but not overly abrupt, at the point of time when the contact was made. After Mr Young made this statement, Mr Denney was asked whether he observed OUR ROKO getting down the track, to which he responded:

'No as I said in my observations I had a head on view of the incident which was an elevated position looking down on the incident as it unfolded and my initial part of the evidence was that Mr Young was racing in a three wide and holding his true racing line. Mr Young's evidence he has put forward that OUR ROKO was getting down the track, I did note that Mr Young was using the whip on the horse and one would ask why he was using the whip and was racing ungenerously as he had said. But no I did not have an observation getting down the track I thought it was racing in its true racing line in the three wide line.' (para 8)

Mr Woodley was then asked to comment on the incident which he did in these terms:

'..., in the back straight I was travelling in a two wide position, Mr Young in a three wide position and there was enough room for me to push out an (sic) obtain the run behind Mr Suvaljko's runner. I started the movement outward to push Mr Young four wide, I didn't think it was overly abrupt, I didn't even think it was quick at all because there was no real rush, Mr Young's horse was not ravelling (sic) very well and sort of under the whip wasn't really going anywhere, so there was no real rush for me to push it out,

maybe sort of as Mr Young had said towards the end of the push it might have come out a little bit quicker because my horse was travelling quite well and it got the gap it sort of and therefore sprinted up a little bit quicker but I don't think the movement was abrupt as Mr Denney said. As for Mr Young's horse getting down the track and don't know if it was getting down the track but the difference between hanging down and actually getting down the track, Mr Young might have been fighting his horse from hanging but I don't know if it was actually trying to run down the track or not.' (para 12)

Mr Woodley went on to add:

'Well, to be honest I didn't think that there would be a problem with it, I was sort of easing out and I thought OUR ROKO would go out with a push and just move out to the four wide position because it was pretty much of a straight forward push, wasn't overly fast, I don't think OUR ROKO kind of went with the push the way that Mr Young or I would have like (sic) it to' (para 14)

After Mr Woodley admitted that there was in fact a small amount of contact, Mr Denney gave further evidence, late in the inquiry, as follows:

'You said that probably the first part of the movement wasn't abrupt but the last part was abrupt that's when Mr Young is trying to do his best to say that his horse wouldn't move the last part, maybe it didn't move the last part outward because the last part of your movement was abrupt. Going back to question you asked me, looking head on from an elevated position I could see coming to me running in lanes and when you're a driver moving outwards and I have been watching runners for twenty one years as a Steward I think I am almost certain I can clarify if it is abrupt or not, abrupt and to answer the other question that you just have got to sit there and do your best for the trainer for the horse you are driving you have to make moves to do your best for the trainer within the rules and Mr Oliver correctly pointed out that you can move when it is safely to do so within the rules.' (para 53).

The Stewards proceeded to charge Mr Woodley with a breach of Rule 163(1)(a) of the Rules of Harness Racing *'...for causing interference to OUR ROKO when racing off the back straight on the final occasion you have shifted your drive LORINDA wider on the track endeavouring to gain a clear run and in doing so contacted the near side fore of OUR ROKO causing that horse to race roughly'*. (para 68)

Mr Woodley pleaded not guilty to the charge. The Stewards went on to convict him in these terms:

'...Mr Woodley, Stewards have taken into account all the evidence that has been put forward at this inquiry, including the evidence put forward by yourself, Mr Young and the observing Steward Mr Denney which we do feel it is supported by the video, we do find the charge sustained that is we do find you guilty of the charge. Having heard that we now wish to deal with the matter of penalty, is there anything you wish to put forward on the matter of penalty.' (para 85)

In relation to penalty the Stewards discussed with Mr Woodley his record and the fact that the last time he offended for a breach of this rule, namely 28 March 2006, a reprimand was given. Prior to that Mr Woodley had been suspended for 19 days under Rule 163(1)(b) and 13 days under Rule 163(1)(a) on the 17 December, 2005.

The Stewards concluded that:

'...this type of penalty is in the mid to high range of culpability and the degree of carelessness we would put in the mid to high range as well as we do feel that an offence of this type would incur a penalty of twenty six days. Taken into account your good driving record we are prepared to give you for want of a better word a discount and reduce that to a twenty three day suspension of your reinsperson's licence.' (para 110)

Mr Woodley was granted a stay by the Stewards to enable him to drive the following Friday. The period of suspension of his reinsperson's licence therefore ended on the 11 June 2006.

The Appeal

Mr Woodley appealed against both the conviction and penalty. At the same time, he also applied for, but was refused, a suspension of operation of the penalty.

Mr Woodley argued his case before me in a lucid and effective manner. In summary he submitted the video was insufficient, Mr Denney's evidence was unsupported and the Stewards' decision conflicted with the evidence given by both drivers at the inquiry. In support of these propositions, Mr Woodley carefully took me through many passages in the transcript, pointed out what he claimed to be deficiencies in various aspects of the evidence and invited me to exonerate him from the conviction. He then sought leave to call Mr Mark Reid, an experienced driver. The Stewards did not oppose that course. It was clear however from Mr Reid's evidence that Mr Reid had not participated in the race in question, was not present at the course on the night of the race and obviously did not see the incident live. Rather, in giving his evidence Mr Reid was simply relying on his own assessment from what he had observed of the incident based on the video of the race which he had viewed. This evidence was of no probative value.

I too was shown the video. Unfortunately it comprised only a side on view of the incident. The video was taken from the opposite side of the track to the incident some considerable distance away. That side on view did not reveal anything to me which reflected adversely on the observations which Mr Denney had presented to the inquiry regarding the quality of the drive. There can be no doubt Mr Denney was in the box seat to view the incident and, based on knowledge he had gained from his many years of experience in the industry, was well equipped to objectively evaluate the matter. Clearly, Mr Denney's assessment was entirely independent, objective and removed from the adrenalin of competing in the race. These features combine to

place the Steward's observations of the incident into a completely different perspective from the two drivers involved.

At the appeal hearing I was handed a long list dated 23 May 2006 which was headed 'Offences and Penalties Rule 163(1)(a)' going back to August 2005. The list comprises a series of columns headed 'Licensee', 'Offence Date', 'Offence Details', 'Result', 'End Date', 'Fine Amount', 'Period', 'Period Type' and 'Label'. Every entry on the list under the heading 'Label' states 'Rule 163(1)(a)'. Although some refer to crossing offences and other related matters, I have only considered those entries on the list which have offence details described as causing interference as part of their description. There are some 75 such entries.

The list provides at least some guidance as to the range of penalties that have been imposed recently by the Stewards for the offence of causing interference. To that extent it is a very helpful guide. But that is about all that one can usefully put the list to as it is clearly of little assistance in working out the relativities of the offences recorded and how they compare with Mr Woodley's current offence. No details of any of the facts and circumstances associated with each individual case are contained on the list. Further, the starting points in setting the penalties for the offenders on the list and the allowances which may have been made for any good behaviour or other mitigating circumstances are not provided.

At the end of the appeal hearing I advised the parties that I required time to evaluate Mr Woodley's argument and needed to conduct a close examination of the transcript for that purpose. I undertook to arrive at a decision the following day. I informed the parties I would instruct the Acting Registrar to communicate the outcome of the appeal to the parties by telephone. I duly did so the next day. I disallowed the appeal as to conviction but reduced the penalty by seven days. I now set out my reasons for having done so.

Reasons for Determination

The best person to assess whether Mr Woodley's drive in fact had caused the interference which was alleged clearly was Mr Denney. The Steward's evidence of the incident was the only evidence which was totally dispassionate. It was presented by a person who enjoyed a bird's eye view and was fully equipped to evaluate the quality of the drive. Mr Denney's observation of the race was in no way diminished by any of the evidence of the two drivers involved. The video did nothing from my perspective to throw Mr Denney's evidence in any doubt. Mr Woodley acknowledged to the Stewards that contact had been made. Mr Young did not dispute the proposition that the movement caused by Mr Woodley had been somewhat abrupt at the end of the process of outward movement.

In all the circumstances I was not persuaded that the movement out which Mr Woodley engaged in and which resulted in the contact occurring was undertaken with sufficient care. Mr Woodley's

action was the cause of the interference to the other runner. It was Mr Woodley's driving that caused the contact to be made.

I therefore reached the conclusion that the appeal as to conviction should be dismissed as I was satisfied no error on the part of the Stewards had been demonstrated.

However, I did determine that there was some merit in the appeal against the penalty. The long list of penalties provided by the Stewards reveals that the least serious offenders received reprimands. In fact five drivers have been reprimanded for the same offence as Mr Woodley since August 2005. The most serious offender was suspended for 35 days. Between that range:

- one offender had nothing recorded on the list against his name,
- two resulted in 11 day suspensions,
- another resulted in a 13 day suspension,
- seven offences resulted in 14 day suspensions,
- one a 15 day suspension,
- two 16 day suspensions,
- seven 17 day suspensions,
- four 18 day suspensions,
- six 19 day suspensions,
- four 20 day suspensions,
- six 21 day suspensions,
- one a 21 day suspension,
- two 23 day suspensions,
- eight 24 day suspensions,
- seven 25 day suspensions,
- three 27 day suspensions, and
- seven 28 day suspensions.

No offender was fined.

I decided to reduce the penalty imposed by the Stewards from 23 days to a 16 day suspension as I was satisfied that in all of the circumstances the Stewards had erred in imposing too stiff a penalty. Based on the range revealed in the list for this type of offence in order to warrant 26 days (before any concessions) an offending drive clearly would need to fall at the upper end of the

scale or range of severity. I concluded the penalty which was enforced had been pitched too close to the higher end of the scale of severity. In this regard I was partly influenced by the drivers' descriptions of what had occurred, particularly Mr Young's evidence as to how his horse was travelling at the time and the affect of Mr Woodley's movement out on his horse. The Stewards described the offence as being '*a mid to high range of culpability*'. Consequently they concluded it warranted a 26 day suspension. It was reduced by the Stewards by three days due to Mr Woodley's '*good driving*'.

The list of penalties reveals only 26 out of 76 offenders were meted out a more serious punishment than Mr Woodley for this type of offence. Only 11 received a penalty higher than the starting point applied to Mr Woodley by the Stewards before making any allowances. I was satisfied this incident in all the circumstances should be characterised as a little less serious which fell more in the middle of the range than mid to high. In reaching this conclusion I particularly bore in mind, amongst other things, the fact that Mr Young gave evidence to the effect that he had lost control of his own horse just prior to the contact as well as the actual consequences of the contact. I considered the Stewards did not sufficiently take into account Mr Woodley's relatively good driving record. I was persuaded to some extent by the argument that the Stewards had failed to make sufficient allowance for factors in Mr Woodley's favour.

In coming to my conclusion I did not lose sight of the fact that it was undisputed that the contact which had occurred had properly been attributed to Mr Woodley's driving. I did not ignore Mr Denney's testimony which I clearly was influenced by in dismissing the appeal as to conviction.

Orders

The appeal against conviction was dismissed. The conviction was confirmed. The appeal against penalty was upheld. The penalty was reduced by six days to a 17 day suspension.



DAN MOSSENSON, CHAIRPERSON

