

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

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**APPELLANT:** GARY EDWARD HALL (JNR)

**APPLICATION NO:** A30/08/675

**PANEL:** MR D MOSSENSON  
(CHAIRPERSON)

**DATE OF HEARING:** 22 AUGUST 2007

**DATE OF DETERMINATION:** 22 AUGUST 2007

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**IN THE MATTER OF** an appeal by Gary Edward Hall (Jnr) against the determination made by the Racing and Wagering Western Australia Stewards of Harness Racing on 10 August 2007, imposing 16 day suspension for breach of Rule 163(1)(a) of the Australian Rules of Harness Racing.

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Mr G Hall (Snr) was granted leave to appear for Mr GE Hall (Jnr).

Mr WJ Delaney appeared for the Racing and Wagering Western Australia Stewards of Harness Racing.

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**BACKGROUND**

This is an appeal by Mr G E Hall (Jnr), driver of DILL AND GRACE, against his conviction and penalty arising out of a driving incident which occurred in Race 3 at Gloucester Park on 10 August 2007. Racing and Wagering Western Australia Stewards of Harness Racing conducted an inquiry into the reasons for SAABS SIBLING, driven by Colin Brown, being severely checked and falling whilst racing into the straight on the final occasion.

Mr W E Sullivan, Provincial Chief Steward, presented the following evidence at the outset of the inquiry:

*'I viewed the race from the turn at the 200m. Just prior to straightening up Mr Hall had been leading closest to the pegs outside of him Mr Brown and three wide Mr Lewis and I felt that just as they straightened up for the run to the finish Mr Hall's allowed his horse to shift up probably three quarters of a cart and as a result Mr Brown was taken up into Mr Lewis. I didn't think Mr Lewis' horse had shifted inwards a great deal at all.'* (T1)

Mr Brown then gave evidence in the inquiry following Mr Sullivan to the effect that the *'three fillies were all starting to get a little tired and shifting and yeah certainly both the horse inside and the horse outside a bit appeared to tighten my ground a little.'*(T1) That was followed by Mr Lewis' statement that he *'... kept a fairly straight line, maybe there might have been just a margin there, I can't really say there was much in it in error.'* (T2) Later in the proceedings Mr Hall (Jnr) did admit that *'... she'd run up ... a fair bit...'* (T4)

Mr Hall (Jnr) went on to say *'My filly sort of had a tendency to get off the pole throughout the race ...'*, (T4) and he referred to what had happened a couple of starts back when his mount did get up just as they straightened. The appellant went on to say that he believed he was pretty quick in straightening her back up and keeping her line in the race in question and there didn't seem to be a lot of room between himself and Mr Brown. He went on to explain that it was pretty abrupt and as soon DILL AND GRACE hit the straight she drifted up a bit, but at the time he had the horses head screwed around to the inside. The Chairman then asked Mr Brown whether he had his problems coming from the inside and he agreed with that proposition. Some questioning then followed of Mr Hall (Jnr) regarding the positioning of his horse's head and he went onto explain that he remembered having the reins bridged and letting the outside rein go. The Chairman of the inquiry then asserted that he didn't *'... appear to miss a beat with the whip'* which was not denied. Mr Hall explained that there was difficulty in determining where one draws the line as to whether a driver has made sufficient effort. It was asserted that every attempt to keep DILL AND GRACE straight had been made when the horse moved abruptly. There was some further questioning regarding the use of the whip and whether or not it was continuously applied.

The Stewards reached the conclusion that there was a charge to be answered, namely, causing interference. The charge was laid pursuant to the provisions of Rule 163(1)(a).

*'The specifics of the charge are that in race 3, racing into the front straight on the final occasion, you failed to make sufficient effort to correct DILL AND GRACE when that filly shifted outwards, as a result SAABS SIBLING, ...Mr Brown's drive ..., was taken out making contact with the sulky wheel of PARSONEMBY blundering and falling.'*

After the charge was laid there were some further questions asked. Mr Hall (Jnr) asserted he had proven his horse had gone up half a cart, but no more. There was reference to what happened with regard to the DILL AND GRACE on previous occasions and the fact that this horse had previously shifted out abruptly in a similar manner, as it did on the night in question. This led the Chairman of the inquiry to put the proposition the appellant was not caught out unaware and could have, or should have been waiting for or anticipating his horse to make such a movement in the race in question.

The Stewards came to the conclusion *'...the fact that DILL AND GRACE was half a cart up the track prior to the incident occurring, it should have been an indication to you that the filly was not racing truly. The fact that you didn't realise that suggests in our opinion a lack of awareness on your part. In addition you didn't stop driving with the whip and we don't accept that the filly's shift was as abrupt as what you are making it out to be. Under the circumstances, we do find the charge sustained, that is we find you guilty.'* (T17)

The Chairman of the inquiry then invited submissions to be made on penalty. Mr Hall (Jnr) asked for his clean record to be taken into consideration along with the circumstances surrounding the event. This led to the Stewards reaching the following conclusions:

*'...Stewards firstly look at the circumstances of the incident. On this occasion we have assessed the degree of carelessness shown by yourself as being mid on the scale of low mid high. We are of the opinion that you should have been far more aware of the*

*potential for the filly running around given your knowledge of what she's done previously. The degree of interference we've assessed as being high. It was only slight contact between SAABS SIBLING and PARSONEMBY but unfortunately SAABS SIBLING did fall and also several other runners were checked with another driver being dislodged from the cart. ~~The circumstances of this incident are such that we believe a~~ base penalty of 24 days should apply, now in mitigation we looked at your record, now you were suspended in June 2006, but that really wasn't for causing crossing or interference or anything like that.... Now given the number of times you go round, you have got an excellent driving record and that went in your favour, so it's worthy of some discount in penalty. Bottom line Mr Hall, we've come up with a 16 day suspension, which will take effect from midnight on the 14<sup>th</sup>, ... so you're back for Friday 31<sup>st</sup>. All right, 31<sup>st</sup> August...'*

## **THE APPEAL**

Mr Hall appealed on the basis that he was not guilty of the offence and the penalty was too severe. Mr Hall's grounds of appeal are that:

*'The Stewards failed to take into account the racing behaviour of the pacer 'DILL AND GRACE'. They also, failed to understand the reason for GE Hall Jnr's driving tactics on the pacer with regard to the continuation of the use of the whip. Also I would like to appeal against the severity of the penalty.'*

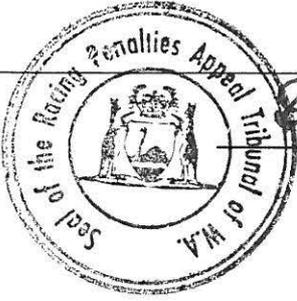
I have had the benefit of helpful argument on both sides and obviously the opportunity of viewing the video on a number of occasions. Mr Hall (Snr) advanced a sincere and powerful argument which was presented with conviction in which he expressed his own opinion of the circumstances of the driving and nature of the incident.

I must make my decision based on the totality of the material before me including the transcript of the Stewards' enquiry, the video of the race and Mr Delany's submissions in addition to the arguments on the appellant's behalf. I have, in particular, been influenced by those parts of the transcript which I have specifically referred to.

The Stewards were fully justified on the evidence that was presented to them at their enquiry to level the charge which they did against Mr Hall (Jnr). I am satisfied that on the evidence presented in response to that charge and taking into account all of the evidence which had already been presented earlier in the course of the inquiry, that the charge should be sustained. The Stewards were entitled to reach the factual conclusions and findings, which they did on the evidence. No error has been demonstrated to exist in regard to the conviction for the offence. DILL AND GRACE clearly did shift ground. Mr Hall (Jnr) should have been prepared for this eventuality but failed to drive appropriately in the circumstances.

I am not persuaded on all of the material before me, despite the argument presented for the appellant, that the Stewards were in any error in arriving at both conclusions which they did. The Stewards properly determined to convict Mr Hall (Jnr) and to impose a 16 day suspension. The nature of this offence, taking into account all relevant factors including the stage in the race, the quality of the driving displayed and the consequences to other drivers, in my opinion justified the penalty which was imposed. I am satisfied the Stewards correctly assessed both the degree of carelessness and the degree of interference in arriving at the penalty.

In all of those circumstances I am satisfied that the appeal should be dismissed both as to the conviction and penalty and I confirm the decisions which the Stewards made.



*Dan Mossenson*

DAN MOSSENSON, CHAIRPERSON