

RACING PENALTIES APPEAL TRIBUNAL DETERMINATION

APPELLANT: MR CHRISTOPHER VOAK

APPLICATION NO: A30/08/803

PANEL: MR P HOGAN (PRESIDING MEMBER)

DATE OF HEARING: 5 SEPTEMBER 2017

DATE OF DETERMINATION: 8 SEPTEMBER 2017

IN THE MATTER OF an appeal by CHRISTOPHER VOAK against the determination made by Racing and Wagering Western Australia Stewards of Harness Racing on 26 August 2017, imposing a suspension of seventeen days for breach of Rule 163(1)(a)(iii) of the Racing and Wagering Western Australia Rules of Harness Racing.

Mr M C Voak represented himself.

Ms B Scott appeared for the Racing and Wagering Western Australia Stewards of Harness Racing.

INTRODUCTION

This is an appeal against conviction.

The Appellant was the driver of OHOKA DAMO NZ , which ran in the GWN 7 MS Pace over 1609 metres at Bunbury on 26 August 2017. The other horse relevant to this inquiry and this appeal was SPIDER BAY, driven by Mr Kaiden Hayter.

At the conclusion of the race meeting, the Stewards opened an inquiry. The inquiry was chaired by Senior Steward Mr Franklin. Mr Franklin gave evidence of his own observations of the race. The

inquiry also heard from Deputy Chief Steward Chappell, and from the drivers themselves Mr Voak and Mr Hayter.

As a result of the inquiry, the Stewards issued a charge against Mr Voak. The charge and particulars appear at page 9 of the transcript of proceedings ("T9"):-

"FRANKLIN Thanks drivers. Mr Voak at this stage of the inquiry, Stewards are issuing a charge against you. That's under the provisions of Rule 163(1)(a)(iii) — The rule says:

Offences related to matters during a race

Part (1) A driver shall not

Part (a) Cause or contribute to any

Part (iii) Interference

And what part we're talking about is causing interference. And the particulars of the charge are that in Race 8 tonight, you being the driver of OHOKA DAMO NZ, racing into the front straight on the final occasion you've shifted from a position in the one wide line when insufficiently clear of Mr Hayter on SPIDER BAY. You've caused that horse to race roughly. You've continued to shift outwards and there's been contact to that runner and that horse has then broken gait. Now do you understand the charge and where it occurred Mr Voak?"

Mr Voak pleaded not guilty, but was convicted

THE GROUNDS OF APPEAL

There are two grounds of appeal. The Appellant says:-

- "1. The Stewards erred in their operation of the rule and failed to adhere to their published "Harness Stewards Racing Guidelines".*
- 2. The Stewards erred in their conclusion and decision, by their failure to account (sic) relevant considerations put during the inquiry by me and their failure to pursue all relevant factors".*

THE RULES AND THE GUIDELINES

Harness Racing Rule 163(1)(a)(iii) provides that:

"A driver shall not

(a) cause or contribute to any

(i)...

(ii)...

(iii) interference.

Rule 163(5) provides:

"A driver who, in the opinion of the Stewards, fails to comply with any provision of this rule is guilty of an offence and in relation to sub-rule(2) the Stewards may in addition to any other penalty disqualify the horse or give it a lower placing."

Local Rule 164 provides that:

"(1) Notwithstanding Rule 163(1)(b), a driver may make another horse cover more ground than necessary where:

(a) the driver does so on or after entering the front straight with one lap of the race to run provided that any horse being made to cover extra ground is obliged to race no wider than three wide until entering the back straight on the final occasion; or

(b) the driver does so prior to entering the front straight with one lap of the race to run, and the other horse is not maintaining or improving its position, and provided that the driver does so only to the extent necessary to obtain an improved position for the driver's horse.

(2) For the obviation of doubt, nothing in this local rule authorises any act which is contrary to any rule other than Rule 163(1)

RWWA have published Guidelines for assessing LR 164 incidents. The Guidelines were tendered at the Appeal hearing.

The Guidelines are in the following terms:

“GUIDELINES FOR ASSESSING LR164 INCIDENTS

LR164(1) provides protection for a horse maintaining its position or making a forward move on the outside of runners until entering the front straight with a lap to go. From that point until entering the back straight on the final occasion a horse cannot be obliged to race wider than three wide.

Under LR164(2) a driver is obliged to comply with all Rules other than R163(1)(b).

It is expected, however, that all drivers will make moves, with safety, to ensure that their drives obtain the best possible finishing position.

It is therefore imperative that any driver wishing to change position exercises due care whilst doing so.

For the Ease Out Rule to work effectively however the driver of the horse being eased out must also exercise due care if attempting to resist the move.

Stewards when assessing the circumstances of an incident covered by the Rule will consider the degree of care exercised by each driver.

The driver who initiates the move must exercise the utmost care and must have a clear advantage. Head to head movement is discouraged as any undue pressure or jostling may result in action being taken.

The driver of the horse being eased must also exercise care if attempting to resist the move. If he is not in a position to realistically resist the move then it may be deemed careless if he continues to resist.

Basically, interference will occur for one, or more, of three reasons:

- The driver attempting to shift ground does so abruptly, or his horse over-reacts when being taken outwards, leaving the driver of the horse he is attempting to shift insufficient time to react to the move,*

- *The driver of the horse being eased fails to react to the move or attempts to resist the move when not in a position to realistically do so,*
- *The horse being eased out does not respond to its driver's efforts.*

In assessing an incident, Stewards will determine the degree of care being exercised by each driver. It is entirely reasonable for a driver easing outwards with a clear advantage to expect the move to be completed without incident. If an incident occurs in those circumstances it is highly probable that either the actions of the horse or driver to the outside were significant factors."

CONSIDERATION OF THE APPEAL

The initial evidence at the inquiry was given by Senior Steward Franklin. He said at T1:

"Thanks drivers, take a seat. Race 8 tonight, Mr Hayter you drove SPIDER BAY, Mr Voak you drove OHOKA DAMO NZ. I viewed the race from the stand adjacent to the winning post. As the horses raced into the front straight on the final occasion, Mr Voak you've established yourself in the one wide line and to your outside was Mr Hayter. Now it's appeared that Mr Voak you've shifted from the position in the one wide line to a position three wide, but it appeared like it was quite an abrupt shift. It really didn't give Mr Hayter much time to react. There was an initial shift and it's probably, I couldn't tell if it was a wheel to wheel contact but it was horse to horse contact. It just looked like a shove outwards and then you've continued to shift outwards and then it appeared when you got the advantage that there was contact to Mr Hayter's horse. You've actually almost jumped out of the cart, well not jumped out, but there's been contact so it's, you know cart up at that stage of the event. But I thought it was your shift outwards that caused the incident. That's how I viewed the race. Did any other Steward have an observation at all? No? Mr Hayter what can you tell the Stewards?"

Mr Voak said that he attempted to shift wheel on wheel, which is an allowable shift. He said that Mr Hayter resisted to a point and then he got the advantage. T T3, Mr Voak said:

"That's exactly what I said in my initial evidence Mr Hayter's resisted my move, we were wheel to wheel, then his horse, you know, became unbalanced, threw the cart, the cart contacted, lost ground, well you know probably raced roughly and then that's probably the reason why it's lost ground and then, yep, I don't see how my move's super abrupt there at all. I mean I made the move wheel to wheel, so there's no leg there. I'm still just to the outside of the horse in front of me. I haven't gone from the one out line straight to the three wide line. I reckon I've almost half carted position for a period of time, probably due to Mr Hayter resisting the move. I just think if his horse hadn't of been so big he wouldn't have been able to resist the move as much as he did."

Mr Voak made the point at the inquiry, and on the hearing of the appeal, that it is incumbent on the driver being eased out to "oblige with" (T7) the move. That is a correct reading of the guidelines, which state in part:

"The driver of the horse being eased must also exercise care if attempting to resist the move. If he is not in a position to realistically resist the move then it may be deemed careless if he continues to resist."

There is no doubt that Mr Hayter's horse was raced roughly and then broke gait. The thrust of Mr Voak's defence was that the incident was caused by Mr Hayter unrealistically resisting the move. In convicting Mr Voak, the Stewards gave little by way of reasons, but their reasoning can be discerned from comments made along the course of the inquiry, and indeed at the very end of the evidence. There was an exchange at T9:

"VOAK Okay sure and I've done it wheel to wheel, which is a tick for me.

Then, I can't help that his horse just raced a bit greenly, you know, like..

FRANKLIN It only raced greenly because you shoved him out of the way."

In summary, the Stewards did not accept Mr Voak's explanation, to the effect that the incident was caused by Mr Hayter unrealistically resisting Mr Voak's move.

Rule 163(5) creates an offence where, in the opinion of the Stewards, there has been a failure to comply with an obligation mentioned in the Rule itself. This Tribunal will not merely substitute its own opinion for that of the Stewards if it disagrees with the Stewards' opinion. However, if the opinion of the Stewards is demonstrably unreasonable, or if the Stewards have misdirected themselves as to the operation of the Rule, or their decision has been the product of taking into account irrelevant considerations or of a failure to take into account relevant considerations then it is open for this Tribunal to reconsider the Stewards' determination: Minister of Immigration and Citizenship v Li 12013] HCA 18.

DISPOSITION OF THE APPEAL

In my view, it was clearly open to the Stewards on the evidence presented to find the charge proved. The finding was not unreasonable. Further, the Stewards did apply the Guidelines. In fact, the whole case was concerned with the Guidelines and their application.

The Appeal is dismissed.



PATRICK HOGAN, PRESIDING MEMBER

