

**RACING PENALTIES APPEAL TRIBUNAL DETERMINATION**

**APPELLANT:**                      **AIDEN DE CAMPO**

**APPLICATION NO:**              **A30/08/818**

**PANEL:**                              **MS K FARLEY SC (CHAIRPERSON)**

**DATE OF HEARING:**              **29 JUNE 2018**

**DATE OF**  
**DETERMINATION:**              **26 JULY 2018**

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**IN THE MATTER OF an appeal by AIDEN DE CAMPO against the convictions and penalties of 24 days suspension for breach of Rule 163 of the Racing and Wagering Western Australia Rules of Harness Racing.**

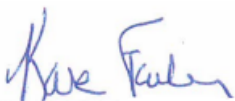
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Mr A De Campo represented himself.

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

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I publish my reasons for decision in this matter.



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**KAREN FARLEY SC, CHAIRPERSON**

1. There was what can only be described as a sickening fall in race 4 at the harness racing meet at Gloucester Park on Friday 15 June 2018. Pacer Shandale fell near the 50m mark, dislodging his driver Mr Suvaljko from the sulky.
2. A post-race veterinary examination of Shandale revealed a laceration to the knee of the off-side foreleg and bruising. Luckily, Mr Suvaljko, whilst attended to by ambulance officers, was unhurt and was able to continue with his driving engagements on the evening.
3. Senior Steward Grant Frankland viewed the race from the stand out of the front straight or adjacent to the winning post. He observed that Pacer Tommy Be Good driven by Mr De Campo, had been allowed to shift up the track slightly and it appeared that there was contact between Shandale and Mr De Campo's sulky. He reported that to the Stewards who convened an inquiry in the steward's room. Mr Frankland gave his report and both Mr Suvaljko and Mr De Campo gave evidence to that inquiry. Footage of the race was also viewed during the course of the inquiry.
4. At the conclusion of the inquiry, Stewards were of the opinion that there was a charge for Mr De Campo to answer under Rule 163(1)(a)(iii) of the *Rules of Harness Racing*. That Rule reads:

‘A driver shall not cause or contribute to any interference during a race.’

5. The particulars of the charge were that:

*‘Aiden De Campo the driver of Tommy Be Good in race 4 at Gloucester Park on 15 June 2018, midway down the home straight on the final occasion ..... caused (d) interference when (he) allowed Tommy Be Good to shift out when not sufficient clear of Shandale resulting in a contact by Shandale to (his) off-side sulky wheel. Shandale being severely checked, blundering and falling’.*

6. Mr De Campo pleaded not guilty to that charge.
7. Having heard further from Mr De Campo, Stewards adjourned, following which they found Mr De Campo formally guilty of the charge. The Stewards found (ts.22):

*‘in relation to the incident from race 4, you put forward some defence of the charge. The first one you said that when you moved the incident happened about 60 metres*

*later. We are of the opinion that you have allowed Tommy Be Good to shift out on a second occasion and that's what's, that's when the incident has occurred. You said that you believed Mr Suvaljko shifted down the track. Stewards do not agree that Mr Suvaljko has shifted at all. In fact, Mr De Campo, when your wheel shifts out into the line of Shandale on that second occasion, when you allowed it to shift out, Shandale's near side leg was back and as it strode forward that's when its contacted the back of your wheel, which means that you were insufficiently clear. And in relation to the clarification of driving rules any assessment in relation to interference is determined on the merits of each case, having regard to the Australian Harness Racing Rules, the incident itself and any other relevant facts. We are of the opinion that you caused interference as a result of your allowing Tommy Be Good to shift up the track and therefore find you guilty of the charge'.*

8. Stewards then went on to consider penalty. Stewards properly heard further submissions from Mr De Campo and then proceeded to suspend his driver's licence for a period of 24 days.
9. Relevantly, Stewards noted that (pursuant to Rule 256 of the *RWWA Rules of Harness Racing*) various penalties are available to the Stewards on a finding that a rule has been breached. In this instance, Stewards advised that they did not believe that a reprimand or a fine were appropriate penalties and believed that suspension was the correct penalty. More relevantly, Stewards explained to Mr De Campo how the period of 24 days have been arrived at, making reference to 'penalty guidelines'. In explaining how the 24 days were arrived at, Stewards said (ts. 24):

*'We have penalty guidelines that give us some guidance on how to calculate a penalty and the starting point for any interference in a race is a 28-day suspension of a driver's licence. In relation to the degree of carelessness, we believe that there was a low degree of carelessness so we have taken three days off that, which it brings it down to 25 days. Then we look at the degree of interference. Obviously, a horse falling is a very high degree of interference. So, we have added five days for that degree of interference. The penalty guidelines also allow us to add a premium of up to 21 days where a driver is found to have either displayed a high of degree of carelessness of a high degree of interference. We are of the opinion that there needs to be added to that degree of interference because of the fall. So, we are adding an extra four days to your degree of interference, which brings it up to nine days. So, at the moment we have got a suspension of your driver's licence for 34 days. You did not give us a guilty plea so we can't give you any discount for guilty*

*but we can certainly give you the maximum discount for your driving record. You've had more than 500 drives since your last suspension. You've had 573 drives at the maximum amount we can give you is 10 days. That leaves us with a suspension of your driver's licence for a period of 24 days'.*

10. Stewards went on to correctly advise Mr De Campo of his rights of appeal to this tribunal and advised that the commencement of the suspension could be deferred for a period of up to nine days.
11. Mr De Campo lodged a notice of appeal on 19 June 2018. Mr De Campo's grounds of appeal effectively appealed against his conviction and his penalty. He also applied for a stay of proceedings.
12. I refused the stay of proceedings, however, as the period of suspension was quite short, I arranged for the matter to be urgently listed on Friday 29 June 2018 before me.
13. Having had the benefit of helpful submissions from Mr De Campo, and from the Chairman of Stewards Ms Scott, and having watched footage of the race, I advised the parties that whilst I would not uphold Mr De Campo's appeal against the finding of the Stewards that he had breached Rule 163(1)(a)(iii) of the *RWWA Rules of Harness Racing*, I was of the view that Stewards had erred in imposing a period of suspension of 24 days. Whilst I did not find that suspension an inappropriate penalty in the circumstances, I quashed the period of suspension of 24 days and instead imposed a period of 19 days suspension. I advised that I would publish my reasons later.
14. In relation to Mr De Campo's appeal against the finding of guilt pursuant to the Rule, it is, as Ms Scott submitted firmly the practice of the Tribunal that the Tribunal will not interfere in a decision of the Stewards unless it is convinced that no reasonable Stewards, acting reasonably, could have come to the same finding. A Steward, Mr Frankland, was sufficient concerned that Mr De Campo had caused interference to Shandale as to make a report to other Stewards which led to the inquiry being held. Stewards followed all due process during the course of the inquiry, hearing evidence from both Mr De Campo and Mr Suvaljko and viewing footage of the race. They came to a conclusion, which was reasonably open to them on the evidence before them, that Mr De Campo had breached the Rule.

15. I did not have the benefit of hearing from Mr Suvaljko, whose evidence the Stewards must have preferred to that of Mr De Campo to come to the conclusion that they did. I am not entitled to substitute any alternative finding that I may or may not have made having heard from the witnesses, and it is for this reason that I will not interfere with the finding of the Stewards.
16. At the hearing as to penalty, I received two exhibits. Exhibit one is a document entitled 'Clarification of Driving Rules' issued by Ms Scott on 13 June 2018. Exhibit two is a document entitled 'Harness Stewards Penalty Guidelines' which purports to be effective from 24 November 2017.
17. Exhibit one was dated two days prior to the race meeting the subject of this inquiry. It was unclear whether Mr De Campo was aware of it on the evening in question. In any event, it simply clarifies the expectations of the Stewards in relation to a driver complying with Rule 163 of the *RRWA Rules of Harness Racing*.
18. The Harness Stewards Penalty Guidelines (exhibit two), however, purports to indicate to the industry the penalties that can be expected in various circumstances. Fines are indicated for numerous rule breaches (along with indicated rules that will result in reprimands or suspensions). That part of the document properly indicates that Stewards may increase penalties for repeated offences and that where mitigating factors exist may moderate a penalty accordingly. Stewards indicate what actions they may take with horses breaking gait.
19. Stewards then go on to indicate presumed penalties and discounts for unreasonable and unacceptable driving pursuant to Rule 149. I note that those indications do not come with the rider that offences against this Rule may incur alternative penalties in the particular circumstances of the case.
20. Finally, that document indicates how Stewards will determine penalties for driving offences under Rule 163, 164 or 168. This part of the document purports to indicate that the starting point for a penalty for breaches of those Rules will be a 28-day suspension of a driver's licence. Thereafter, discounts or increases of that number of days will be allowed in relation to the degree of carelessness, the degree of interference (which is defined as 'consequential affects') and then sets out discounts for various mitigating factors. Curiously, the document concludes 'it must be noted that while discounts will be applied, no penalty will be reduced below seven days'.

21. Whilst this portion of the “penalty guidelines’ explains how the Stewards arrived at the suspension period of 24 days in this matter, it also indicates where the Stewards fell into error.
22. The gazetted *RWWA Rules of Harness Racing* have a specific rule (Rule 256) which is clear as to the range of penalties available to the Stewards with regard to any rule that does not of its own terms impose a specific penalty. Stewards should, when considering the appropriate penalty, have regard to all available options in sub rule 2 of Rule 256, with the general aim of imposing a penalty that is appropriate in the circumstances, having regard to all the circumstances of the breach of any rule of harness racing.
23. To attempt to come up with a ‘formula’ to calculate a penalty inhibits the requirement of the Stewards to take into account the individual circumstances of each offence, and the circumstances of the person convicted of breaching the Rules, in determining an individual penalty.
24. Rule 163 aims to prevent drivers causing interference with other pacers. ‘Interference’ should be given its ordinary meaning in an interpretation of the Rules. In their ‘Penalty Guidelines’, the Stewards define interference as the consequential affects, whereas interference, given its normal meaning, would indicate the degree of carelessness (or for that matter wilful or reckless interference). It is the driving action of the reinsman that causes another pacer to be interfered with.
25. Whilst the consequential effects of interference may well be relevant in determining penalty, a conflation of interference and consequence has, in this matter, led Stewards into error. It was for this reason that I determined that the penalty imposed was excessive, and reduced the penalty by the period of five days, particularly as it would appear that the Stewards had already, and properly, classified the level of Mr De Campo’s carelessness in causing interference as being low.
26. In so doing, it is not my intention to suggest that any mathematical ‘formula’ for breaches of rules relating to driving should be encouraged. I would encourage Stewards to reconsider the concept of penalty guidelines and instead to ensure that the industry is given an indication of what they can expect to receive by way of penalty for breaches of the rules of harness racing by applying general principles and consistent penalties.

27. Whilst I see no danger in Stewards advising the industry that, for breaches of particular Rules, certain types of penalty will ordinarily be considered, room must remain for Stewards to consider other penalties in particular circumstances of the case.
  
28. Likewise, whilst it would be appropriate for Stewards to indicate which matters would ordinarily be taken into account as aggravating or mitigating any particular breach of the Rules, attempting to devise a mathematical formula for the construction of penalties overlooks the particular circumstances of any breach.
  
29. In this case, the rigid adherence to what should only be applied as a 'guideline', has led to the Appellant in effect being doubly penalised for the consequence of his interference and has therefore led to a penalty that was excessive having consideration to all the circumstances of this case.