

RACING PENALTIES APPEAL TRIBUNAL DETERMINATION

APPELLANT: MR GARY EDWARD HALL (JUNIOR)

APPLICATION NO: 21/2777

PANEL: MS K FARLEY SC (CHAIRPERSON)

DATE OF HEARING: 25 AUGUST 2021

DATE OF DETERMINATION: 12 OCTOBER 2021

IN THE MATTER OF an appeal by GARY EDWARD HALL against a determination made by Racing and Wagering Western Australia Stewards of Harness Racing imposing a fine of \$100 for a breach of Harness Rule of Racing 162(1)(y)

The Appellant was in person.

Mr Trevor Styles and Mr Brad Lewis represented the Racing and Wagering Western Australia ("RWWA") Stewards of Harness Racing.

1. On 28 June 2021 Mr Hall (Jnr) was a reinsman in race 7, Hygain Hoofgain Conditioned Pace (2185ms). His horse finished third.
2. At the conclusion of the race RWWA Stewards held an inquiry. On opening the inquiry, the chairman Mr styles advised Mr Hall, "Mr Hall the Stewards have got you here and you've run the first quarter of the last mile in 32.1 which is outside the prescribed time of 32 seconds. Is there any reason as to why the Stewards shouldn't apply a fine".
3. Mr Hall offered the reasons that it was "blowing a gale out there and the track's rain affected" (Transcript p1). Mr Hall (Transcript p2) submitted that the Stewards had previously "allowed" (by which it transpired that the Stewards had not charged a breach of the rule) a matter where a mare (Wainui Creek) had run 32.5 over the same section in wind and rain affected conditions.

4. Mr Hall also questioned the accuracy of the timings of the sections of the race and called the timer Miss Goode. She advised that she had timed the sections at Pinjarra from the Judges Box, in line with the winning post. She times the horses that are racing head on to her when they pass a yellow peg through the glass window in the Judges Box. She was the only timer.
5. Stewards advised Mr Hall that they accepted the time of 32.1, and further advised that they had considered all matters and (at p8 Transcript) imposed "the fine" of \$100 upon Mr Hall.

GROUND OF APPEAL

6. On July 8th, Mr Hall appealed to this Tribunal. His grounds of appeal were as follows:
 1. Inconsistencies in previous cases
 2. The fact that the sections are hand timed
 3. The smallest fraction of infringement
 4. The difficulty the timekeeper has in being completely accurate from their vantage point
7. I have numbered the grounds as above for convenience. Grounds (2) and (4), it would seem to me, refer to Mr Hall's appeal against the Stewards finding that he had breached rule 162 (1) (y) of the RWWA Rules of Harness Racing (HR). Grounds (1) and (3) relate to the appeal against the penalty imposed of a \$100 fine.

The Appeal

8. The Appeal was heard before me on 25 August 2021. Mr Hall represented himself. Mr Styles and Mr Zucal represented the Stewards.
9. Mr Hall submitted that -
 - there is an overarching rule in Harness racing to give a horse the best possible chance in a race, and that a sectional times policy may sometimes seem to conflict with that aim. He believed he had given his horse the best chance in this race.
 - it is difficult to tell how quickly you are going in a race, save to say whether the pace is fast or slow
 - it is also difficult to accept in a race that is hand-timed how accurate that time recording is. At Bunbury & Gloucester Park race tracks, electronic timing has been installed. All other courses are timed by a single timer operating a handheld device. In this race, the timer (Miss Goode) was timing from 200m away, through the glass window of the Judges Box, as the horses were running toward her.
 - times can be affected by conditions on the track, and that on this occasion there was a head wind, and the track was rain affected. Mr Hall tendered

exhibits 1a & 1b. Exhibit 1b shows a non rain affected track on 23 August 2021. Exhibit 1a shows the track on 28 June 2021. Mr Hall submitted that the darkness of the side of the racing rail indicated that rain had fallen. On the back of Exhibit 1b was the BOM rainfall map indicating that some rain had fallen in the area on 28 June.

- the infraction of time. If it was accurately timed, the infraction was minor being 0.1 of a second.
- there were inconsistencies in penalties imposed by the Stewards. Mr Hall referred to 4 inconsistencies in June and on in July of this year where penalties were not imposed (however it would seem in those circumstances the charge was not proceeded in an exercise of the Stewards discretion).
- the Stewards failed to have regard Mr Hall's explanations as to the weather conditions. They also failed to consider the minor fraction of infringement.
- Stewards considered the infringement of the rule should not have occurred because of the slow lead time in this race (of 45.6) which should have allowed him to race faster in the sectionally timed part of the race.

10. In reply, Mr Styles submitted that

- there is no question that the 1600 "Yellow Peg" is in the correct spot. Mr Styles tendered a survey report. (Exhibit 2)
- timekeeping is covered by HR50. HR 50(2) provides for a manual or an electronic device or both to be used. HR 50 (4) provides that "times so taken and entered are the official times" and HR 50 (5) provides that "times taken and entered cannot be altered except at the direction of the Stewards".
- HR162 (1) (y) came in on 25 September 2020 in consultation with the industry. A sectional time policy was seen to be required for fair and competitive racing and to improve the perception of harness racing. There were also "safety issues due to a slow tempo". Mr Styles tendered the original policy released on 25th of September 2020 and an updated policy dated 18th of June 2021. These became Exhibit 3.
- Mr Styles had looked back at records of times at Pinjarra from 4 January 2021 -16 August 2021. He had found the following:
 - 32 meetings had been held. He had been involved in 23 of those (as a Steward).
 - Of the meetings he was involved with, on 20 occasions fines were imposed. In 11 no action was taken.
 - Of the 9 meetings where other Stewards officiated 5 fines were imposed.

- in relation to Mr Hall, in the period he had failed to complete the section is under 32 seconds on 5 occasions, 3 were the subject of fines.
11. Mr Styles agreed with my understanding that if a sectional time was not adhered to, Stewards would inquire as to the reasons for the non-adherence. If the Stewards were satisfied, no action would be taken. If there were insufficient or unacceptable reasons Stewards would impose a minimum fine (at Pinjarra) of \$100 in line with the Policy.
 12. Mr Styles submitted that on 28th June 2021, the lead times and final sectional times (in effect) meant that there was “no problem with the track” and that Mr Hall had no excuse or reason for failing to adhere to the minimum section time for his race of 32 seconds and that the appeal should be dismissed.
 13. In reply Mr Hall submitted that as there was no rule relating to timing of lead times, they were irrelevant for the purposes of deciding whether he had adhered to the sectional time in question and that his only aim throughout the race had been to give his horse the best chance.
 14. At the conclusion of the hearing, I advised the parties that I would reserve my decision.

The Relevant Rules of Racing

15. HR 162 (1) (y) clearly imposes an obligation on drivers to adhere to minimum time standards for sections of a race. Not to do so constitutes an offence under that rule.
16. HR 256 sets penalties available to the Stewards that may be imposed on a person found guilty of an offence under the rules. HR 256 (2) provides for, inter alia, HR 256 (a) a fine; HR 256 (2) (b) suspension; HR 256 (2) (j) a reprimand or caution. HR 256 (6) states that although an offence is found proven, a conviction need not necessarily be entered or a penalty imposed.
17. HR 147 requires a driver to race a horse on its merits. Failing to do so constitutes an offence.
18. HR 149 requires a driver to ensure that the horse is driven in a manner that gives that horse full opportunity to win or obtain the best possible placing in the field. Failing to do so constitutes an offence.
19. HR 50 relates to time keeping which can be taken manually electronically or both (HR 50 (2)). Times so taken a recorded and entered are official times (HR 50 (4)) unless altered at the discretion of the Stewards (HR 50 (5)).
20. HR 162 (1) (5) prevents a driver from carrying or using a stop watch in a race.
21. Sectional time standards are not defined in the rules. It appears they are set by policy of the Stewards. On 23 September 2020 those sectional times were published as:
 - “2.3 The section times policy will be enforced on a quarter by quarter basis with main focus on the first two quarters of the last mile with the maximum sectioned time for any quarter being-

- 2.3.1 - Gloucester Park, Pinjarra or Bunbury – 32 seconds
- 2.3.2 - Albany, Bridgetown, Central Wheatbelt, Narrogin, Wagin or Northam – 33 seconds
- 2.3.3 - Busselton, Collie or Williams – no sectioned times will apply

22. The Policy went on to state:

- 3.1 "If a driver fails to adhere to the required section times without reasonable explanation a minimum penalty of \$100 will be applied when the time recorded is less than one second outside the time requirement.
- 3.2 Penalties may increase at the discretion of the Stewards in races where slower section times are recorded particularly in circumstances where slower than average lead times are run in combination with slow first and second quarters or where slow consecutive quarters are recorded.
- 3.3 Offences of this nature will attract penalties under HR 162 (1) (y).
- 3.4 Stewards may also apply other rules in relation to the pace if deemed applicable such as HR 162 (1) (u) and (x) which deal with abruptly reducing or checking the speed of a horse and setting an excessively slow pace. In applying this policy, Stewards will take into account factors such as rain affected tracks, adverse weather conditions and any other reasons considered to be relevant..."

23. The policy was later reviewed and a revised policy was issued on 18 June 2021. That policy removed the requirement for mandated sectional times for tracks other than Gloucester Park Pinjarra, Bunbury and Northam.

24. The 18 June 2021 policy went on to state:

" PENALTY GUIDELINES

If a driver fails to adhere to the minimum time standards without reasonable explanation the following penalties will apply;

Gloucester Park Prime meetings – minimum \$150

Gloucester Park Tuesday & Pinjarra meetings – minimum \$100

Bunbury and Northam Meetings-

For races \$7500 or more – minimum \$100

For races less than \$7500 – minimum \$75

- 1. Penalties may be increased at the discretion of the Stewards in races where slow times are recorded particularly in circumstances where slower than average lead times are run in combination with slow consecutive quarters.
- 2. Stewards will consider factors such as rain affected tracks, adverse weather conditions and any other reasons considered relevant when assessing times."

25. Neither policy was said to apply to trotters or two year old races for the first six months of the racing season.

The Issues in this Appeal

26. In relation to the appeal against the Stewards finding that the Appellant breached HR162 (1) (y) (grounds (2) and (4)), the Stewards found that-
- the Appellant's horse ran the relevant section of the race in a time of 34.1 seconds (manually timed), .1 of a second slower than the mandated time. That time was the official time in accordance with HR50(4) and was not altered by direction of the Stewards pursuant to HR50 (5).
 - The Appellant was therefore in breach of HR 162 (1) (y), and was subject to the "minimum" penalty of \$100.
27. In applying this penalty it would appear that the Appellant's submissions to the adverse conditions (i.e., the rain affected track and headwind) and concerns as to the accuracy of the manual timing were not accepted by the Stewards in so far as the assessment of time was concerned. The policy appears to allow for consideration of those factors only when "assessing times"; not when considering penalty.
28. In relation to the appeal against penalty (grounds (1) and (3)), the Stewards imposed "the minimum" fine in accordance with the policy, it would appear without further considering any aggravating or mitigating factors further. In fact they were precluded from so doing by their own policy which set the minimum and allowed only for penalties to be increased at the discretion of the Stewards in races where slower times are recorded particularly in circumstances where slower than average lead times are run in combination with slow consecutive quarters.
29. In relation to ground (1) of this appeal, it is not possible for me to form an opinion as to the reasons for what does appear to be a varied approach to dealing with matters where sectional times appear not to have been adhered to. Mr Styles own submissions were that between 4 January 2021 – 16 August, over 32 meetings, on 20 occasions sectional times were not adhered to. 11 of those non adherences attracted fines (presumably "the minimum" or above) and on 9 occasions "no action" was taken.
30. Whether no action meant that Stewards in their discretion did not charge those 9 drivers or whether a charge was brought pursuant to HR 162 (1) (y) but HR 256 (6) was applied is unclear.
31. What is clear is that in applying the "RWVA Harness Racing Sectional Times Policy" the Stewards purported to override the provisions of HR256 by the imposition of minimum fines, which by the terms of the policy, could only be increased. The Stewards would consider other factors including weather conditions only when assessing times "under the policy, not penalties. It would appear that although the "minimum" fines are to be applied for non adherence to time standards without reasonable explanation, that "reasonable explanation" relates only to an assessment of time (HR 50) rather than a consideration of appropriate penalty pursuant to HR256.
32. It is unwise for the Stewards to seek to apply rigid policy in relation to matters such as those arising in this appeal. Such a policy is arguably ultra vires the Rules of Harness Racing and should in my opinion be urgently reviewed.
33. Whilst the Rules are clear that timing of section times can be manual, electronic or both and that times thus taken are official (unless altered by the Stewards) it is of course obvious that in normal circumstances electronic timing is more likely to be accurate than manual timing (particularly in the circumstances of this case as outlined at

the inquiry), notwithstanding the best efforts and ability of the timer. Where, as in this case, the lack of adherence to the time standard was so small, drivers could well have a justifiable sense of grievance that the timing may not have been accurate. They of course have no realistic ability to challenge the time, given the rules.

34. It is clear and understandable that sectional times are applied to encourage "fair and competitive racing" and to address safety issues when horses over race due to a slow tempo. There is however something of a disconnect between this rule and with the overarching duty on a driver to drive in a way that ensures that his horse is given its full opportunity to win or obtain the best possible placing in the field.
35. It is noted that Appellant was not charged with any offence under HR 147, HR 149, HR 162 (1) (u) or HR 162 (1) (x), notwithstanding that the Chairman of Stewards at the inquiry (transcript p1) comments on the Appellant's slow lead time (45.6) and faster final sections (27.7, 28.2 & 29.1) and seems to suggest that this indicated the non adherence could not be explained by weather conditions (Transcript p6), thereby suggesting that he deliberately and impermissibly slowed the race at the time this section was run.
36. Whilst I share and understand the disquiet of the Appellant as to the accuracy of manual timing, I cannot see that the "official time" in this matter of 32.1 seconds can be challenged in this Tribunal. Under HR 50 (5), only the Stewards can direct that such a time be altered. In this case they did not do so.
37. That being the case even if that involved an exercise of the Stewards' discretion not to alter the time (notwithstanding the Appellants submissions as to accuracy and weather conditions), it has been said by this tribunal on numerous occasions that this Tribunal cannot without more, substitute its own discretion for that of the Stewards. Whilst I may share the Appellant's concern as to the accuracy of the manual timing and whilst I may even have a personal view as to weather conditions on 28 June 2021, I am unable to substitute my views for theirs.
38. In terms of the penalty imposed, once again I cannot substitute my own view on penalty for that of the Stewards, without being convinced that their discretion miscarried or was applied erroneously.
39. In this case I do believe that Stewards erred in imposing a "minimum" fine that was not in accordance with the rules. Stewards failed to complete the process contemplated by HR 256 to arrive at an appropriate penalty in all the circumstances of the case.
40. In particular and in relation to ground (3) of this appeal the Stewards failed (in light of the "minimum" fine) to consider the lack of adherence to the sectional standard was by .1 second (presumably the smallest infraction that could be recorded manually). It would appear that in other instances of lack of adherence to sectional times as outlined in the hearing by Mr Styles most of those times were slower.
41. Whilst the lead time in this race was slow and the final sectional times were sub 30 seconds, a time of 32.1 was only just over the permissible time.

DECISION

42. For the reasons set out herein generally I am of the view that:

- Grounds (2) and (4) (the appeal against the breach finding) should be dismissed

- Ground (1) should be dismissed for the reasons specifically outlined in para [26] and [27] herein
- Ground (3) should be upheld for the reasons specifically outlined in para [38] and [39]

43. As a consequence of the finding that ground (3) should be upheld I would set aside the fine imposed of \$100.
44. In lieu thereof, I would impose a fine of \$50. in my view this reflects the degree of culpability of the Appellant in this matter I had considered a reprimand pursuant to HR 256 (2) (j), however, given the fact that Mr Hall had previously breached the rule and appeared well aware of the need to comply with it, a reprimand seemed inappropriate in the circumstances.
45. I would encourage the Stewards to revisit and review their Sectional Standards Policy in light of the issues raised in this appeal and to consult with BOTRA and other interested parties in so doing. Whilst it may be appropriate for a policy to contain "indicative" penalties, mandatory "minimums" should not be prescribed.
46. There will be liberty to apply granted to both parties should any consequential orders be required.

Karen Farley

KAREN FARLEY SC, PRESIDING MEMBER



