

RACING PENALTIES APPEAL TRIBUNAL DETERMINATION

APPELLANT: MICHAEL YOUNG

APPLICATION NO: A30/08/791

PANEL: MR D MOSSENSON (CHAIRPERSON)  
MR P HOGAN (MEMBER)  
MS K FARLEY SC (MEMBER)

DATE OF HEARINGS: 8 DECEMBER 2016;  
9 FEBRUARY 2017

DATE OF

DETERMINATION: 13 APRIL 2017

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IN THE MATTER OF an appeal by MICHAEL YOUNG against the determinations made by Racing and Wagering Western Australia Stewards of Harness Racing on 23 September 2016, imposing a fine of \$500 and two terms of disqualification of three years and four years for breaches of Rules 44(1), 208 and 243 respectively of the Racing and Wagering Western Australia Rules of Harness Racing.

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Mr T F Percy QC appeared for the Appellant.

Mr R J Davies QC appeared for the Racing and Wagering Western Australia Stewards of Harness Racing.

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1. By a majority decision, with Mr D Mossenson dissenting, the appeals against the convictions under Harness Racing Rules 44(1) and 208 are upheld.
2. By a unanimous decision, the appeal against conviction under Harness Racing Rule 243 is dismissed.

3. By a majority decision, with Mr D Mossenson dissenting, the appeal against penalty under Harness Racing Rule 243 is upheld, and the period of disqualification is reduced from 4 years to 3 years.

*Dan Mossenson* **DAN MOSSENSON, CHAIRPERSON**



**RACING PENALTIES APPEAL TRIBUNAL**

**REASONS FOR DETERMINATION OF MR D MOSSENSON  
(CHAIRPERSON)**

**APPELLANT:** MICHAEL YOUNG

**APPLICATION NO:** A30/08/791

**PANEL:** MR D MOSSENSON (CHAIRPERSON)  
MR P HOGAN (MEMBER)  
MS K FARLEY SC (MEMBER)

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Mr T F Percy QC appeared for the Appellant.

Mr R J Davies QC appeared for the Racing and Wagering Western Australia Stewards of Harness Racing.

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**BACKGROUND**

1 This appeal follows an inquiry conducted by the Racing and Wagering West Australian Stewards of Harness Racing ("RWWA Stewards") over the period of some nine months.

The matter involves a fairly substantial volume of evidence. The Steward who chaired the inquiry stated "...Obviously this is not a stock standard racing inquiry...". This was confirmed by Mr Percy QC, who represented Mr Michael Young, when he stated at the outset that the appeal raised a number of "new issues". Mr Percy had earlier represented Mr Young during part of the inquiry.

2 Following the running of Race 9 at Albany on 16 January 2016, Mr Young was briefly called before the Stewards. Mr Young was the holder of an A Grade driver's licence with the RWWA Stewards as well as being both a part owner and the driver of BABY HOUSEMAN NZ which had competed in the Race 9. Mr Young's then partner, Courtney Burch, was the trainer of BABY HOUSEMAN NZ. Mr Chris Edwards was also a part owner of the horse in addition to being a long time friend of Mr Young.

3 The inquiry resumed in earnest on 29 April 2016 at which time Mr Trevor Styles presented the report he had compiled after having conducted investigations in relation to the matter. Mr Styles is the Stewards' form analyst. Mr Styles explained to the inquiry that he had watched the 16 January race and had believed that BABY HOUSEMAN NZ had a very strong chance to win based on its barrier two draw and the way it ran on 10 January 2016. The report asserted BABY HOUSEMAN NZ led without much effort, but surprisingly then gifted the lead to TELEGRAPH LOVE without any effort to hold that horse out. The report also stated the betting investigation revealed TELEGRAPH LOVE had been heavily supported, whereas there had been little support for BABY HOUSEMAN NZ.

4 The inquiry next continued on 1 June 2016 during which Mr Young was charged with the following three offences:

4.1 changing race tactics without advising the Stewards, in breach of Rule 44, the allegation being that BABY HOUSEMAN NZ led in its previous starts and gave up the lead in the early stages of the race in question;

4.2 improperly divulging of information in breach of Rule 208, which related to having privately provided part owner of BABY HOUSEMAN NZ, Mr Edwards,

information that BABY HOUSEMAN NZ "...would most likely hand up and take a sit on TELEGRAPH LOVE ... for the purpose of giving Mr Edwards a betting advantage in the race on TELEGRAPH LOVE a horse tipped to him by you"; and

4.3 behaviour detrimental to the industry in breach of Rule 243, being particularised with allegations that:

4.3.1 the decision to intentionally hand up the lead whilst driving the favourite was calculated to advantage the chances of another horse, namely TELEGRAPH LOVE of winning the race;

4.3.2 Mr Young did not drive his horse out until roughly the 100 metre mark; and

4.3.3 this conduct was done to aid Mr Edwards who had heavily supported TELEGRAPH LOVE.

5 Mr Young pleaded not guilty to the first charge, but declined to plead to the other two until he had engaged a lawyer. Consequently the hearing was adjourned again to enable Mr Young to obtain legal assistance but not before Mr Young's driver's licence was suspended pending the recommencement of the inquiry.

6 On the resumption on 31 August 2016 the Stewards introduced some documentary evidence and also called a deputy Steward to give evidence in relation to the allegation that Mr Young had allegedly handled horses at Byford Training Complex, despite the suspension having been imposed. During the course of the proceedings, Mr Young personally gave and also called evidence in defence of his position in relation to the horse handling allegation. A further charge was then laid in relation to failing to abide by the terms of his suspension in breach of Rule 91(1)(B). Mr Young pleaded "not guilty" to the balance of the charges. After hearing evidence from a number of witnesses, the Stewards reserved their decision on all charges.

7 By letter dated 22 September 2016, the Stewards advised Mr Young that they had found him guilty of each count. The Stewards reconvened on 18 October 2016 to hear submissions in relation to penalty.

8 By letter dated 26 October 2016, Mr Young was advised that the Stewards had decided to impose the following penalties:

- 8.1 for having changed tactics without notifying - \$500;
- 8.2 for having divulged information improperly – 3 years disqualification;
- 8.3 for behaviour detrimental to the industry – 4 years disqualification; and
- 8.4 for failing to comply with the suspension – 6 months disqualification.

Despite the fact that the Rules provide for suspensions or disqualifications to be served cumulatively the Stewards exercised their discretion in Mr Young's favour and ordered all disqualifications to be served concurrently. Further, the disqualifications were ordered to be backdated to the date of the suspension, namely 1 June 2016.

### **APPEAL GROUNDS**

9 Mr Young lodged a notice of appeal against the first three convictions as well as the penalty, along with an application for the suspension of operation of the penalties. After receiving written submissions from both parties and having considered the matter, I refused the stay of proceedings application.

10 Mr Young appealed in the following terms:

#### **A. Conviction**

- 1. The stewards erred in finding that the horse BABY HOUSEMAN NZ had an established "racing pattern" within the means (sic) of the rules
- 2. The stewards erred in finding that the Appellant had adopted tactics contrary to the horse's usual "racing pattern"
- 3. The stewards erred in finding that there was an obligation on Appellant to advise the stewards as to the intended manner of driving the horse on the night in question

4. The stewards erred in finding that any information conveyed by the Appellant to the owner Chris Edwards in relation to the horse's prospects in the race in question was conveyed improperly
  5. The stewards erred in their construction of rule 208 by conflating and confusing the concepts of information and opinion
  6. The stewards erred in finding that the Appellant on the night in question engaged in behaviour detrimental to the industry for the purposes of Rule 243
  7. The stewards erred in finding as a fact that:
    - A the Appellant knew or should have known that Edwards had or was likely to wager heavily on TELEGRAPH LOVE; and
    - B that the Appellant drove the horse so as to facilitate Edwards wagering on TELEGRAPH LOVE
- B. Penalty**
8. The penalty imposed by the stewards was manifestly excessive having regard to all the circumstances of the case

11 The Appellant's written submission made it clear that ground 8 was only a challenge to the penalty in relation to Count 2. However, during the course of his argument, after Mr Percy QC indicated the final ground was intended to address both Counts 2 and 3, the appeal proceeded without objection on that basis.

12 In view of both the seriousness of the matter and the novelty of the issues, it is worth spending more than the usual time in detailing the arguments raised by the respective parties.

### **APPELLANT'S SUBMISSIONS**

Senior Counsel for Mr Young advanced a wide range of propositions and made the following submissions on behalf of the Appellant:

#### **RULE 44 - "RACING PATTERN" (Grounds 1 – 3)**

13 The Stewards erred by finding that BABY HOUSEMAN NZ had an established racing pattern when no such pattern had emerged. BABY HOUSEMAN NZ only had two starts in Australia prior to the 16 January race and on each occasion the horse had raced differently. On 31 December 2015, BABY HOUSEMAN NZ was a significant favourite.

Despite looking to lead, it never made it to the front and it was ultimately beaten by TELEGRAPH LOVE. This experience helped to inform the Appellant's tactics during the race in question. In its second Australian race on 10 January 2016, although BABY HOUSEMAN NZ was able to lead and, based on her supposed ability, should have won the race easily from there, was comprehensively beaten. Mr Young claimed he did not intend on leading this race, but felt he would give his horse the best change by sitting on a horse called JET HOLME. JET HOLME did not come out quickly and BABY HOUSEMAN NZ kept the lead easily. The tactic was an abject failure as the horse was beaten comprehensively. Further, a pattern could not be ascertained after just two starts. In relation to this aspect, the Appellant tendered a video by the Chairman of Stewards of Victoria Harness Racing, who expressed an opinion that one would need to consider in the order of 10 races to establish a racing pattern for a horse. This was said to make logical sense as an owner or trainer might try different things with a new horse but it does not follow that he is required to report what he is trying on each occasion. The obligation only arises once the horse establishes a usual racing pattern. If there were no established racing pattern, then there was no requirement under the Rules to advise the Stewards of how he intended to drive the horse, nor that he is trying a different tactic on each occasion. It follows that information given to Mr Edwards regarding how the Appellant intended to race BABY HOUSEMAN NZ was not given improperly. Trainers will try different things with new horses in a bid to ascertain their best racing pattern.

- 14 With a view to obtaining the best possible outcome in both Australian starts, as well as the starts in New Zealand, the horse was driven completely differently. Therefore, it was not open to the Stewards to find that BABY HOUSEMAN NZ had an established racing pattern which required the Stewards to be notified of a change in tactics. The horse simply had no racing pattern as the evidence established the horse was not a leader in New Zealand and had only led in one race in Australia.



- 15 The Stewards erred in finding that in electing to adopt a different driving tactic from that used in either of the horse's two prior starts the Appellant had intended to adopt tactics contrary to the horse's usual racing pattern on the night in question.

RULE 208 - "IMPROPERLY DIVULGING INFORMATION" (Grounds 4 and 5)

- 16 Whether BABY HOUSEMAN NZ did or did not have an established racing pattern had some relevance to the question of whether information was improperly divulged. The Stewards erred in finding that the information provided to the owner, Mr Edwards, in relation to the race in question was conveyed improperly. Owners are always entitled to be kept informed of some confidential matters regarding their horses, which is not available to the general wagering public. This includes general information relating to its race preparation, general physical condition, work, feeling and behaviour. The trainer and the driver may divulge to an owner their assessment of the ability of the field in the event in which the horse is engaged to compete and candid opinion of the most likely main opposition. The same applies to the tactics likely to be adopted by the driver in the race in addition to telling the Stewards if it were a change in tactics under the Rule. When required to tell the Stewards about a change of tactics, it would not be improper to tell an owner about this. Rather he would be required to do so. The conveying to an owner of any such information or opinion was entirely appropriate and in accordance with a contractual duty of disclosure and fidelity owed by a trainer and driver to the horse's owner.

- 17 It was conceded that the unauthorised disclosure of confidential information about a horse to a third party, such as a bookmaker, might well be improper. However, it could never be said that the communication of such information to an owner is improper. It was erroneous for the Stewards to assert that an owner cannot be informed that another runner in the race might have superior prospects to the owner's own horse or to "*tip*" another (non-stable) horse to an owner was improper or contrary to the Rules.

Should a trainer have advised an owner to back the favourite in a race instead of his own horse, this could never be said to be improper.

- 18 The Stewards further erred in their construction of Rule 208 by “conflating and confusing the concepts of ‘*information*’ and ‘*opinion*’”. A trainer’s subjective opinion as to a horse’s particular prospects of winning was not “*information*” for the purposes of the Rule. The Rule did not prohibit a trainer or driver from expressing an opinion to an owner as to the likely outcome of a race even when that opinion is to the effect that another horse in the race may have a superior, better prospect of winning than the owner’s own horse. It is submitted that this could not be prohibited by the Rule
- 19 Although trainers and drivers have no general duty of disclosure to the general public as to their opinions of a horse’s race prospects, or its prospects in relation to any other runner in the event, there may be such a duty in respect of medical treatment or some other factor that may affect performance in the race.
- 20 It is a privilege of ownership rather than being improper for an owner to be in possession of significant information which is not in the public domain as to a horse’s prospects in a race.

RULE 243 - “BEHAVIOUR DETRIMENTAL TO THE INDUSTRY AND ERRORS OF FACT”

(Grounds 6 & 7)

- 21 The appropriate charge was the failure to drive the horse so as to give it the best possible chance of winning rather than engaging in behaviour detrimental to the industry. The former is a serious offence under Rule 149(1), but it was not the subject of a charge. Mr Young had not come prepared to answer nor was he required to meet this charge, although it was reasonably open for the Stewards to make a finding to that effect. The Stewards erred by making findings as to what was essentially a Rule 149(1) offence in a case where no such allegation was charged. Whilst a charge under Rule 149(1) might arise as a result of a driver’s negligence or incompetence, the finding of the Stewards in the present case went beyond a Rule 149(1) misdemeanour, as the

Stewards concluded that there had been a deliberate attempt for a related party's financial gain, to ensure the horse did not win. Absent of any complaint of a transgression under Rule 149(1) the findings and the conviction under Rule 243 were not reasonably open to the Stewards.

22 The Stewards erred in finding as a fact that the Appellant knew Mr Edwards would wager on TELEGRAPH LOVE or that the horse was driven in a way to facilitate the wager by Mr Edwards. Both findings were necessary for the Stewards to be comfortably satisfied of the Appellant's guilt on Count 3. The finding of guilt on Count 3 cannot be sustained unless these findings were correct. If the Appellant did not know as a fact that Mr Edwards had wagered heavily on the horse, then Count 3 must fall away.

23 Count 3 was predicated and particularised based on the fact that the horse was driven in a certain way so as to aid Mr Edwards' wager on the horse. Although it follows that the Appellant must have had some actual knowledge of Mr Edward's wager, the findings are confusing as on the one hand, the Stewards state at page 7 of their reasons:

*whether you had prior knowledge of the bets or not it can be assumed that there would be a highly likely chance that Mr Edwards would be having a bet or bets in the race from the information you provided to him (emphasis added).*

and at page 10, they say:

*The Stewards are satisfied that you at the very least knew Mr Edwards had the intention to bet on TELEGRAPH LOVE with the information provided to him.*

24 It was an error that the Stewards, essentially, appear to have made a finding that the Appellant assumed Mr Edwards would bet or intended to bet on TELEGRAPH LOVE. Such a finding was not open on the evidence nor the only reasonable inference. Merely because the Appellant gave his owner, information about his horse and the race does

not lead to the inevitable conclusion that the Appellant knew he would place or intended to bet on the horse.

25 Mr Young supplied the information to Mr Edwards before the betting markets came out and therefor, before the Appellant knew what the price of each horse would be. In their reasons the Stewards refer in detail to the pricing of the relevant horses in the race. This is of little significance when the information about the race, the assessment of the field and the advice of the intention to take a sit was given before the markets opened. The Appellant did not know if BABY HOUSEMAN NZ would start favourite or TELEGRAPH LOVE would start favourite. Had TELEGRAPH LOVE started favourite the inquiry would not have taken place, as Edwards would probably have wagered on his own horse.

26 There was direct evidence that there was no communication that a bet had been placed. The phone records did not clearly establish knowledge of a bet. This explains why the Stewards only found that there was an assumption or an intention that Mr Edwards would bet. This was not sufficient to sustain Count 3.

27 Absent the finding of actual knowledge of a wager it was not open to find that the horse was so driven as to facilitate a wager that the Appellant assumed Mr Edwards might make. It was incorrect for the Stewards to conclude that the Appellant would effectively "throw" a race on the basis that Edwards intended on placing a bet or on the assumption he would place a bet.

#### MANIFEST EXCESS – (GROUND 8)

28 Although the wording of this ground as originally formulated appeared to be addressing all penalties, Mr Percy clarified at the hearing that the Appellant was challenging the penalties on Counts 2 and 3.

29 Having regard to the age and character of the offender, the prior records of the offender and all the circumstances of the case, the disqualifications were too harsh.

30 Absent comparable cases, it is difficult to assess what the range of penalties are for this type of offending. However, the criminality involved could never warrant the significant penalties of disqualification. Something more than advising an owner, albeit improperly, of the tactics in the race and the best chances in the race warrants such high penalties.

### **STEWARDS' RESPONSE**

- 31 Mr Davies QC went into great detail in responding which he did largely by reference to the transcript of the Stewards' proceedings. The Tribunal was told it was necessary to look at the total picture and that the real story emerged from the report of Mr Styles.
- 32 The close relationship between Mr Young and Mr Edwards was emphasised. Mr Edwards relied on Mr Young for all his information and Mr Young gives Mr Edwards "tips on the horses". It was admitted Mr Young had given Mr Edwards a tip.
- 33 The only betting evidence was to be found in the telephone records. The Stewards were entitled to rely on that evidence and draw conclusions from it.
- 34 Mr Young displayed no interest in driving his horse so as to get close to the eventual winner until it was too late. He failed to make any ground from the turn out of the back straight and into the front straight.
- 35 The impropriety was the fact that Mr Young had told Mr Edwards that it was a two horse race and not to back his own horse.
- 36 The finding that the behaviour was detrimental to the industry was justified based on the betting evidence produced by Mr Styles, coupled with how the race was run as revealed by the film of the race.
- 37 The Stewards could have charged and convicted Mr Young for a breach of Rule 147 as well, but it means nothing that they did not.
- 38 Mr Styles' experience as a Steward from 1979 onwards in a diverse range of senior positions was emphasised. Mr Styles had "watched thousands of films and races".

- 39 The reading of races is far from straightforward. The Stewards relied on Mr Styles' forthright opinion as they clearly were entitled to do.
- 40 All of the findings made by the Stewards in their detailed written reasons were open to them on the evidence.
- 41 The Stewards are the experts and it is their responsibility to evaluate and determine the manner in which this horse raced in its recent starts. It cannot be said that the conclusion which they reached of the drive was not open to them.
- 42 The second charge must be looked at in the context that Mr Edwards, the owner, was told by the driver not to bet on his own horse, but rather to back the other in a two horse race. Nothing could be said that the conclusions were not open to them in all of the circumstances.
- 43 The rule which Mr Young was charged for is far wider than the racing on merits Rule 147.
- 44 To succeed in relation to all charges, it is necessary for it to be shown that the findings are not open on the evidence. The Appellant had not attempted to do so.
- 45 The charges were clearly laid and properly particularised.

## REASONS

### GROUND 1 - 3

46 Rule 44 states:

- “(1) A driver or 1 or more of the connections of a horse intending to adopt during a race tactics contrary to the horse's usual racing pattern shall, as soon as practicable, so notify the Stewards.
- (2) The Stewards may approve or disapprove the change of tactics.

- (3) *In the event of the Stewards approving a change of tactics, then in the absence of exceptional circumstances, the horse shall be driven in accordance with the approved change.*
- (4) *A person who fails to comply with sub-rules 1 or 3 or changes tactics without approval given under sub-rule 2, is guilty of an offence.*
- (5) *For the purposes of determining the usual racing pattern of a horse, the Stewards shall take into account the manner in which the horse has been driven at its most recent starts.*

47 I have given consideration to Ex 17 which was presented by the Appellant being the Victorian Harness Racing Chairman of Stewards' video interview which refers to the need to consider 10 races in order to establish a horse's racing pattern. However, in the light of the wording of sub-rule (5) of Rule 44 together with the circumstances of BABY HOUSEMAN NZ's previous races, I am satisfied that the message in this video interview does not afford the Appellant any assistance.

48 The Stewards clearly did give detailed consideration to the last two starts of BABY HOUSEMAN NZ. Nothing has been advanced to persuade me the Stewards were incorrect in the way they evaluated the race tactics that were employed in this horse's third Australian start compared to the tactics adopted in the previous two starts.

49 The Stewards are appointed to oversee the conduct of races because of their training, specialist knowledge and wide experience of driving tactics. The Tribunal should not lightly accept or adopt someone else's opinion for that of the Stewards when it comes to analysing any race and the quality of any drive. Stewards are very deliberately positioned at vantage points at race courses during the running of races to enable them to view the action first hand from the best possible locations. In addition, they have the benefit of the films of races to enable them to carefully view and review any aspects of a race they may wish to focus on.

50 The evidence in this case clearly establishes that Mr Styles, over a very long and distinguished career as a Steward, has watched thousands of films and races.

Mr Styles enjoyed a perfect live view of the race in question. He also studied the film of the race after it was run. Mr Styles stated at the inquiry:

*“To hand the lead up over 1800 seemed a strange move to me at that point, and I stand by my statement that I didn’t believe that he didn’t try to resist the move in any shape or form. And I’m again concerned as I further watch the video as to why BABY HOUSEMAN NZ after initially pulling out to the outside of TELEGRAPH LOVE didn’t appear to be put under any pressure or full pressure to try and make ground, and I still as I viewed the video felt that around the 100 it appeared to be given rein and it ran on very very strongly.”*

Mr Styles also stated:

*“I watched the race and out of barrier 2 BABY HOUSEMAN NZ was able to lead without any undue effort at all and I was very surprised that .....down the back straight when TELEGRAPH LOVE progressed forward that Mr Young gifted the lead to TELEGRAPH LOVE and made no effort at all to hold that particular horse out. Further watching the race I was a little concerned when I saw Mr Young looking in the front straight on several occasions when racing to receive the bell. He trailed up TELEGRAPH LOVE thereafter and I felt around the 500 metre mark he eased his drive out and it appeared to be travelling very well but then I was concerned as to the fact as to why it would lose ground and didn’t appear to be put under pressure thereafter until the very final I would have thought, near the 100 metres the horse appeared to be allowed some rein, and it ran to the line very very strongly to be beaten 2.5 metres.”*

51 It was put to Mr Young that he generally drove all his horses “quite hard to quite vigorously” ... to which he replied “.... Yes no doubt”. Clearly Mr Young did not do so on this occasion.

52 To justify disturbing Mr Styles’ highly experienced assessment of the race and the panel of Stewards’ adjudication of the inquiry requires establishing there was some glaring



error or obvious mis-judgment in the evaluation of the way Mr Young performed in the race compared to the way BABY HOUSEMAN NZ was driven by Mr Young in its two previous starts. I am satisfied nothing like such an error or misjudgment has been exposed or occurred.

53 I find nothing wrong with the Stewards' conclusions as to the two previous starts as summarised on page 3 of their reasons. I am satisfied the Stewards were entitled to find that BABY HOUSEMAN NZ did have a race pattern which was not adhered to the third time it raced in Australia.

54 For these reasons, I would dismiss grounds 1 and 2 relating to changing tactics without notifying the Stewards.

55 In view of the way BABY HOUSEMAN NZ was raced on two occasions prior to the night in question compared to the race on 16 January 2016, I am satisfied the Stewards were entitled to find there was an obligation on the Appellant to advise the Stewards as to the intended manner of driving on the night in question. Consequently, I would also dismiss ground 3.

#### GROUND 4 - 7

56 Rule 208 states:

*“A person employed, engaged or participating in the harness racing industry shall not divulge information to anyone improperly.”*

There obviously can be no question that Mr Young's role in the industry meets the description contained in the first part of the Rule in terms of the nature of his involvement in the harness racing industry. The evidence before the Stewards established as a fact the Mr Young divulged intelligence as to the prospects of his own horse and the other main contender in the race. Mr Young had told Mr Edwards, the part owner in question, that it was a two horse race. Mr Young dissuaded Mr Edwards from backing Mr Edwards' horse and clearly encouraged Mr Edwards to put his money on the other contender. The Stewards were satisfied that the tactics employed in the

race were designed to help facilitate TELEGRAPH LOVE to win. I have not been persuaded to a different point of view.

57 I have concluded that, in the light of:

- 57.1 the personal and professional relationship which the Appellant enjoyed with Mr Edwards;
- 57.2 the fact that Mr Young divulged to Mr Edwards how he was most likely to race;
- 57.3 the fact that Mr Edwards had regularly sought and obtained Mr Young's advices before placing bets;
- 57.4 the fact that Mr Edwards trusted Mr Young's advices and was known to act on those advices at times in the past;
- 57.5 Mr Young having said it was a two horse race and told Mr Edwards not to bet on his own horse;
- 57.6 Mr Edwards having stood to gain from the advice that was so provided and in fact did gain substantially as a result of the discussion with Mr Young;
- 57.7 Mr Young have driven less than competitively which helped facilitate TELEGRAPH LOVE to win; and
- 57.8 the fact that I too have concluded the drive did not match the previous two starts,

I am satisfied it was reasonable for the Stewards to decide that what was divulged to Mr Edwards by Mr Young was improperly divulged.

58 The Appellant's written submissions in paragraphs 19 to 22 do not suggest that the inside intelligence that was conveyed by Mr Young to Mr Edwards regarding the prospects of the two horses in contention and the tactics to be employed did not or could not meet the description of "information" as that word is used in the Rule 208. I am not persuaded the Stewards wrongly interpreted and applied Rule 208.

59 Despite the fact that the less than genuinely competitive driving employed by Mr Young could have qualified as being a transgression of Rule 147 had Mr Young been so

charged, all of the relevant elements of the misbehaviour did combine to amount to a breach of Rule 243 in my opinion.

60 Mr Edwards was provided with a betting advantage which he was able to realise due to the improper driving employed in the race. The investment of \$4,329 returned \$19,774 to Mr Edwards. I am not persuaded in all of the relevant circumstances that actual knowledge of a wager was necessary for the breach of the Rules to have occurred. The finding as to an assumption or intention in the circumstances sufficed.

61 The industry will struggle to survive if communications such as occurred in this case, coupled with the driving tactics which were employed, are allowed to go unchallenged and unpunished. The betting public is entitled to expect an even playing field, with each horse being driven to give it the best prospects of winning or gaining a place and with no one, not even owners, being provided with information of the type provided in this case which places owners in a superior and improper position compared to the general public punter.

62 That is not to say that I am intending to convey the impression that I consider that trainers and drivers may not supply a wide range of information of an innocuous nature to their owners regarding both their own horses and their competitors. Such innocuous information includes some of the examples provided by Mr Percy in argument such as a horse's physical condition, work rate, feeding, behaviour, ability in the field in which it is competing, the strength of the opposition and tactics to be employed. In this case however, the facts establish that Mr Edwards went beyond these types of usual and innocent things and behaved in a manner which was untoward. Because of its nature, the behaviour in question can only be described as conduct bringing serious discredit and potential damage to the industry. I fully agree with the conclusions the Stewards reached as to the nature of the behaviour as described at pages 4 – 7 of their reasons.

63 For these reasons I would dismiss grounds 4, 5, 6 and 7.

GROUND 8

64 I agree with Mr Percy that absent comparable cases, it is difficult to assess a range of penalties for this type of offence.

65 The conduct complained of regarding divulging and behaving detrimentally was very serious indeed, so much so that it requires both a stern treatment of the offender and a strong message being conveyed to everyone involved in the industry. Clearly fines or suspensions would not suffice here.

66 I believe there is insufficient evidence by way of mitigation in the light of Mr Young's personal circumstances to justify any adjustment to the length of the disqualifications in the circumstances of this heavily contested case. The disqualification penalties imposed by the Stewards were not ordered to be cumulative, rather concurrent. The severity of them is to some degree lessened by virtue of the fact that they were back dated to the date of the suspension.

67 I appreciate a disqualification for 4 years is particularly tough. It would not be appropriate in my opinion to tinker with a penalty for behaviour detrimental to the industry in circumstances where the best judges of the damage to the industry are the Stewards.

68 I am satisfied it has not been demonstrated that the Stewards erred in their assessments of the seriousness of the offences and the consequent punishments which should be imposed. In view of my previous findings and conclusions, coupled with the absence of any compelling argument having been put to support a proposition of manifest excess of the penalties, I would dismiss ground 8.

*Dan Mossenson*

**DAN MOSSENSON, CHAIRPERSON**



**RACING PENALTIES APPEAL TRIBUNAL**

**REASONS FOR DETERMINATION OF MR P HOGAN (MEMBER)**

**APPELLANT:**                      **MICHAEL YOUNG**

**APPLICATION NO:**                **A30/08/791**

**PANEL:**                                **MR D MOSSENSON (CHAIRPERSON)**  
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**DATE OF HEARINGS:**            **8 DECEMBER 2016;**  
**9 FEBRUARY 2017**

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Mr R J Davies QC appeared for the Racing and Wagering Western Australia Stewards of Harness Racing.

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**INTRODUCTION**

1        The Appellant was the driver of **BABY HOUSEMAN NZ**, which ran in Race 9 at Albany on

Saturday 16 January 2016. Also running in the race was TELEGRAPH LOVE. TELEGRAPH LOVE won the race, and BABY HOUSEMAN NZ ran second. A professional gambler, Mr Edwards had spoken to the Appellant in the days before the race. In the end result, Mr Edwards won a substantial amount upon TELEGRAPH LOVE winning the race. Putting it another way, Mr Edwards won a substantial amount upon BABY HOUSEMAN NZ not winning.

2 Mr Edwards was a part owner of BABY HOUSEMAN NZ. And also a long time friend of the Appellant. The Stewards complaint is that Mr Edwards had an advantage over the general betting public, and he got that advantage from the Appellant. Ultimately he Appellant was charged with 3 offences arising out of his conversation with Mr Edwards before the race and out of his drive in the race.

3 The three offences under consideration were referred to in various terms at the inquiry, in the Stewards' reasons, and in submissions on this appeal. I propose to adopt the same interchangeable descriptions here.

4 The Appellant was convicted of an offence against Rule 44 (1), which has been described as "*failing to notify a change of tactics*" (referred to as "*charge 1*"). He was convicted of an offence against Rule 208, described as "*improperly divulging information*" ("*charge 2*"). The third offence was against Rule 243 and was described as "*behaviour detrimental to the industry*" ("*charge 3*").

5 The Appellant was also convicted and penalized for a fourth offence. That was an offence against Rule 91(1)(b), namely carrying out a licensed activity whilst suspended. This offence was committed soon after the second sitting of the inquiry on 1<sup>st</sup> June 2016. This charge is not the subject of appeal.

### **THE GROUNDS OF APPEAL**

6 The grounds of appeal are attached to the appeal notice dated 26 October 2016. They are:-

1. *The stewards erred in finding that the horse Baby Houseman had an established "racing pattern" within the means of the rules*
2. *The stewards erred in finding that the appellant had adopted tactics contrary to the horses usual "racing pattern"*
3. *The stewards erred in finding that there was an obligation on appellant to advise the stewards as to the intended manner of driving the horse on the night in question*
4. *The stewards erred in finding that any information conveyed by the appellant to the owner Chris Edwards in relation to the horse's prospects in the race in question was conveyed improperly*
5. *The stewards erred in their construction of rule 208 by conflating and confusing the concepts of information and opinion*
6. *The stewards erred in finding that the appellant on the night in question engaged in behaviour detrimental to the industry for the purposes of rule 243*
7. *The stewards erred in finding as a fact that:*
  - A. *The appellant knew or should of known that Edwards had or was likely to wager heavily on Telegraph Love; and*
  - B. *That the appellant drove the horse so as to facilitate Edwards wagering on Telegraph Love*

7 The grounds of appeal also complain (generally) that the penalty was manifestly excessive. Ground 8 is in the following terms:

8. *The penalty imposed by the stewards was manifestly excessive having regard to all the circumstances of the case*

## **OVERVIEW OF THE EVIDENCE**

8 BABY HOUSEMAN NZ had been the pre-race favourite. It had been expected to win,

but ultimately ran second. TELEGRAPH LOVE had been on the second line of betting, but won. The Appellant in his evidence said in effect that he never had the same high expectation of his horse that would have justified favoritism.

9 Racing and Wagering Western Australia ("RWVA") Steward and form analyst Mr Styles investigated after the race. On reviewing the race vision, he had concerns about the way BABY HOUSEMAN NZ had been driven.

10 A Stewards inquiry was commenced. At the first sitting of the inquiry on 29 April 2016, Mr Styles' report became Exhibit 8. Mr Styles said in his report:-

*"In my opinion Young was not interested in winning the race but rather made certain that TELEGRAPH LOVE would."*

11 Mr Styles went on to investigate the betting on the race. He reported in Exhibit 8:-

*"Upon investigation into the betting of this particular race it has been revealed that there was significant support for TELEGRAPH LOVE who firmed from odds of \$11 into \$3.70 on fixed odds WA TAB, whilst BABY HOUSEMAN (NZ), the pre-race favourite drifted in the market from \$2.10 to \$2.90."*

*Subsequent examination of betting on this race has found substantial support for TELEGRAPH LOVE by Mr. Chris Edwards a part owner of BABY HOUSEMAN (NZ)...."*

12 Further detail of Mr Edwards betting on the race was given by Mr Styles at the first sitting of the inquiry on 29 April 2016. Mr Styles said at T9:-

*".....and in total the(sic) invested by Mr Edwards on the race \$4,329.00 to return \$19,774."*

13 Mr Styles interviewed Mr Edwards on 20 January 2016 about his betting on the race. The transcript of the interview became exhibit 3 at the inquiry. The following exchange took place:-

*"STYLES            So, all your betting is related to tips from Mr Young?"*



EDWARDS Yes.

STYLES All your betting?

EDWARDS Not all of it, no. I do a lot of bloody, I get a couple of tips from a mate on some gallopers, but trots, yes, he's my main info, I don't know too much about them yet, but I'm learning the ropes.

STYLES Ok. So, when did Mr Young last tip a horse to you?

EDWARDS Would have been three days ago..

STYLES And what.

EDWARDS three or four days ago..

STYLES horse was that?

EDWARDS What's its bloody name. I know it was paying 10's when I got on.  
What was its bloody name.."

14 Mr Edwards gave evidence to the same effect at the first sitting of the inquiry on 29<sup>th</sup> April 2016. He said at T14:-

"EDWARDS Well basically, me and Mic go through each race that my horses are involved in. We identified TELEGRAPH LOVE and BABY HOUSEMAN NZ were pretty much of the two main dangers. I don't really know anything about tactics I'm just a pure numbers man I told Mr Styles I'm a professional gambler. I saw it opened up at \$10's TELEGRAPH LOVE when the way we went through it I was thinking it would be more around I don't know, \$3's \$4's and it ..... just went home .....I expected values .....ever. So I pretty much it into a formula called Kellies Criteria and it pretty much told me to bet as big as possible so I spread everything I could .....Pretty limited on the sites. I would have bet more if I could because, I don't want to sound vain but I got a pretty large

*bank roll to play with from poker and we just don't see opportunities like that in my field ever so I put as many dollars I could on it,*

CHAIRMAN *Ok. And what did Mr Young say regarding that horse, TELEGRAPH LOVE?*

EDWARDS *He just said that BABY HOUSEMAN NZ I think was a little bit over rated at that point and that TELEGRAPH LOVE was definitely the main danger and that is about it really. That's pretty much a couple of chances and saw the numbers and went bezerk on them as you would."*

15 The Appellant himself was interviewed on 21 January 2015, and gave his version of what had been said between him and Mr Edwards. He said at T13 of Exhibit 6:-

STYLES *Tell us about your discussions with Mr Edwards?*

YOUNG *I told him that, same again, she's not much good and that, we would look to take a trail with her this week and see if she could win that way.*

STYLES *And did you discuss anything else with Mr Edwards.*

YOUNG *Yes, a few of the other runners.*

STYLES *Will you explain what you discussed to him, with Mr Edwards to us.*

YOUNG *Oh just, Just who I thought the other chances were.*

STYLES *And who did you think the other chances were?*

YOUNG *I thought TELEGRAPH LOVE would've been the best chance, apart from myself and then the one behind me as well LIGHTS OF GOLD."*

16 The Appellant's reference to "taking a trail" with BABY HOUSEMAN NZ was a reference to driving not in the lead, as he had done on the horse's last race.

17 It was common ground that the Appellant did not tell the Stewards before the race what

his driving tactics were going to be.

18 At the first sitting of the inquiry on 29<sup>th</sup> April 2016, the Appellant did not depart from what he had earlier said in his interview but he characterized his actions differently. He did not accept that he tipped Mr Edwards. At T36, the following exchange took place:-

*“CHAIRMAN Yes. Ok. Just going on to Mr Young, I'll just put this question to you.  
Do you believe it's proper for a driver in a race to tip or tell a person to back another runner in that race?”*

*YOUNG I didn't tell him to back another runner in that race.”*

And at T44:-

*CHAIRMAN Hmm. So here's another question Mr Young. Do you believe there is a potential conflict of interest in a race knowing that you've given info to an owner of TELEGRAPH LOVE to your, or to your connections that you know may have a substantial bet on that race?*

*YOUNG Can I answer your question with another question?*

*CHAIRMAN Certainly.*

*YOUNG Should I in future not speak to owner? Is that where this is getting towards?*

*CHAIRMAN Hmm.*

*YOUNG Should I honestly kept in the dark with their horses?*

*CHAIRMAN Obviously as a driver your main obligations is to give your horse every opportunity to win or best place..*

*YOUNG Which we did.*

*CHAIRMAN but obviously there's not saying that it has happened but obviously there is a potential conflict of interest knowing that if your horse*

*doesn't win your connections may have won a lot of money.*

YOUNG *I had no idea..*

CHAIRMAN *But obviously..*

YOUNG *what he bet or if he bet or..*

CHAIRMAN *But you know he's a better and you know he is a big better..*

YOUNG *..all owners are really.*

CHAIRMAN *Not all owners are.*

YOUNG *But our stable is full of big punting owners. Absolutely 100% no doubt about it.."*

19 After initial evidence at the first sitting, the inquiry was adjourned. It resumed on 1 June 2016, when the charges were laid.

## **THE CHARGES**

20 The charges, and the particulars as formulated by the Stewards, are set out below:-

### "44. Tactics

- (1) *A driver or 1 or more of the connections of a horse intending to adopt during a race tactics contrary to the horse's usual racing pattern shall, as soon as practicable, so notify the stewards.*
- (2) *The stewards may approve or disapprove the change of tactics.*
- (3) *In the event of the Stewards approving a change of tactics, then in the absence of unforeseen circumstances, the horse shall be driven in accordance with the approved change.*
- (4) *A person who fails to comply with sub-rules 1 or 3 or changes tactics without approval given under sub-rule 2, is guilty of an offence.*
- (5) *For the purposes of determining the usual racing pattern of a horse, the Stewards*

*shall take into account the manner in which the horse has been driven at its most recent starts.”*

As to that charge, the Stewards said in the inquiry held on 1 June 2016 at T2:-

*“.....Now the specifics of the charge are that at Albany on the 16th January 2016 in Race 9 on your drive BABY HOUSEMAN NZ you have changed race tactics on the horse by handing up a lead of the field to TELEGRAPH LOVE in the early stages of the event contrary to the way the horse has been driven at its last two race starts without notifying the stewards prior to the event...”*

“208. Improper divulging of information

*A person employed, engaged or participating in the harness racing industry shall not divulge information to anyone improperly.”*

The Stewards gave the particulars of this charge at T7:-

*“The specifics of the charge are that prior to Race 9 at Albany over 1828metres on the 16th January 2016 you Mr Young divulged information privately to owner Chris Edwards that you the driver of BABY HOUSEMAN NZ in race 9 would most likely hand up and take a sit on TELEGRAPH LOVE this was done for the purpose of giving Mr Edwards a betting advantage in the race on TELEGRAPH LOVE a horse tipped to him by you and in doing so divulged information improperly.”*

“243. Behaviour detrimental to the industry

*A person employed, engaged or participating in the harness racing industry shall not behave in a way which is prejudicial or detrimental to the industry.”*

The particulars of this charge were given at T8:-

*“The specifics of the charge are that in Race 9 at Albany on the 16th January 2016 you Mr Young on your drive BABY HOUSEMAN the favourite in the race which was initially leading the field have intentionally handed up the lead of the field to TELEGRAPH LOVE racing in the back straight on the first occasion and in doing so advantaged TELEGRAPH LOVES chances in winning the event. You have also*

*failed to drive out BABY HOUSEMAN until roughly the 100 metre mark, this was done to aid your connections specifically Chris Edwards who had heavily supported TELEGRAPH LOVE. An act which is detrimental to the industry.”*

The Appellant pleaded not guilty to each charge. The inquiry was adjourned again. It resumed on 31 August 2016.

### **THE DEFENCE TO THE CHARGES**

21 On 31 August 2016, the third sitting of the inquiry, the Appellant gave evidence again. A witness was called in his defence, Mr Gary Hall senior. The Appellant was represented by counsel, who made submissions. The inquiry was adjourned again so that the Stewards could deliberate.

22 The Stewards found the Appellant guilty. They communicated their findings and reasons by letter dated 22 September 2016.

### **THE REASONS FOR CONVICTION**

23 In their introduction the Stewards referred to the report of Mr Styles which became exhibit 8 at the inquiry. The Stewards said:-

*“On Summary of the Interview with Mr Edwards in Mr Styles report it is stated that Mr Edwards;*

- *Places bets on information from Mr Michael Young.*
- *Mr Young told Mr Edwards to back TELEGRAPH LOVE, despite Mr Edwards being a part owner of BABY HOUSEMAN NZ.*
- *Mr Edwards placed a bet of \$1500 each way on TELEGRAPH LOVE and did not place a bet on the horse he part owns BABY HOUSEMAN NZ.*
- *Mr Edwards claims all bets are for himself, however at a previous Investigation Mr Young advised that Mr Edwards had placed bets for him.”*

Mr Styles had also earlier said in his report:-

*“In my opinion Young was not interested in winning the race but rather made certain that TELEGRAPH LOVE would.”*

An inference can be drawn that at this early stage of the investigation, the Stewards' suspicion was that the Appellant had deliberately lost the race and that the betting itself was on behalf of the Appellant. There could hardly be a more serious allegation made in terms of race driving. This was however not what the Appellant was ultimately charged with.

#### **CHARGE 1 – RULE 44 – FAILING TO NOTIFY A CHANGE OF TACTICS**

24 During the inquiry, the Stewards reviewed the vision of the Appellant's previous 2 drives of BABY HOUSEMAN NZ, which were its only 2 starts in Western Australia. Much of the evidence concerned whether there was an established racing pattern at all, so as to bring the Rule into play. As to this charge, the Stewards said:-

*“Mr Young you were the driver of the horse BABY HOUSEMAN NZ on the 16th January 2016 in race 9.*

*Your pre-race plan was to hand up to TELEGRAPH LOVE. You had not notified the stewards of your intentions.*

*Your drive on 10th Jan 2016 at Albany you held the lead with BABY HOUSEMAN NZ over a longer distance.*

*Your drive on the 31st Dec 2015 at Albany although you drew the second row you made a 3 wide move in the early stages to find a forward position. But as the pace had strengthened at that stage you restrained to a position in the one out one back. This indicated that you're intentions were to find a forward position even though it did not eventuate.*

*These are your only and most recent starts driving BABYHOUSEMAN NZ, There is no argument that BABYHOUSE MAN has been driven differently on the 16th*

*January. Handing up the lead in the early stages of the event,*

*In the interview with Form analyst T Styles on the 21st January 2016 after the event It was shown It was your intention prior to the race to hand up to TELEGRAPH LOVE. This was not a split second decision made during the race or as a tactical option arising from unexpected or unplanned events that might have been considered by a driver prior to the event or as the race unfolded.*

*This was a race tactic you intended to adopt prior to the race, A tactic which was quite specific and contrary to your last two drives on the 31st Dec 2015 and 10th Jan 2016.*

*This was not the product of unfolding circumstances in a race dictating your actions but rather It was a preconceived plan and deliberate intention to drive BABYHOUSEMAN in this way as was evidenced by the fact that you had informed as much to the owner In advance but not the stewards.*

*In determining the usual racing pattern of a horse, the Stewards shall take into account the manner in which the horse has been driven at its most recent starts. Clearly the tactic you intended to and then adopted were contrary to these recent starts.*

*The Stewards are satisfied the particulars of the charge are met."*

25 The conviction on this charge is challenged by grounds 1, 2 and 3 of the Grounds of Appeal:-

- "1. The stewards erred in finding that the horse Baby Houseman had an established "racing pattern" within the means of the rules*
- 2. The stewards erred in finding that the appellant had adopted tactics contrary to the horse's usual "racing pattern"*
- 3. The stewards erred in finding that there was an obligation on appellant to advise the stewards as to the intended manner of driving the horse on the night in question"*



26 With respect to this charge, I have read the draft reasons for determination of Ms K Farley SC and I agree with her reasons and conclusion.

27 I would allow the appeal against conviction in respect of count 1.

## **CHARGE 2 – RULE 208 – IMPROPERLY DIVULGING INFORMATION**

28 As to this charge, the Stewards reasons for conviction were as follows:-

*“The stewards are satisfied that you have divulged information to Mr Edwards regarding TELEGRAPH LOVE in that you would hand up the lead to that horse in the event. This (sic) a deliberate and premeditated plan that significantly impacted the prospects of the other horse in the event.*

*The Stewards are also satisfied that you tipped Mr Edwards TELEGRAPH LOVE and told him not to back his own horse, It is denied by you throughout the inquiry that you tipped Mr Edwards TELEGRAPH LOVE. But the stewards cannot see it as anything but a tip. You are aware that Mr Edwards bets on your information. In your evidence you told Mr Edwards that TELEGRAPH LOVE would've been the best chance apart from yourself. But you told Mr Edwards not to back your own horse BABY HOUSEMAN NZ. Stewards are satisfied that you told Mr Edwards the horse number and race number of TELEGRAPH LOVE which he says he ran through the Kelly's calculator,*

*This is not a case of a trainer like Gary Hall Snr informing his owners that a runner will simply race with a sit or go forward in a race as argued in the inquiry. These were explicit instructions and information which as the driver you had the ability to apply, and then did. You were the driver of the favourite in the race telling the owner of BABYHOUSEMAN NZ a man you've grown up with in private not to back his own horse but instead back horse number 4 as he intends to hand up specifically to that horse during the race.*

*Mr Edwards now has that inside information from the driver on the favourite in the*

*race which has drawn an inside barrier which lead and attempted to lead at its last two starts that he would change its tactics from its prior starts grab hold and surrender the lead to TELEGRAPH LOVE. This altered completely the complexion of the race.*

*The meaning of 'Mostly Likely' was established as being on the event that TELEGRAPH LOVE made its forward move your plan A, which from its previous form and position was a highly likely outcome. This is a very specific piece of information afforded to Mr Edwards. It wasn't Just a case of informing Mr Edwards that you would take a sit with BABY HOUSEMAN in the event. It was specific as to which horse would essentially be gifted a forward position thereby strongly Improving its prospects of winning, Simultaneously you then tell Mr Edwards to support this other runner, in the first hearing on the 29th April in response to a question as to what horses in that race would you have taken a sit on you state ',and there wasn't a whole lot of other exposed form in the race so when I lobbed the front as I did and didn't know where It was I was quite content to just stay where I was, but Mr Inwood come at me and come at me pretty hard so I reverted back to plan A' This is not Just a trainer simply telling an owner that they were going to adopt a different modest of driving.*

*This was specific that you were going to hand up to TELEGRAPH LOVE a horse you stated was the only other danger in the race. A horse that travels well in a forward position in recent form, in a race over a short distance (which tend to favour the leading horse) a race without a sprint lane.*

*In this race BABYHOUSEMAN NZ was the favourite at \$3 drawn barrier 2 you the driver of that horse. In your own words you thought it was a two horse race an absolute two horse race. This between BABYHOUSEMAN NZ and TELEGRAPH LOVE. How can it be proper for the driver of the favourite In the race to tell Mr Edwards in private not to back his own horse but tip him the only other danger in that race. You have given him the specific race number and horse number of*

*TELEGRAPH LOVE. Then most importantly told him your intention to hand up and gift the leading position in the field too that runner.*

*That is a key piece of information which was given to Mr Edwards in private with very few other people knowing this. This has given Mr Edwards inside information into how the race would be run giving him a great statistical advantage over other punters on the race. This preconceived plan significantly altered the likely outcomes in favour of TELEGRAPH LOVE. At the very least it had the potential to change the complexion of the race and afford an advantage to Mr Edwards over other punters.*

*This is made worse by the fact that you were driving the favourite BABY HOUSEMAN NZ in the race which showed strong gate speed at its last start and had a good barrier position which could control how easily TELEGRAPH LOVE could obtain the lead by simply restraining your drive and letting it take the lead. As it happened TELEGRAPH LOVE was met with no trouble and was simply gifted the lead. The Trainer of TELEGRAPH LOVE Mr Goulden in an interview on the 21st January although he wasn't present at the inquiry commented 'I don't know how it got to the front, or, it got to the front so easily'. In the inquiry you state that 'I thought it was a two horse race absolute two horse race' For a person in private to be told that the favourite in the race would be driven differently to its previous start, hand up to the only other danger in the race as you yourself indicated, that's a very crucial piece of information and would be a major advantage for any punter, The person concerned is clearly going to bet accordingly to attempt to benefit from this Information.*

*You have divulged this information to also help your connections for the purpose of monetary gains. Mr Styles report reveals Mr Edwards had invested \$4329 spread over four betting agencies on the race and returned \$19,774 this was not disputed and was acknowledged by Mr Edwards. Mr Edwards when giving evidence stated 'I put as many dollars as I could on It' and 'Saw the numbers and went bezerk on them' The stewards consider this to be a very large bet particularly on a country RO*

— R1 that sees prize money to the winner of \$1,950. Clearly the value of this information was high as it created great confidence certainly greater than would have been the case without this prior knowledge. You even state in the inquiry that 'if i didn't speak to him he probably would have back BABY HOUSEMAN NZ'

TELEGRAPH LOVE up to this point had not won a race and the odds on that horses were quite good. If you had driven like your run on the 10th January and held out TELEGRAPH LOVE that runner would have been disadvantaged and would have either had to restrain or take a position in the one out line or do more work in the early stages to get to the lead.

Giving out this information to your connections especially tipping other runners in the event also creates a potential conflict of interest for you as the driver in the race. Whilst under R149(1) as the driver of BABY HOUSEMAN NZ you are to give your driver the best chance to win or best place but you now had another interest in the race namely the connections winning a large sum of money if your runner does not win that race. Whilst in the inquiry and interviews you never state that you had knowledge of the bets placed prior to the race but you have known Mr Edwards for a long time and know he is a large punter, you also know you advised him not to back his own horse and you recommended him that other runner. In your interview when questioned by Mr Styles 'So when you call Mr Edwards, when his horse is in, is that the way the situation evolves with him? You reply 'Yes, yes because he likes he likes to have a bet and I didn't want him to back her.' You are also asked 'Ok. And In relation to the horses that you told him, did he indicate to you that he was going to have a bet on them? You reply 'Ah, not, not as such, but I know he does, he does bet, yes', Mr Edwards in his interview states 'Yes well basically I just hound him all week, saying, you got anything for me this week, you got anything.' Clearly someone that hounds you for information wants to bet and after giving him the race and horse number of TELEGRAPH LOVE and informing him of your plans to hand up to that runner what reason is there for Mr Edwards not to bet apart from him

*being busy playing poker or at footy training as he suggests.*

*In the Interview with Mr Styles you comment that Mr Edwards told you how much he had on the horse and that you didn't believe \$1600 each way was a substantial bet for him. In any case whether you had prior knowledge of the bets or not it can be assumed that there would be a highly likely chance that Mr Edwards would be having a bet or bets In the race from the information you provided him.*

*If the betting public knew that a drivers in races were passing on crucial information between only a select group of people as to how the races were to be run especially when a driver has a direct influence on the race itself they would undoubtedly lose confidence in an inconsistent product and turn to other sports or racing. If this type of practice were proper the betting public would not be able to compete against these individuals with this type of inside information and the betting public would eventually lose all confidence that races were being run fairly and the industry would no longer be able to function.*

*As it stands your connection a man you grew up with won a large sum of money on the information you provided him.*

*After considering all evidence in relation to the charge the stewards find you guilty as charged."*

29 The conviction on this charge is challenged by grounds 4 and 5 of the Grounds of Appeal:-

*4. The stewards erred in finding that any information conveyed by the appellant to the owner Chris Edwards in relation to the horse's prospects in the race in question was conveyed improperly*

*5. The stewards erred in their construction of rule 208 by conflating and confusing the concepts of information and opinion*

30 In my opinion, ground 5 has been made out. The particulars, which are in effect the substance of the charge, did not amount to divulging information (emphasis added).

31 The particulars allege that prior to the race, the Appellant had a state of mind, namely an intention. He intended to drive the horse a certain way. Prior to the race, he communicated that state of mind to Mr Edwards. As a matter of statutory construction, a state of mind is not information of the type contemplated by Rule.

32 The Oxford English Dictionary defines information in the following terms:-

*“knowledge communicated or received concerning a particular fact or circumstance; news.”*

Knowledge, in turn, is defined as follows:-

*“acquaintance with facts, truths, or principles, as from study or investigation; general erudition.”*

33 In my opinion, it would strain the construction of the Rule to say that the knowledge which the Appellant communicated was an acquaintance with facts in his mind, which came from and existed nowhere else but in his own mind.

34 There are numerous examples in statutes of the phrase “divulge information”. Normally, it is in the context of prohibiting a person from passing on information which they have received in the course of employment or position. Sometimes the person who passes on the information is lauded as a “whistleblower”. Nowhere has the phrase been taken to mean that a person is prohibited from passing on to another his or her own state of mind, namely intention.

35 The offence if committed took place immediately when the words were said, no matter what those words were. The fact that Mr Edwards acted on the words (even to his advantage) and the fact that the Appellant drove in accordance with his intention were both irrelevant to the charge.

36 The fact of the Appellant telling Mr Edwards of his intention may well have been relevant to the proof or disproof of charge 3, behavior detrimental to the industry. Standing alone, the communication does not amount to proof of the charge of improperly divulging information contrary to Rule 208.

37 I would allow the Appeal against conviction in respect of that charge.

**CHARGE 3 – RULE 243 – BEHAVIOUR DETRIMENTAL TO THE INDUSTRY**

38 In relation to charge 3, the Stewards made a number of factual findings. These include:-

*“As previously stated in charge 2 the Stewards are satisfied that you tipped Mr Edwards TELEGRAPH LOVE.”*

*“Once you’ve seen TELEGRAPHE LOVE make its forward move you have restrained BABY HOUSEMAN NZ and shown no resistance to the challenge gifting it the position a move which contradicts the way BABY HOUSEMAN NZ has been driven in its recent starts especially its last start.”*

*“TELEGRAPHE LOVE has then easily found the lead of the field after you have restrained BABY HOUSEMAN NZ. ....TELEGRAPHE LOVE has then had clear running and has won the race by 2.5 metres to your horse BABYHOUSE MAN running second.”*

*“The Stewards are satisfied that by handing up to TELEGRAPH LOVE in the back straight on the first occasion you have advantaged that runner.”*

*“In regards to falling to drive your horse out until roughly the 100 metre mark. There is no argument that the horse was driven out in the final 100 metres of the race. it being struck with the whip on roughly 16 occasions. But by that time there was little to no chance BABY HOUSEMAN NZ could have beaten TELEGRAPH LOVE home.”*

*“The Stewards prefer our observations during the race and on review of the race footage as well as Mr Style's evidence that you did not place your drive under full pressure and drove your horse with a distinct lack of urgency. The stewards find that there is no evidence that BABYHOUSEMAN was hanging or looped on the lugging pole as suggested by you, It was simply not driven out by you until the final stages in the front straight by then you could only hope to secure your second*

*placed position.”*

39 As to whether the Appellant’s actions were detrimental to the Industry, the Stewards said:-

*“The Stewards find your actions are detrimental to the Industry and have a severe negative Impact on the industry for the following reasons;*

*Firstly the harness industry relies on the betting public and turnover on its racing. Without it, it would not exist. The betting public expects a high level of integrity and fairness in the races they invest in otherwise they would lose confidence in the product and move elsewhere.*

*As a driver on the favourite in the race you have advantaged another runner and then tipped your connection that runner. Knowing that you were going to hand up the lead he has invested heavily and has won a considerable amount of money. Against Individuals with that type of Insider information no public punter could compete and the public would eventually lose all confidence that the races are run fairly,*

.....

*By advantaging TELEGRAPH LOVE you have allowed Mr Edwards to collect almost \$20,000.*

*The stewards are satisfied you had handed up the lead In the event to advantage TELEGRAPH LOVE to aid Mr Edwards to receive monetary gains.”*

40 The conviction on this charge is challenged by grounds 6 and 7 of the Grounds of Appeal:-

*6. The stewards erred in finding that the appellant on the night in question engaged in behaviour detrimental to the industry for the purposes of rule 243*

*7. The stewards erred in finding as a fact that:*

*A. the appellant knew or should of known that Edwards had or was likely to*



*wager heavily on Telegraph Love; and*

*B. That the appellant drove the horse so as to facilitate Edwards wagering on  
Telegraph Love*

41 It is apparent that factual basis for conviction on this charge included the factual basis for the convictions on each of charges 1 and 2. The Stewards used all of the facts in combination in proof of charge 3. By itself, the failure to notify change of tactics may not have amounted to behavior detrimental. Similarly, the communication from the Appellant to Mr Edwards may not have been sufficient proof, nor the drive itself. Each however was a "link in the chain" permitting the Stewards to be satisfied to the required standard of the Appellant's guilt.


42 In my opinion, each of the facts found by the Stewards was open on the evidence and was used correctly in the reasoning process.

43 The Stewards found the Appellant's actions to amount to behaviour detrimental to the industry, for the reasons expressed above. That finding seems to me to be both correct in terms of principle, and entirely open on the evidence.

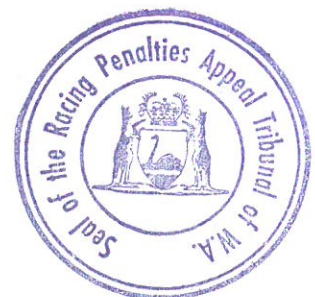
44 I would dismiss the appeal against conviction in respect of charge 3.

#### **APPEAL AGAINST PENALTY**

45 I have read the draft reasons and conclusion of Ms Farley SC in relation to the appeal against penalty. I agree with Ms Farley's determination and I have nothing further to add.



**PATRICK HOGAN, MEMBER**



**RACING PENALTIES APPEAL TRIBUNAL**

**REASONS FOR DETERMINATION OF MS K FARLEY SC (MEMBER)**

**APPELLANT:** MICHAEL YOUNG

**APPLICATION NO:** A30/08/791

**PANEL:** MR D MOSSENSON (CHAIRPERSON)  
MR P HOGAN (MEMBER)  
MS K FARLEY SC (MEMBER)

**DATE OF HEARINGS:** 8 DECEMBER 2016;  
9 FEBRUARY 2017

**DATE OF**

**DETERMINATION:** 13 APRIL 2017

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**IN THE MATTER OF** an appeal by MICHAEL YOUNG against the determinations made by Racing and Wagering Western Australia Stewards of Harness Racing on 23 September 2016, imposing a fine of \$500 and two terms of disqualification of three years and four years for breaches of Rules 44(1), 208 and 243 respectively of the Racing and Wagering Western Australia Rules of Harness Racing.

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Mr T F Percy QC appeared for the Appellant.

Mr R J Davies QC appeared for the Racing and Wagering Western Australia Stewards of Harness Racing.

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**INTRODUCTION**

1 I have read the draft reasons for determination of Mr P Hogan and agree with and adopt those reasons insofar as they summarise the facts of this matter, the evidence at

the various hearings, and the findings of the Stewards. Where I seek to add any further reference to the evidence, I shall do so in my following reasons for determination of the appeal as they relate to the findings of guilt on the three counts faced by the Appellant.

### **REASONS – CHARGE 1**

- 2 The Appellant admitted throughout the enquiry that he has made a conscious decision to employ a different racing tactic to that employed in the two previous starts of Baby Houseman.
- 3 On 31 December 2015 (the horse's first start in Australia) the Appellant sought a forward position but restrained to come out, one back when the pace increased. Although starting as favourite in that race, Baby Houseman finished 8th. It could not be said (and it was not suggested) that at her first Australian start, Baby Houseman had a "usual racing pattern" for the purpose of rule 44.
- 4 On 10 January 2016, the horse's second Australian start, the horse held the lead for a longer period but was beaten into third position. She started on the second line of betting. The favourite in that race, Jet Holme, finished 9th in a field of 10.
- 5 At the inquiry on 31 August 2016 Senior Counsel for the Appellant asked the Appellant what his race plans were for the drive on 10 January. The Appellant answered that his plan was "to sit on Greg Bond's horse, Jet Holme" (page 61 of the transcript). When asked what happened in the race on the 10th, the Appellant responded "I got out of the gate good, Bond's horse didn't really come out very quick, but I expected him to just settle or pop around. That didn't eventuate, so I changed my plan and held the front, there was no other horse in my opinion that was worth sitting on" (page 66 of the transcript).
- 6 (At page 67 of the transcript) the Appellant agreed with Senior Counsel that leading might not be it's (Baby's Horseman's) best chance of winning a race "Because it seems to travel better when it's following other horses".

- 7 The Stewards did not comment on this evidence in their reasons for decision, simply stating, in relation to that race on 10 January 2016, that the Appellant “held the lead with Baby Horseman NZ over a longer distance”.
- 8 Rule 44 obliges connections to advise the Stewards of an intention to adopt during a race “tactics contrary to the horse’s usual racing pattern”. Rule 44(5) obliges Stewards to “take into account the manner in which the horse has been driven at its most recent starts”.
- 9 Senior Counsel for the Appellant at the Tribunal submitted that there was no obligation on the part of the Appellant to advise the Stewards of an intention to adopt a different racing tactic from that used in previous starts unless that tactic was one contrary to the horse’s usual racing pattern. I agree.
- 10 On 31 December 2015, this horse had no “usual racing pattern”. It was its first start in Australia. No evidence was lead in the enquiry or before the Tribunal as to any “usual race pattern” that the horse may have displayed in New Zealand.
- 11 On 10 January 2016, the horse did indeed hold the lead for a distance, but there was unchallenged evidence that that was not the planned tactic of the Appellant for that race. The planned tactic was to follow Jet Holme, the favourite. The tactic changed due to the circumstances of that race.
- 12 Whilst the tactic employed by the Appellant in driving Baby Houseman on 16 January 2016 or the reasons for adopting it may well be relevant to proof or disproof of charge 3, the Stewards erred in finding that there was an obligation on the part of the Appellant to disclose it to them. There was insufficient evidence to show that the horse had established a “usual racing pattern” for the purpose of the rule.
- 13 I would allow the appeal against conviction in respect of that charge.

## REASONS – CHARGE 2

14 I have read and agree with the decision of Mr P Hogan in relation to this charge. I  
would add the following comments.

15 The owners of racing horses, by virtue of that ownership, are entitled to, and regularly  
are, updated and advised of various matters to do with their horse including but not  
limited to:

16 the horse's well-being, preparation or performance at training, and its perceived ability;

17 the trainer or driver's opinion as to a horse's chances of success in a race, and their  
opinion as to the ability of other horses in the field;

18 the trainer or driver's opinion as to whether the owners horse was worth betting on in a  
particular race;

19 the tactics likely to be employed by the driver in a race.

20 It was not in contention in this case that the Appellant told Mr Edwards, a part owner of  
Baby Horseman, inter alia that:

21 he should not, in the Appellant's opinion, bet on Baby Horseman on 16 January;

22 that he would most likely "hand up and take a sit" on Telegraph Love in that race;

23 that Telegraph Love was likely to be the other chance to win the race, also mentioning  
a third horse, Lights of Gold (the eventual third place getter)

24 that generally he was disappointed in Baby Houseman's previous form.

25 The Stewards concluded that the Appellant "tipped" Telegraph Love to Mr Edwards.

Nothing turns upon the word "tip". It is not, on the face of it, improper for a trainer or  
driver to advise an owner as to their opinion of the likelihood of another runner beating  
their horse. Trainers or drivers commonly do so.

26 I agree with Mr Hogan's decision that the communication from the Appellant to Mr Edwards regarding his "most likely" race tactics, so particularised by the Stewards as forming charge 2 is not "information" for the purposes of that rule.

27 I also agree that the circumstances of the Appellant telling Mr Edwards of his intention to "most likely" hand up or take a sit on Telegraph Love may well have been relevant to charge 3. I would allow the appeal against conviction in respect of charge 2 by upholding ground 5 of the appeal. Given my findings as to whether the matters disclosed by the Appellant to Mr Edwards constituted "information" for the purpose of rule 208, it is not necessary to specifically consider ground 4.

### **REASONS – CHARGE 3**

28 I have read the draft reasons of Mr Hogan in relation to this charge and agree with his conclusion that the appeal against conviction should be dismissed. I would add the following comments.

29 Clearly, the charge under rule 243 of behaving "in a way which is prejudicial or detrimental to the industry" is a serious charge. It is also a charge that may result following a very broad range of behaviours. These may include, but are not limited to, inappropriate or disorderly behaviour on a race course or on licensed premises, convictions for criminal offences involving violence or dishonesty, or other behaviours not specifically covered by the Rules of Racing.

30 There is however nothing to prevent a finding of guilt on a charge under the rule where the behaviour complained of may otherwise breach (or not breach) other Rules of Racing. Clearly, the Stewards based their finding of guilt against the Appellant on this charge, at least partially, on the combination of their found facts relating to charges 1 and 2. They also relied upon their findings of fact as to the actual driving behaviour of the Appellant on 16 January 2016.

31 Curiously, in my opinion, the Stewards did not charge the Appellant under rule 148(1) of not driving his horse so as to give it the best possible chance of winning. Clearly, this charge was open to the Stewards, but they chose not to pursue it.

32 Nothing however turns on this. The Stewards are able to charge or not charge, or to charge with particular offences, in their discretion.

33 They chose to charge under rule 243, and to use the facts they found that may have founded a charge under rule 149(1), to prove the rule 243 charge (amongst other facts).

34 Likewise, notwithstanding my decision as to Charges 1 and 2 in this Appeal, the facts relating to those charges were and could be used by the Stewards to establish that Charge 3 was made out to the required standard.

35 The Stewards found that the combination of

1) the appellant advising Mr Edwards:

- a) of his "most likely" race tactic (and not disclosing that tactic to the Stewards);
- b) not to bet on Baby Houseman;
- c) that Telegraph Love as the other main contender in the race;

2) the actual driving behaviour of the Appellant during the race in question, and

3) the fact that Mr Edwards bet heavily on Telegraph Love, the eventual winner consequent upon his discussions with the Appellant, satisfied them that the behaviour of the Appellant was such as to cause prejudice or detriment to the industry.

36 Certainly, any perception that a race was not run on its merits and that a horse was driven so as not to give it the best chance of winning, in circumstances where its connections have heavily backed the eventual winner, is detrimental to the industry where the betting public and racegoers are entitled to believe that races will be run

appropriately and without manipulation. The Stewards findings on this charge, having considered a raft of facts which may not individually offend any other rule or which, considered individually, may not offend rule 248, were open to them on the evidence. There was also no error shown in the Stewards' reasoning process.

37 It is not for the Tribunal on appeal to substitute its own opinion for that of the Stewards. So long as there is evidence on which the Stewards could find the charge proved, this Tribunal cannot interfere.

38 The Stewards found that the Appellant in his conversation with Mr Edwards advised him to back another runner and not his own horse, or thereafter, knowing that it would be likely that Mr Edwards would substantially back that other runner, drove his own race to advantage that runner.

39 As I understand their reasons, the Stewards stopped short of finding that the Appellant (or Mr Edwards and the Appellant), "fixed" the race "corruptly". Rather, they found that the combination of facts found by them may have lead to a perception that this race had not been run on its merits and that Baby Houseman may not have been given every opportunity to win this race.

40 If proved, those facts would act together to constitute behaviour detrimental to the industry. Those were the facts that the Stewards found. The charge was thereby proved.

41 I would dismiss the appeal in respect to charge 3.

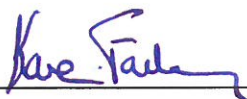
#### **APPEAL AGAINST PENALTY**

42 As a consequence of my decision in relation to charges one and two against the appellant the penalties imposed in relation to those charges fall away, leaving the penalty of four years disqualification on charge three.



- 43 The notice of appeal in this matter contained a ground that appeared to challenge the penalty as a whole.
- 44 In his written submissions in support of (the) appeal, the Appellant at paragraph 51 indicated that the ground related only to the penalty imposed in relation to charge 2.
- 45 At the hearing of the appeal, Senior Counsel for the Appellant advised the Tribunal that the penalties for charges two and three were challenged, on the basis that in all circumstances of the case, those penalties were manifestly excessive.
- 46 Apart from the clarification, neither Senior Counsel for the Appellant, nor Senior Counsel for the Stewards, made any substantial submissions to the Tribunal in relation to penalty, save to advise that no comparable case could be found which would assist in considering the penalty.
- 47 Whilst the Stewards in their reasons of 26 October 2016 refer to several Eastern States decisions, none of those are comparable to the facts of this matter and the Stewards make no comment in their reasons as to the personal circumstances of the person charged.
- 48 The Appellant was 27 years of age at the time the inquiry was concluded. He had held an A Grade drivers licence in the industry for 10 years, has driven horses in about 700 races and was an owner or part owner of a number for Standardbred horses. Whilst previously having held employment as a boilermaker, at the time of the inquiry, he relied solely on income from his involvement in the industry. At the time he was in a de facto relationship with Courtney Birch, a licensed trainer, and the trainer of Baby Houseman.
- 49 Whilst he had had a number of previous fines and short suspensions, the Appellant did not have what could be described as either a lengthy or particularly serious previous history.

- 50 The Stewards have available to them a wide range of penalties following a finding that a charge is proved. These range from reprimands or cautions through to permanent warning off. Disqualification can be permanent, or for a period.
- 51 The consequences of disqualification are wide ranging and can severely impact the everyday life of a person involved in the industry. At page 17 of the transcript of the Stewards Inquiry held on 18 October 2016 the Chairman inquired of the Appellant as to how disqualification would impact his personal circumstances. The Appellant responded "well how doesn't it. It changes my life completely". This is not an exaggeration.
- 52 It is therefore incumbent upon the Stewards to seriously consider the imposition of any period of disqualification and to ensure that that period is of the shortest possible time necessary to reflect the seriousness of the offending and to protect the industry.
- 53 Whilst the conduct of the Appellant seen in its entirety was detrimental to the industry, it was the perception that that behaviour gave rise to in the mind of the public that the race was not run on its merits in the circumstances that was deserving of condign punishment.
- 54 There was no evidence to suggest that the Appellant benefitted personally or financially from the behaviour the subject of this charge. Had there been such evidence that would have substantially aggravated the seriousness of the conduct.
- 55 In the circumstances and given my findings, I am satisfied that the period of four years disqualification for the remaining charge 3 is manifestly excessive, I would allow the appeal against penalty in relation to charge three. I am of the view that a 3 year disqualification would adequately punish the conduct or behaviour of this Appellant, whilst satisfying the need for specific and general deterrence, and would impose that penalty in lieu of the 4 year disqualification imposed by the Stewards.



**KAREN FARLEY SC, MEMBER**

