

RACING PENALTIES APPEAL TRIBUNAL DETERMINATION

APPELLANT: MR GARY EDWARD HALL JNR

APPLICATION NO: 22/971

PANEL: MR P HOGAN (PRESIDING MEMBER)

DATE OF HEARING: 24 FEBRUARY 2022

DATE OF ORAL DETERMINATION: 24 FEBRUARY 2022

IN THE MATTER of an appeal by Gary HALL JNR against the decision of the RWWA Stewards of Harness Racing to impose a 12 day suspension for a breach of rule 162(1)(u) of the Harness Rules of Racing

Mr G Hall Jnr self-represented.

Mr B Lewis appeared for the Racing and Wagering Western Australia Stewards of Harness Racing.

(This judgment was delivered extemporaneously and has been edited from the transcript.)

REASONS FOR DETERMINATION OF MR P HOGAN (PRESIDING MEMBER):

1. In this case, the Appellant is charged with an offence under rule 162 (1)(u) which says that a driver shall not abruptly reduce or check the speed of the driver's horse in a way which could interference or jostling. The charge was put in the particulars at transcript page 9. Under that rule, the Appellant is charged with:

"...racing towards the front stretch received the bell and after crossing Taking The Mickey to lead the event, you've checked the speed of your drive and as a result, runners were interfered with to various degrees."

2. Mr Hall pleaded not guilty. The elements of the offence, as one says in domestic law, are that the Stewards have to be satisfied that Mr Hall checked the speed and then have to be satisfied that that was in a way which could cause interference or jostling. In terms of the interference or jostling it could cause. There is evidence that interference or jostling was caused, namely what's on videos.

3. The Stewards were well entitled to be satisfied of the fact that there was interference or jostling. The question in this case was crystallised at page 10. The meaning of the word "check" is the suddenness. It might be that the two things mean the same thing. I appreciate that the Stewards charged the Appellant with "check". The dictionary definition of "check" is "to stop or arrest the motion of suddenly". The phrase "abruptly reduced" means exactly the same thing as "check" and why the draftsman has written it twice, I don't know, but he did, or she did.
4. The Stewards say there was suddenness. The Appellant at page 10 and here today used many different phrases: "eased the pace, bring the pace off, slow down," In everything he said, he didn't accept any suddenness which is what's required by the rule. Suddenness, that's what's involved in the word, "check." I find that there was not sufficient evidence to the high standard required in *Briginshaw* to find that there was any suddenness in Mr Hall's action in, to use a neutral term, slowing the pace.
5. I'm fortified in all of that by some of the other phrases used along the way by the Stewards and I'm not being critical of the Stewards, but this is what was said along the way. In the transcript at page 1, "*You've gone to the front and the pace has eased.*" Mr Voak said he slowed his horse down. None of those things involve suddenness. The Stewards at page 4, as part of going through the facts put to the Appellant that he reduced the pace - so far, no suddenness.
6. The chairman at page 6, "*You have relaxed it, you've relaxed the pace.*" These phrases all don't have to do with suddenness. Until one gets to the charge itself where the Stewards say, "*Checked.*" In explaining page 10 to Mr Hall, the Stewards go back to, "Reduce the pace," and again, no element of suddenness in the language used. Again, at page 14, by way of explanation.
7. In giving these reasons, I don't want to appear as if I'm nit-picking in the sense of, "Choose your words wisely, otherwise you'll be taken to the sword or put on the sword," but the choice of language is something I do take into account. I also take into account the fact of the differing explanations put by Mr Hall, both at the Stewards and here. The fact that there was no physical taking hold and Mr Lewis seems to accept that today and quite correctly in my view, and I suppose Mr Lewis puts it well, in the sense of Mr Hall being the top trainer doesn't actually have to do that to slow things down, which is fair enough. But he didn't take hold.
8. Mr Voak was in a bit of trouble at that time himself and that's an alternative to why interference - if I can use that phrase - occurred down the line. So, I'm taking into account the language used, what Mr Hall puts up and I find that there's not sufficient evidence at the required high standard to find checking. The dictionary meaning of check is, "Suddenly arrest the motion of." So, I allow the appeal against conviction. I set aside the finding of guilt.

P. J. Hogan

PATRICK HOGAN, PRESIDING MEMBER

