

RACING PENALTIES APPEAL TRIBUNAL DETERMINATION

APPELLANT: MR GARY HALL Jr

APPLICATION NO: 23/147

PANEL: MR ROBERT NASH (CHAIRPERSON)

DATE OF HEARING: 20 JANUARY 2023

DATE OF DETERMINATION: 25 JANUARY 2023

IN THE MATTER OF an appeal by GARY HALL Jr against a determination made by Racing and Wagering Western Australia Stewards of Harness Racing to impose a 12 day suspension for breach of Rule 163(1)(a)(iii) of the Rules of Harness Racing

Mr Gary Hall Jr self-represented.

Mr Brad Lewis represented the Racing and Wagering Western Australia Stewards of Harness Racing.

INTRODUCTION

1. Gary Hall Jr appealed against the decision of the RWWA Stewards finding him guilty of causing interference in breach of Harness Racing Rule 163(1)(a)(iii), the particulars being that in Race 4 at Gloucester Park on 6 January 2023, Mr Hall allowed his drive, MOONLITE DRIVE, to shift up the track at the turn into the front straight on the final occasion when not clear of the horse WHATABRO and contacted that gelding's hind leg causing it to break gait and lock wheels with GALACTIC STAR.
2. Mr Hall was suspended from driving for 12 days as a result of the breach, of which 6 days were ordered to be served concurrently with another suspension he received for another incident occurring earlier in the same Race. Mr Hall's effective penalty was therefore 18 days suspension.
3. The appeal was heard by the Tribunal on 20 January 2023.
4. On 25 January 2023, the Tribunal notified the parties that the appeal had been allowed, meaning that Mr Hall's total period of suspension was reduced by 6 days, being the 6 days which he would otherwise have had to serve cumulatively on the other penalty he had received.

REASONS FOR DECISION

5. These are the reasons for allowing the appeal.

6. Rule 163(1) is in the following terms:

“163. Offence relating to matters during the race

(1) A driver shall not: -

- . (a) cause or contribute to any (amended GG 13/05/16)*
 - (i) crossing*
 - (ii) jostling*
 - (iii) interference;”*

7. Relevantly to the circumstances of this case, the interpretation and application of Rule 163 requires that it be read together with Local Rule 164 and having regard to the published guidelines which allow a driver of a horse on the inside to ease out in order to obtain an improved position in the latter stages of a race. The integrity of harness racing is promoted by seeing the best performing horses featuring in the finish and reducing the incidence of the better performing horses being boxed in by slower horses on the outside during the closing stages of a race.

8. Local Rule 164 is in the following terms:

“LR164. Changing Positions (Easing Out)

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

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

(b) the driver does so prior to entering the front straight with one lap of the race to run, and the other horse is not maintaining or improving its position,

and provided that the driver does so only to the extent necessary to obtain an improved position for the driver’s horse.

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

9. RWWA have published guidelines to assist drivers better understand what is expected of them when an inside horse is easing out.

“1.2 GUIDELINES FOR ASSESSING LR164 INCIDENTS

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

Under LR164(2) a driver must comply with all Rules other than R163(1)(b). It is expected however, that all drivers make forward moves with safety to ensure that their own drive and all other horses in the field obtain the best possible finishing position.

It is therefore imperative that any driver intending to change position and ease another horse and driver wider is fully aware of the positioning of their own drive relative to the horse and driver being eased wider. The driver initiating the move must always exercise due care and afford sufficient time to the other driver and horse to react to the move by only moving outwards when in a position to do so and in a gradual and reasonable manner without moving suddenly or abruptly. To achieve this requirement, the driver initiating the move must exercise the utmost care and have a clear advantage prior to commencing it. Head-to-head movement is discouraged as any undue pressure or jostling may result in action being taken.

For the Ease Out Policy to work effectively, the driver of the horse being eased out must also exercise due care and not resist the move when not in a position to realistically do so.

In circumstances where the driver initiating the move does so according to this policy, the driver being eased wider is expected to react by moving wider as endeavouring to resist such movement when not in a position to realistically hold the position is likely to result in action being taken against them under the rules in the event of an incident and interference resulting to either horse.

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

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

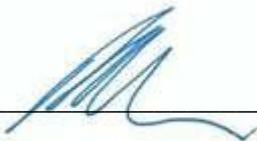
- The driver attempting to shift ground does so suddenly or abruptly, or his horse over-reacts when being taken outwards, leaving the driver of the horse he is attempting to shift insufficient time to react to the move,*
- The driver of the horse being eased fails to react to the move or attempts to resist the move when not in a position to realistically do so,*
- The horse being eased out does not respond to its driver's efforts.*

Any assessments by the Stewards in relation to interference will be determined on the merits of each particular case, having regard to the Australian Harness Racing Rules, the degree of care being exercised by each driver, all of the above factors and any other relevant considerations that may apply. It is entirely reasonable for a driver easing outwards with a clear advantage to expect the move to be completed without incident. If an incident occurs in those circumstances it is highly probable that either the actions of the horse or driver being eased wider were significant factors."

10. The incident the subject of the interference charge in this case took place at the turn towards the front straight on the final occasion.
11. Mr Hall was easing his horse, MOONLITE DRIVE, out in order to gain a better position for the run to the finish. He had an advantage over the horse immediately on his outside, being Mr Voak's horse, WHATABRO. Mr Voak's horse, in turn, had an advantage over the horse on his outside, being Ms Roberts' horse, GALACTIC STAR. Mr Voak initially went with Mr Hall's move, but then stalled his horse's outward movement.

12. There was no issue that the easing out by Mr Hall was gradual and not sudden.
13. The Stewards found that as Mr Hall eased out, his sulky came into contact with the hind leg of Mr Voak's horse, WHATABRO. The Stewards found that Mr Voak then reacted after the contact was made to his horse's leg, which resulted in it breaking gait and the locking of wheels with GALACTIC STAR.
14. The Stewards based their finding that Mr Hall caused the interference on their factual finding that Hall's sulky wheel came into contact with Mr Voak's horse's leg.
15. It is not entirely clear from reading the transcript, whether the Stewards considered they could actually see the contact with the horse's leg occur or if they inferred it from what they could see on the vision. The video footage did show that Mr Hall's sulky wheel was in a position of close physical proximity to Mr Voak's horse's left hind leg and also the manner in which Voak's horse reacted.
16. Mr Hall did not accept there had been actual contact between his sulky wheel and WHATABRO's hind leg.
17. Mr Voak did not give evidence that Mr Hall's sulky wheel came into contact with his horse's hind leg. There was no reported injury or vet check of WHATABRO after the race.
18. Mr Voak is an experienced reinsperson. His evidence was that he would have been able to shift out if Ms Roberts had shifted her horse, GALACTIC STAR, as desired. Her failure to do so, was the reason he gave for why he had to check his horse. Mr Voak said that he *'had to stall a little bit, so it probably made it look a bit worse than maybe what it was'*. In Mr Voak's view, the incident was caused as a result of Ms Roberts' horse not easing out. Mr Voak at T8.5 said he did not see any problem with Mr Hall's move and had expected that it was coming. He did not accept the proposition put to him that Mr Hall was not clear to make the move.
19. Mr Voak's view at T36 was that his horse's observed reaction on the video was as a result of his taking it on the right rein. My review of the footage indicates that the horse's reaction occurred at the same time Mr Voak pulled on the right rein.
20. Mr Hall called Mr Chris Lewis to give his views of the incident. Mr Lewis is by reputation, the pre-eminent reinsperson in Western Australia and one of the best in the nation.
21. Mr Lewis at T55, said that on his interpretation of the rules and guidelines, when the inside horse has an advantage, the outside horse has an obligation to move up the track and not hold its position. If the outside horse holds its position, any contact is the fault of its driver unless the move has been sudden in which case the onus falls back on the driver of the inside horse. Looking at the vision, Mr Lewis said he did not consider the move was abrupt. He said that Mr Voak, although initially going with the movement, stalled and allowed Mr Hall to tighten up on him. Mr Lewis said that *'you're always in a position similar to these (sic), especially in the last lap where a horse is going to push off and if you're not in position to hold itif you're back further than that, you've just got to go with the movement.'*
22. I have carefully and repeatedly viewed all of the footage of the incident that was available to the Stewards including the Hawkeye footage.

23. I am unable to observe contact occurring between Mr Hall's sulky wheel and WHATABRO's hind left leg. It seems that the finding of contact has been inferred by the Stewards based on their observations of the physical closeness between the leg and the wheel of Mr Hall's sulky and the horse's reaction.
24. The finding of physical contact with WHATABRO's leg causing it to break gate, was a material element to the Stewards' finding that Mr Hall had caused the interference.
25. In my view, although it is possible that there was contact, the finding of contact was against the weight of the evidence.
26. Neither Mr Hall nor Mr Voak said they witnessed or were aware of there being contact with the horse's hind left leg. There was no reported injury to the horse.
27. Mr Voak's evidence was that his horse's reaction (which occurred when Mr Hall's sulky wheel was close to the hind leg of WHATABRO) was as a result of him pulling on the right rein as things got tight.
28. In reaching my decision that the appeal should be upheld, I have been mindful that this Tribunal is not to merely substitute its own opinion for that of the Stewards, but must be satisfied, before allowing an appeal, that the Stewards' decision was based on a legal or factual error or was plainly unreasonable.
29. I have found that the Stewards finding was based on a finding of fact that in my view was not supported by the evidence. I have undertaken very close and repeated scrutiny of the video footage and am unable to detect there being actual contact made between Mr Hall's sulky wheel and WHATABRO's hind leg. Further, neither Mr Voak nor Mr Hall gave evidence of there being any contact with the horse's leg.
30. Accordingly, on that basis, I allowed the appeal.



ROBERT NASH, CHAIRPERSON

