

RACING PENALTIES APPEAL TRIBUNAL DETERMINATION

APPELLANTS: MR BROCK WILLIAM JOHNSON

APPLICATION NO: 24/2772

PANEL: MR ROBERT NASH (CHAIRPERSON)

DATE OF HEARING: 16 April 2024

DATE OF DETERMINATION: 17 April 2024

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**IN THE MATTER OF an appeal by BROCK WILLIAM JOHNSON against a determination made by the Racing and Wagering Western Australia Stewards of Harness Racing to impose a 21 day suspension for breach of Rule 149(2) of the Rules of Harness Racing**

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Mr Johnson self-represented with assistance from Ms Tenille Smith.

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

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Summary

1. For the reasons which follow, the Appellant's appeal against conviction for breach of Rule 149(2) of the Rules of Harness Racing ("Rules") is dismissed.

Reasons

2. Brock William Johnson ("the Appellant") is a RWWA licensed reinsperson and trainer of Harness Racing horses.
3. On 8 April 2024 at Pinjarra Paceway, the Appellant drove YANKEE DELIGHT in Race 6 ("the Race").
4. YANKEE DELIGHT came last in the Race.
5. YANKEE DLIEGHT had not been placed in 19 of its last 20 starts. The horse started the Race with odds of 101 to 1.
6. After the Race, the Stewards charged the Appellant with a breach of Rule 149(2) of the Rules.

7. Rule 149(2) provides: "A driver shall not drive in a manner which in the opinion of the Stewards is unacceptable."

8. In this instance, the Stewards were of the opinion that the Appellant had driven YANKEE DELIGHT in an unacceptable manner in the Race. The particulars were that during the Race:

*"...after being positioned in the 3 wide line towards the rear of the field, on racing into the back straight on the first occasion, [the Appellant has] then elected to travel into a 4 wide position and continue to race forward challenging OUR EAGLE BAY driven by Trent Wheeler for the outside leader's position, until racing out of the back straight on the first occasion, when there wasn't a realistic chance of the Appellant obtaining a position outside the leader. [The Appellant] has then elected to remain in the 3 wide position for the remainder of the event, causing [his] drive to tire and giving ground from the 200 metres to the finish in last position."*

9. The Stewards in finding the charge made out, said a page 14 of the Inquiry Transcript:

*"...We find that by remaining in the 3 wide position for the majority [of the Race] and challenging when you have and a lead time set, gave your horse no realistic chance of racing competitively.*

*The former racing pattern of the horse also indicates it's not capable of this type of work. The horse has restrained and found positions in the rear in its past and there is no indication that the horse must travel forward in this company or distance."*

10. The Appellant argued that the Stewards opinion was unreasonable. The Appellant said the horse in this case was deliberately driven forward seeking to place it in the breeze position after consultation between the Appellant and the trainer prior to the Race. Going forward was considered to be the horse's best chance, since it did not have the turn of speed to get past other horses in the final stages of the Race but did have the capacity to maintain pace if it was towards the front at the end of the field.

11. The Appellant said that the pace of the Race in the first quarter was slower than it should have been which made it difficult, in any case, to pull the horse back into a covered position after it had got out towards the front but unable to get into the breeze position. As a consequence, the Appellant said he made the strategic decision to keep the horse in the position it was. The Appellant said he believed the horse could have featured in the finish if the sprint had not come as early as it did, namely about 1000m from the finish. As a result of being 3 wide, the horse eventually began to tire and ultimately finished last.

12. Mr Lewis for the Stewards responded by saying that the Stewards were of the view that the horse was being driven outside its comfort zone. The Stewards considered that there was no practical chance that by being driven in the manner that it was, the horse would get to where the Appellant wanted it to be. The Stewards said that when the horse's prior form was looked at, it did better when it ran from the middle to rear of the field and had cover.

13. The four Stewards who presided at the Inquiry had between them many years of combined experience in harness racing. They were unanimous in their opinion that the Appellant's driving was unacceptable.

14. This Tribunal has on numerous occasions emphasised that it matters not what the Tribunal's opinion is of the driving when dealing with an appeal against a conviction under Rule 149(2). The relevant question for the Tribunal is whether, armed with all of the material facts, no reasonable body of Stewards could have reasonably reached the opinion that the drive in question was unacceptable.
15. The Appellant has not established that the Stewards made any material factual errors in undertaking their consideration. After the Appellant's submissions were made, I inquired of Mr Lewis if there were any new matters raised by the Appellant during the course of the appeal hearing which were material to the opinion that was formed by the Stewards. Mr Lewis indicated that there were not.
16. The appeal is directed to the reasonableness of the Steward's opinion. The Appellant must establish that no reasonable Stewards could have reasonably reached the opinion that the drive was unacceptable. It is a high hurdle for the Appellant to overcome.
17. Judging the quality of a drive in a harness race is a technical task which requires considerable understanding, knowledge and experience of the Harness Racing industry and its participants. The Stewards, by reason of their knowledge, experience, and presence at the track, are clearly best placed to assess the quality of a drive and reach a view as to whether it was acceptable or unacceptable.
18. I have a degree of sympathy for the Appellant. It is apparent that he genuinely considers that the planned drive of YANKEE DELIGHT and the decisions made in the course of the Race, were appropriate and made for sound reasons. With the assistance of Ms Smith, he presented a clear and well-argued appeal.
19. Ultimately, however, I am not satisfied that the Appellant has overcome the considerable hurdle he faces in persuading me that no reasonable Stewards could reasonably have reached the opinion that the Stewards in this case did.
20. The appeal must, accordingly, be dismissed.



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**ROBERT NASH**  
**CHAIRPERSON**