

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: DAVID ROBERT YOUNG
APPLICATION NO: A30/08/620
PANEL: MR D MOSSENSON (CHAIRPERSON)
DATE OF HEARING: 14 OCTOBER 2004
DATE OF DETERMINATION: 14 OCTOBER 2004

IN THE MATTER OF an appeal by David Robert Young against the determination made by the Racing and Wagering Western Australia Stewards of Harness Racing imposing 14 days suspension for breach of Rule 163(1)(a) of the Rules of Harness Racing.

Mr G M Tindale was granted leave to appear for the appellant.

Mr W E Sullivan appeared for the Racing and Wagering Western Australia Stewards of Harness Racing.

Background

This is an appeal against conviction.

Following the running of Race 1 over 2170 metres at Pinjarra on 4 October 2004, Mr M Wilson, the driver of the third placed runner SPORTSMAN IMAGE, lodged an objection against the second placed runner, KINNEY BE driven by Mr D Young. Mr Wilson alleged interference racing to the winning post on the final occasion. After hearing from both drivers and viewing the race patrol films, the Stewards dismissed the objection.

The Stewards then commenced an inquiry into the incident. As a result of the inquiry a charge was laid by the Chairman of the inquiry in these terms:

'After considering all the evidence thus far, viewing the official films and from the observations of the Stewards, Mr. Young the Stewards are issuing a charge against you under the provisions of Rule 163(1)(a) and I will just read you the rule. A driver shall not – (a) cause or contribute to any crossing, jostling or interference. What the Stewards are charging you with is causing interference to Mr. Wilson's horse SPORTSMANS IMAGE at about the 50 mark when you have shifted away from the pegs towards the one wide line in attempting to obtain a clear run you have contacted the near foreleg of Mr. Wilson's horse causing that horse to be checked and raced rough at that point. Do you understand what you are charged with and where it occurred?'

After acknowledging that he did understand the charge Mr Young pleaded not guilty. The following exchange then took place between the Chairman and the two drivers who were called to the inquiry:

'CHAIRMAN To you Mr. Wilson, what caused your horse to be checked at that point?

WILSON It was just contact made by Mr. Young's shaft on the side of the horse.

CHAIRMAN So it wasn't his leg with the wheel?

WILSON No, no, no.

CHAIRMAN I am sorry I have misunderstood that. I thought when you said there was contact, that there was contact with the wheel to the leg.

WILSON As he has come underneath me I caught sort of the cross bar

YOUNG here underneath the wheel

WILSON Yeah, sort of outside the wheel and the shaft. He came out on an angle.

CHAIRMAN So what you are saying really, your horse was bumped at that point, went shaft to shaft.

WILSON No, no the shafts went up, he was slightly forward so the shaft went under me and into the horse. The shaft made contact with the horse. It is just the angle he was on. I mean, because he was coming out it sort of hit the front shoulder as he has got underneath me then I have been galloping on his wheel.

CHAIRMAN Would you agree or disagree that it was a movement of Mr. Young that caused your horse to be checked at the point.

WILSON I would agree.'

Later in the inquiry Mr Wilson stated at T4:

'Just in regards to the home straight, I mean my horse was sort of hanging down, he was tired at that stage and hanging down as well. When Mr. Young has asked his horse to come out it does come out rather quickly, just one stride and he was underneath him. I do think he caught Mr. Young unawares. I mean it was a catch 22, I was sort of tiring and trying to hold the position on. I'm probably just as silly as Mr. Young, we both tried to do the wrong thing.'

And at T5 Mr Wilson also said:

'But he couldn't get a clear run without interfering with me so long as I stayed where I was which I was under the impression that as long as I hold my racing line and don't veer right or left I can stay in my position if I could have held him there and good luck to me.'

When the inquiry resumed Mr Young (Snr) and the appellant, Mr Young (Jnr) attended. Mr Young (Snr) is the trainer of KINNEY BE. The Chairman stated:

'Just to bring you up to the stage of the inquiry Mr. Young (Snr) you wish to sit in to assist your son in this matter which the Stewards are quite happy for you to sit in. We do believe that young drivers do need some assistance sometimes and throughout the course of the inquiry the Stewards have issued a charge against your son for causing interference. During the course of the inquiry I misunderstood Mr. Wilson when he said that he was contacted, I thought he meant that his front leg was contacted however, after we had laid the charge Mr. Wilson advised the Stewards that the shaft had gone under his shaft and made contact with the horse, it wasn't his foot so what we are doing Mr. Young (Jnr) we are withdrawing that charge of causing interference however, we are still going to issue a charge under the provisions of Rule 163(1)(a) which states, cause or contribute to any crossing, jostling or interference and what the Stewards are now charging you with is causing crossing and that crossing occurred at approximately 50 metres from the finishing line when changing your position from the position closest to the pegs towards the one wide line to obtain a clear run inside of Mr. Wilson's horse SPORTSMAN IMAGE which was checked at that point.'

Rule 163(4) states:

'A driver who, in the opinion of the stewards, fails to comply with any provision of this rule is guilty of an offence.'

Rule 163(5) states:

'For the purposes of sub rule (1) "crossing" occurs when a driver changing the position of the driver's horse, compels another runner to shorten stride or the driver of that other horse to pull out of its stride.'

The appellant pleaded not guilty to this new charge.

In summary, the evidence given by both the appellant and Mr Young (Snr) in answer to the charge was to the effect that:

- Mr Wilson's horse had hung down
- KINNEY BE had ducked out
- Mr Wilson was trying to hold his position
- KINNEY BE was green and had a propensity to race erratically

The Chairman announced the Stewards' findings as follows:

'We have discussed the incident and we do believe that if Mr. Young Jnr, if you had not have shifted the interference wouldn't have been there, or the crossing wouldn't have been there to Mr. Wilson's horse and we do believe that the charge should be sustained. The interference was as a result of your movement outward. We don't believe that the horse had a bearing on it, that the horse ducked out, and we are of the opinion that the horse was steered out by yourself and when the contact was made you then tried to rectify the error but, it was too late.'

Mr Young lodged a Notice of Appeal on 5 October 2004 and was granted a stay of proceedings until midnight on Thursday, 14 October 2004 or as otherwise ordered.

The ground of appeal is:

'I believe I was penalised for an incident which I feel was caused by the horses racing manners.'

After hearing submissions from both Mr Tindale and Mr Sullivan I granted Mr Young permission to speak to enable him to explain why he believed his horse had been responsible for causing the incident by overreacting.

I was not persuaded by the arguments in support of the appeal. I dismissed the appeal. The suspension of operation of the penalty ceased to apply.

I now set out below my reasons.

Reasons

Mr Sullivan in replying to Mr Tindale's arguments persuaded me in the circumstances of this matter that whilst Mr Young was entitled to hold his line he could only shift out with care and provided he did not interfere with others. According to Mr Sullivan the integrity of harness racing would be compromised if Mr Young were allowed to drive the way he did with impunity at the time the incident occurred. The crossing rule 163(1)(a) is very clear. The definition of crossing, quoted above, does not leave much room for doubt.

The Stewards were entitled to conclude that Mr Young had come out under Mr Wilson and had checked Mr Wilson's horse. Mr Sullivan emphasised a statement made by Mr Wilson in the inquiry at T5 line 28 where he stated:

'But he couldn't get a clear run without interfering with me so long as I stayed where I was which I was under the impression that as long as I hold my racing line and don't veer right or left I can stay in my position if I could have held him there and good luck to me.'

This statement clearly supports the conclusions reached by the Stewards.

I was not persuaded Mr Young's horse was so wayward as to have caused the incident. Rather the Stewards were entitled on the evidence to reach the conclusion that Mr Young had shifted position and that the movement out caused crossing. The crossing which flowed from the movement out clearly constituted a breach of the Rule.



DAN MOSSENSON, CHAIRPERSON

