

**REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL**

APPELLANT: MARTIN WILSON
APPLICATION NO: A30/08/628
PANEL: MR D MOSSENSON (CHAIRPERSON)
DATE OF HEARING: 12 JANUARY 2005
DATE OF DETERMINATION: 12 JANUARY 2005

IN THE MATTER OF an appeal by Martin Wilson against the determination made by the Racing and Wagering Western Australia Stewards of Harness Racing on 13 December 2004 imposing 28 days suspension for breach of Rule 168 of the Rules of Harness Racing.

Mr M Rayner was granted leave to appear for the appellant.

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

After having heard arguments presented in relation to this appeal, as to both conviction and penalty, I dismissed the appeal. I now publish my reasons.

Following the running of Race 6 over 2500 metres at Gloucester Park on 13 December 2004, the Stewards opened an inquiry into the driving tactics adopted by Martin Wilson (GOLDEN LIGHTS). GOLDEN LIGHTS, which is trained by the appellant, started at \$6.00 and finished 6th in the field of 10. The horse was beaten by 26.4 metres.

At the outset the Chairman of the inquiry, Mr Sullivan, stated:

'In Race 6 "The Collex – Refractories Stakes" you were the driver of GOLDEN LIGHTS and as you raced from the Stewards tower at the winning post probably two laps out when you got to the winning post two laps out you started to let GOLDEN LIGHTS run along and then racing probably to the 1200 I see you rein the horse up and felt you may have given the horse a tap with the whip and you have opened up a bit of a break on the rest of the field and then as you got into the turn, probably about the apex of the turn or a little bit further you have then turned you have turned the whip back over your arm which indicated to me that you may well have mistaken the laps.'

After hearing Mr Wilson's explanation, viewing the race film and receiving a report from the course veterinarian, the Chairman of the inquiry announced a charge as follows:

'Mr. Wilson the Stewards have given this matter a fair bit of thought and do believe that at the end of the day, after considering all the evidence and viewing the films and from the observations of the Stewards you do have a charge to answer under the provisions of Rule 168 which is headed up Careless Driving and part one of that Rule "a person shall not before, during or after the race drive in a manner which in the opinion of the Stewards is careless, reckless, incompetent, intimidatory, improper, foul or likely to endanger persons or horses". Now the part of that Rule that we are concerned with is the careless part of it. We do believe that in our opinion that you have been careless and have mistaken the laps.'

Mr Wilson pleaded not guilty to the charge. In the event the Stewards found the charge was sustained. In announcing penalty, the Chairman stated:

'Mr. Wilson under all the circumstances the Stewards do believe that the appropriate penalty is a 28 - day suspension of your driver's licence and that will take you up to and including the 10th January, 2005.'

Mr Wilson lodged a Notice of Appeal on 15 December 2004 and was granted a stay of proceedings until midnight 11 January 2005 or as otherwise ordered. The grounds of appeal are:

'I believe that the suspension was not correct and refute totally the findings of the Stewards. The evidence presented does not substantiate the finding of the Stewards. Penalty is manifestly excessive.'

A wide range of arguments were presented on Mr Wilson's behalf as to the conviction including the fact that:

- GOLDEN LIGHTS was a difficult horse which had dropped the bit when out front in the race.
- The lap times substantiated the veracity of the appeal.
- The driving was not an act of carelessness but rather only slight misjudgement.
- The temperature at the relevant time was hot and sticky and this horse, which trains early, was suffering from heat exhaustion during the race.

- The horse switches off out front.
- The laps were not miscounted.
- Mr Wilson drove a good race based on his past performances in the last 12 months in which he had won four times when driving from the lead.

As to the penalty issue I was presented with more details of Mr Wilson's personal circumstances, including his earnings from driving and family situation.

In response Mr Sullivan posed the following questions:

- 1 Why did Mr Wilson let his horse start to run from the mile?
- 2 Why did Mr Wilson hit GOLDEN LIGHTS with the whip at 1200 metre mark?
- 3 Why did Mr Wilson look around at the turn and then immediately put the whip away and take hold of his horse?

It was submitted that the only conclusion one could reach in answering the questions was that *'he mistook the laps'*. The facts referred to in the three questions were *'dead give aways'*. The subject of heat exhaustion had only been mentioned late in the inquiry. With all of their many years of experience of watching races all Stewards had come to the same conclusion.

Rule 168 is couched in terms of an offence being created *'in the opinion of the Stewards'*. I was satisfied that the conclusion reached by the Stewards in the light of all relevant circumstances clearly was reasonably open to them on the evidence.

Further, I was unconvinced that the Stewards had fallen into error as to the penalty based on penalties imposed in years past and the particular circumstances of the matter.



DAN MOSSENSON, CHAIRPERSON

