

RACING PENALTIES APPEAL TRIBUNAL DETERMINATION

APPELLANT:

AIDEN DECAMPO

APPLICATION NO:

A30/08/799

PANEL:

**MR ROBERT NASH
(PRESIDING MEMBER)**

DATE OF HEARING:

18 APRIL 2017

DATE OF DETERMINATION:

19 APRIL 2017

DATE OF REASONS OF

DETERMINATION:

20 APRIL 2017

IN THE MATTER OF an appeal by AIDEN DECAMPO against a determination made by Racing and Wagering Western Australia Stewards of Harness Racing imposing an 31 days suspension for breach of Harness Rule of Racing 163(1)(a)(iii).

Mr Aiden Decampo represented himself.

Mr Denis Borovica represented the Racing and Wagering Western Australia Stewards of Harness Racing.

- 1 Aiden DeCampo is a RWWA Licensed Driver in the WA Harness Racing Industry.
- 2 Mr DeCampo has appealed against a finding by the RWWA Stewards on 7 April 2017 that he breached RWWA Harness Racing Rule 163(1)(a)(iii) of the RWWA Rules of Harness Racing by driving in a manner so as to cause

interference. The penalty imposed was a 31 day suspension of his reinsperson's licence. Despite making some comments about the penalty imposed in submissions in support of an unsuccessful application for a stay of the penalty imposed, Mr DeCampo confirmed at the hearing of this appeal, that his appeal is against the conviction not the penalty.

- 3 The charge arose out of an incident during the course of the running of Race 7 on 7 April 2017 at Gloucester Park Racecourse. The Race was the Group 1 Sky Racing WA Derby. Mr DeCampo was driving HANDSANDWHEELS. At the 400 meter mark as the field was racing on to the back straight, Mr DeCampo was racing behind the leader on the peg line. On his outside (and about half a length behind) was Mr Lewis who was driving LORD WILLOUGHBY and on Mr Lewis's outside (and about half a length behind him) was Mr Prentice who was driving HERRICK ROOSEVELT NZ.
- 4 Andrew Milne, a RWWA Steward, was in the Stewards' Tower at the 400M mark and at the hearing before the Stewards said he observed Mr DeCampo move from the peg line to the one wide position which forced Mr Lewis to move further out on the track. He said that he believed the movement was abrupt as it was into the legs of Mr Lewis's horse which was obliged to move straight away causing Mr Prentice in turn to be severely checked and causing his horse to break gait.
- 5 Mr Prentice gave evidence at the Stewards Inquiry. He stated that his horse was struggling. He said his horse was wearing a murphy blind on the near side (being the side that Mr Lewis and Mr De Campo were on at the relevant time). He said his horse was hanging down a bit. He said when Mr Lewis's horse has come up the track (moved further out) in response to the move by Mr DeCampo "it took a bit" to get his horse to come out leading to contact and the horse then broke its gait. Mr Prentice, after observing the video vision of the incident at the Stewards Hearing expressed the opinion that it did not look as though Mr DeCampo's move out was made abruptly or sharply. Mr Prentice said that his horse was "hanging at the time"

and "unfortunately [his] back legs have just clipped Mr Lewis's wheel" and that was enough to put the horse "out of his gear".

- 6 Mr Prentice went on to say at page 10 of the Transcript:

'If the horse didn't have a murphy or he was more driveable you know, 19 out of 20 times the horse would move and there wouldn't be a problem but because he has had a murphy on and like Mr Lewis said his horse saw the move coming and he has kind of moved with it and my bloke was just on that one rein and just didn't respond because of the murphy blind. He couldn't see what was happening so.'

- 7 Mr Lewis is a highly respected driver in the harness racing industry and has been inducted into the Hall of Fame. In his evidence to the Stewards he said that Mr DeCampo had shifted up the track and he had gone with that move. He said that at that time in a race you are expecting moves to be made. He said that if a horse has got an advantage you have to shift with the move. He said the trouble was that Mr Prentice's horse had a murphy blind and couldn't see the move as it came on.

- 8 At page 9 of the Transcript is a significant exchange between Mr Lewis and Mr Borovica, the General Manager of Racing Integrity:

LEWIS I think the bottom line is Mr Prentice had no one outside him, he was clear to move up the track, now under our rules where you ease another runner wider if he is not in a position to hold this, that position he is obliged to move with that move and my, well, I was obliged to move with Mr DeCampo's move as was the horse outside me was obliged to move up the track.

BOROVICA Understood, but doesn't he have to have an opportunity to realise there is a move and respond?

LEWIS Yes I think he tried to. The opportunity was probably there but the horse didn't respond to that move. So the look, so my observation and just

going on the fact that he has got a murphy blind on, he is hanging down, he had an opportunity but he didn't respond. That's the way I would see..

- 9 Mr DeCampo gave evidence at the Stewards Inquiry. After being charged with the offence he pleaded not guilty. He said he believed he had complied with the Rules and that he considered he had made a legitimate shift (ease out) which was not abrupt. He was aware that Mr Lewis was outside of him but said to the Stewards he was not aware that Mr Prentice was on the outside of Mr Lewis. He said that he was focussed on trying to check his horse from getting into the wheel of the horse immediately in front. He said he thought he could come off and move Mr Lewis wider and considered Mr Lewis was able to move with the shift.
- 10 Mr DeCampo said that the only reason the interference ultimately resulted was due to the fact that Mr Prentice's horse was not able to move with the shift due to its hanging which caused it to come into contact with the wheel of Mr Lewis. Mr DeCampo said that he looked across at Mr Lewis's horse and saw that there was no horse outside of Mr Lewis which was in front or with an advantage which would prevent Mr DeCampo from pushing him out.
- 11 Mr DeCampo said at page 12 of the Transcript:
- "...the only reason I couldn't push Mr Lewis in that situation is if there a horse three quarters or in front or an advantage on him and there was no horse with an advantage on Mr Lewis so I was, I was in a position to shift wider."*
- 12 Mr DeCampo also said he could not know whether a horse which is running three wide is hanging or not. As I understood his evidence, it was not possible to know that Mr Prentice's horse would not be able to move out with his drive and Mr Lewis's drive when he eased out.
- 13 Video vision from a number of angles was available to be viewed by the Stewards at the Inquiry and was tendered at the Appeal as Exhibit 2. The video shows

Mr DeCampo's horse close to the horse in front and then starting to ease out. Mr Lewis was outside and half a length behind Mr DeCampo and he moved his horse out as Mr DeCampo has moved out. The vision is not altogether clear, but it can be seen that Mr Prentice's horse appears not to move out sufficiently to stay clear of Mr Lewis's horse and as a result comes into contact with Mr Lewis's horse. The horse behind Mr Prentice's horse also appears to be checked by the sudden slowing of Mr Prentice's horse.

- 14 Having viewed the vision a number of times, I think it is fair to say that the movement out by Mr DeCampo was not an abrupt or sudden move. That view seems to have been accepted by the Stewards (despite the evidence of Andrew Milne) after viewing the vision and it was not contended at the Appeal hearing that the move was an abrupt or sudden move.

RELEVANT RULES

Harness Racing Rule 163(1)(a)(iii) provides:

'A driver shall not-

- (a) *cause or contribute to any*
- (i) ...
- (ii) ...
- (iii) *interference.*

Rule 163(5) provides:

'A driver who, in the opinion of the Stewards, fails to comply with any provision of this rule is guilty of an offence and in relation to sub-rule(2) the Stewards may in addition to any other penalty disqualify the horse or give it a lower placing.'

Local Rule 164 provides:

"(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)."

15 RWWA have published a Guideline for assessing LR 164 incidents which was tendered and became Exhibit 1 at the Appeal hearing.

16 The Guideline, inter alia, provides:

- that it is expected that drivers will make moves with safety to ensure that their drives obtain the best possible finishing position;
- a driver wishing to change position must exercise due care whilst doing so;
- for the Ease Out Rule to operate effectively, the driver of the horse which is being eased out must also exercise care if attempting to resist the move;
- Stewards when assessing the circumstances of an incident covered by the Rule will consider the degree of care exercised by each driver;
- the driver who initiates the move must exercise utmost care and must have a clear advantage;
- interference will occur for one, or more, of three reasons:

1. the driver attempting to shift ground does so abruptly, or his horse overreacts when being taken outwards, leaving the driver of the horse he is attempting to shift insufficient time to react to the move;
 2. 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;
 3. the horse being eased out does not respond to its drivers efforts.
- 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 to the outside were significant factors.

THE STEWARDS DECISION

17 The Stewards decision was expressed in quite succinct terms at page 14 of the Transcript:

"After carefully considering all of the evidence tendered from the observing steward, acting on our own observations and everything pertaining to the charge, we find you, the charge sustained and we find you guilty as charged Mr DeCampo. The particulars of that the onus is on the driver shifting with care and the stewards are of the opinion that you failed to do so on this occasion. We are of the opinion that Mr Prentice wasn't given the opportunity to respond to your movement so we find you guilty as charged Mr DeCampo."

APPROACH TO APPEAL

18 In determining any appeal, the Tribunal is required to act according to "...equity, good conscience and the substantial merits of the case", (s 11(1)(b) of the *Racing Penalties (Appeals) Act*). Subject to that overriding requirement, as the Stewards

submitted, most ably through Mr Borovica's written and oral advocacy, this is a rule where its breach is based on the opinion of the Stewards. Therefore, this Tribunal will not merely substitute its own opinion for that of the Stewards if it disagrees with the Stewards' opinion. However, if the opinion of the Stewards is demonstrably unreasonable, or if the Stewards have misdirected themselves as to the operation of the Rule, or their decision has been the product of taking into account irrelevant considerations or of a failure to take into account relevant considerations then it is open for this Tribunal to reconsider the Stewards' determination: *Minister of Immigration and Citizenship v Li* [2013] HCA 18.

DETERMINATION

- 19 At the hearing of the appeal, Mr DeCampo drew an illustrative diagram on a white board which was digitally photographed and became Exhibit 3. The diagram showed what were described as the circumstances in which a driver on the inside of the track near the peg line may make a move to the outside and ease out the horses on the outside. The diagram roughly represented the circumstances which were present during the incident in Race 7. There was no issue on the part of the Stewards that Mr DeCampo was entitled to make a move to ease out Mr Lewis and Mr Prentice provided he exercised the requisite degree of care. The Stewards' position was that Mr DeCampo did not exercise the requisite degree of care because, as stated in their reasons, he did not give Mr Prentice an opportunity to respond to his movement.
- 20 Mr DeCampo said he did not see Mr Prentice's horse before making the move. The Stewards in their questioning during the Stewards hearing suggested that this was a significant factor in showing he was not exercising the necessary degree of care before making the move outwards. Mr DeCampo said that given the location of Mr Prentice's drive at the time which was behind and on the outside of Mr Lewis's drive, it would be extremely difficult for him to directly observe Mr Prentice without

taking his attention away from the horse immediately in front of him which he was having to keep clear of. What he did say, as quoted above, was that he observed there was no horse with an advantage on Mr Lewis so he judged he was in a position to shift wider.

- 21 The finding by the Stewards that Mr Prentice was not given the opportunity to respond to Mr DeCampo's move is difficult to reconcile with the evidence given at the Stewards hearing. Mr Lewis indicated that he had no difficulty in moving when the move came on and he said you would expect such a move at that time of the Race. Both Mr Lewis's and Mr Prentice's evidence was not to the effect that Mr Prentice was not given the opportunity to respond to the move, but was rather that his horse did not respond as required because it was wearing the murphy blind and was hanging down.
- 22 It is noteworthy that in their reasons for determination, the Stewards did not make a finding that the move outwards by Mr DeCampo was abrupt or sudden. It can be inferred they did not accept the evidence of Mr Milne in that respect. The evidence of Mr Milne as to the abruptness and suddenness of the move was not supported by what was observed in the video vision of the incident.
- 23 I am not able to discern from reading the transcript of the evidence or from viewing the video of the incident, on what basis the Stewards formed the opinion that Mr Prentice was not given the opportunity to ease out. The fact that there was contact and Mr Prentice's horse broke gait cannot be the basis for that finding because the evidence was that, that was as a result of Mr Prentice's horse wearing the murphy blind and hanging down. Mr Lewis certainly expected Mr Prentice's drive to move out as he moved out. The Stewards did not explain their finding in this respect which on its face seems unreasonable and does not appear to have had regard to the evidence given by both Mr Lewis and Mr Prentice, which I have quoted above.
- 24 I am of the opinion that the appeal should be allowed.

25 Accordingly, I uphold the Appellant's appeal and direct that the prescribed appeal fees that have been paid by him to lodge the appeal and to make the stay application be refunded to him.



ROBERT NASH, PRESIDING MEMBER

