

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

APPELLANT: PETER HALL
APPLICATION NO: A30/08/748
PANEL: MR D MOSSENSON (CHAIRPERSON)
DATE OF HEARING: 3 October 2012
DATE OF DETERMINATION: 5 October 2012
DATE OF REASONS: 6 November 2012

IN THE MATTER OF an appeal by Mr Peter Hall against the determination made by Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 10 September 2012 imposing a suspension of his jockey's licence for three months pursuant to Rule 135(b) of the Racing and Wagering Western Australia Rules of Thoroughbred Racing.

Mr Paul O'Sullivan of O'Sullivan Saddington Lawyers represented Mr Hall.

Mr RJ Davies QC represented the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

BACKGROUND

Mr Peter Hall rode the second favourite YSMAEL in Race 7 at Belmont on 5 September 2012. YSMAEL came second. The favourite beat it by about half a length. YSMAEL was vetted after the race and found to have nothing wrong with it. Mr Hall's ride was the subject of an inquiry by the Stewards. This led to Mr Hall being charged, convicted and suspended

for three months for failing to take all and reasonable permissible measures to win or achieve the best possible place in the field. An appeal against the conviction was pursued on the basis that the Stewards' determination was "*in error*", and "*contrary to Law*". The penalty was also appealed on the basis that it was too severe.

After receiving some fresh evidence and hearing submissions from counsel, I concluded the appeal as to conviction should fail but the appeal as to the penalty should succeed. I ordered the suspension from riding be reduced from three months to two months. I now set out my reasons below.

STEWARDS' INQUIRY

The Stewards' inquiry involved an analysis of the quality of Mr Hall's ride on the day of the race as well as a comparison of that ride with some of Mr Hall's earlier rides. Basically two opposing expressions of opinion emerged as to the quality of the 5 September ride. To make it abundantly clear how each point of view was arrived at and pursued at the inquiry, I will not only refer to but also quote much of the salient evidence which was presented before the Stewards. It is worth observing that at the appeal proceedings basically the same arguments were re-ventilated.

After establishing at the outset what riding instructions had been given to Mr Hall, Mr B Lewis, the Chief Steward Thoroughbred who chaired the inquiry, observed:

"Watching the race live, I had some concerns with your fluency in the straight...You didn't seem to be riding your horse vigorously, you didn't pull the whip... it didn't look like Hall's normal manner of riding his horse out. There didn't seem to be a lot of fluency with your arms. You didn't seem to be pushing the horse and yet you're right in contention, you've only been beaten a half length, you may have even at one stage almost been in front, but to me your vigour looked questionable in the straight."

Mr Hall replied:

"I just, I thought, I was trying to win the race hands and heels and he was just starting, he was just getting in a little bit, had it up, you know maybe would of liked to have pulled the whip over to the left hand but it just felt like I'd, I was just, I just needed to try and win the race hands and heels trying to get in front of the other horse."

The jockey went on to explain:

"Yes well last start he drew wide. We went right back and, ... he sprinted up well. Like when he'd hit the front I rode him hard with the stick. He did start to pull up a little bit the last bit, but he's just a, he's just a funny horse Sir. A different horse turns up every day and he's just one of them hard horses to ride and you've just got to try and get the best out of him. Sometimes, you know, I don't really think that he is a true whip horse but in saying that the day I rode him at Pinjarra he found pretty good under the stick without winning. But both them two times he's been close to the fence where today I was out in the middle of the field a bit and yeah, just felt like to me that if I hit him with the whip he mostly would of gone slower."

Mr Hall added:

"...But today I just felt like the best thing to do was to ride him that way, you know, that's the feeling he gave me when I straightened up, so I just rode him accordingly to how he felt on the day."

The chairman replied:

"...Even hands and heels, you just looked unbalanced in the saddle to me, watching you...."

Importantly from the appellant's perspective the trainer, Mr B Watkins, gave evidence in the inquiry that he had no issues with the way the horse was ridden. Mr Watkins went on to endorse the jockey's decision not to apply the whip. He acknowledged that the winner was the favourite and that YSMAEL was beaten by a better horse. When asked to comment after viewing the race films Mr Watkins stated:

"...I was just surprised when we were asked to come in. I just can't see what else Peter could of done to try and win the race, like, I really haven't got much to say. I just, I think that the horse run up to his ability, the other horse was better, that's pretty much the way I see it."

Mr Hall proceeded to describe his own skills in the following terms:

"...I'm a horseman, I can ride a horse different all the time. I've won on horses without hitting them, I've won on them by hitting them hard. This horse is a bit of a non-winner. It's no easy feat to try and get the best out of a horse like this."

The chairman, after viewing the film, observed:

"...We can see then as the field comes into the straight, on that head-on shot in particular, I believe it shows, Mr Hall, that there seems to be a lack of vigour. Your arms aren't

moving forward, you haven't pulled the whip, you can see other riders in and about that have pulled the whip. There's a noticeable lack of whip from you. You appear unbalanced. The horse's head seems to react. Your left arm seems rigid. From my observations, particularly that head-on shot Mr Hall, it doesn't seem that you're riding your horse fluently and you haven't got the best out of your horse. It seems that perhaps there's even an attempt to not ride your horse out with any purpose or any full vigour. We know you as a senior rider Mr Hall, capable of far better than what we can see in this particular race. Know you as a vigorous rider, hands and heels, you can use the whip, you get a lot out of horses. We've spoken to you lots of times about too much use of the whip, yet on this horse and you're in contention, you haven't used the whip at all. You mentioned about the horse laying in. Well the horse has got its head turned but it doesn't seem to be moving off its line in any way. To me there's an apparent lack of vigour Mr Hall. There doesn't seem to be any urgency in your riding in the straight."

Mr Hall replied:

"I disagree. I reckon I look vigorous as I can be without pulling the whip. You can see how hard I'm slapping him on the shoulder. The horse wants to get in and whether I've hit a horse one week and if I don't the next week, I find that totally irrelevant. Like NOVEMBER RED, most, most times I don't pull the whip on him. I've pulled the whip on him on twice but these horses that are non-winners, the best way to try and get something out of them is to coax it out of them. I've ridden this horse an absolute treat. Is the reason that we're in here is because I never whipped the horse hard? I was disappointed I got beat, I got beat by a short margin."

The chairman responded:

"It's your overall riding. It's your lack of whip and its your lack of fluency and urgency and your style in the straight."

Mr Hall answered:

"...Now I'm a horseman. I ride them as I find them and I rode that horse as I found him today. If I let go of the reins he just would've pulled up. I tried to entice that horse to go. I was threatening that horse to try and get him to go, to get over, over the top of that horse, that was my only chance of trying to beat the grey horse. I was trying to threaten him to do it and if I pulled the whip he would of run in and plus he would've stopped. If I had of just let the reins go and like a loop he would've just pulled up. I'm telling ya I know it, that's the reason I rode that horse that way."

Two other Stewards queried why the whip was not transferred to his left hand so as to be able to be applied. The following passage emerged:

TAYLOR: So that's why you elected not to go with your stick to the left, even in the straight, when you had the opportunity?

HALL: Yes, yes, yes. But I actually think I was going to get him.

TAYLOR: Did you ever think of giving him a crack behind just to see whether, once you realised that...

HALL: *No, I never, never thought that at all. I just knew I'd, I just knew I'd lose him. Maybe the last 50 metres when I couldn't win, pull the whip just to keep everyone happy.*

Mr Taylor then put to Mr Hall:

"It's not a normal ride of yours."

To which Hall replied:

"No I know but you can watch some of my other rides, I do ride like that."

Mr Taylor responded by stating:

TAYLOR: *That, but the thing is when you look at this horse and we must, you know, we must take to specifically this horse because it's no good drawing comparisons with different horses and different rides. We need to stick with the same horse. When you rode this horse the last time, it was certainly a different ride for Peter Hall as what you did today.*

HALL: *Yes but, well exactly what happened last time, was I was going to win that race hands and heels, right? And I was going to win the race without hitting the horse, that's what I was thinking, but once I got in front I pulled the whip on him to try and teach him a lesson and I, and I, when he got in front I pulled the whip on him to try and teach him a lesson. The last 50 he started pulling up a bit. I was gonna win the race with just riding him hands and heels but I wanted to teach him a lesson because I just know the horse. But today when I was out in the centre of the track, my best way I had to try and threaten him the whole way to try and get past the other horse.*

TAYLOR: *But it's a different ride, I mean today. I mean....*

TAYLOR: *My personal opinion that this is a different ride to the Peter Hall that I saw ride YSMAEL the last time he ran.*

HALL: *But if you're watching this horse, you get, you watch, I'm still vigorous on it.*

HALL: *I'm still going bang, bang, bang my whole shoulders are moving. I'm still riding the horse along.*

TAYLOR: *I've seen you a lot more vigorous myself...*

HALL: *Of course, I can do anything, anything you want on my next ride. You tell me what you want to do, I can do it.*

TAYLOR: *It's not a matter of what I want you to do, you know. We've got to compare that, you know, what the reasonable person having looked at Peter Hall ride...*

HALL: *Yes.*

TAYLOR: *I'm not doubting that, but it's the same horse and having heard what you've said about at track work when you put the stick in the left hand and you've given him a crack and responded and he took off, none of that today.*

HALL: I didn't want to lose him but, I didn't want to lose him. I had him right there, I didn't want to lose him and he was looking for a hole to lay down in and I didn't want to lose him. If that's hard for people to understanding, but that's exactly how it felt to me. I just didn't want to lose the horse because he was looking for a way to get beat. As soon as I straightened up at the top, even though he was travelling good and I still felt like I could win the race I, I, don't tell me how I know, but I know the horse was looking for a hole to lay in.

The Stewards adjourned the inquiry to review the evidence then resumed proceedings on 10 September 2012. One of the owners in addition to the jockey and trainer was present at the resumption. After the race films were shown Mr Hall was asked to comment on the horse's head movement. He responded as follows:

"I'm not to sure if the horse was flicking its head, but, you know we were quite lucky to start before when we won on the horse that we drew a wide barrier and we went back and we got the nice run up along the fence. I've only ridden this horse three times now for two seconds and a first and Bruce kind of asked me if I was interested in riding the horse, it's a bit of a challenge and I like the horse but that day he travelled good in the run and I presented him with it being a winning runner I thought in the best part of the track which was out in the middle, the winners, quite a few of the winners seem to be coming down the centre of the track that day. When I presented him with the run he just, when I aimed him out for the centre of the track he just wanted to get in under pressure, I feel like the horse was giving his best, he just wanted to get in, as I said before I didn't think I could pull the whip over into the left hand, I would have lost momentum. I didn't think I could hit him with the whip in the right hand he would have ducked in. I was just trying to carry the horse and get him over the line. At that stage if felt to me like it would either be a negative difference of me beating Paul Harvey's horse or Harvey's horse or him beating me, but as the race went on the more he wanted to get in. But I was just doing my best, hands and heels, you can see I'm slapping the horse for different opportunities vigorously on the shoulder."

The Chairman of the inquiry then commented that being out in the middle of the track meant there was room for Mr Hall's horse to shift. Mr Hall expressed concern that had he allowed the horse to shift he thought it would go slower. The Chairman then pointed out:

"...on this particular day, him finishing second he's run a time of 1:19:43 with the last 600m in 34:49 and at the previous start when winning his time was 1:19:16 so a faster the time and his last 600m was 34:33, so he has gone quicker when winning in the start prior."

The horse's previous starts were reviewed and race films shown which revealed commencement of the use of the whip at about 150m involving something in the order of 25 applications and subsequently very vigorous whip use at about 125m with approximately 17 strikes.

After explaining those two rides Mr Hall justified his actions in not putting the horse “*under full Peter Hall pressure*”, as the Chairman described it, in the following terms:

“...I’ve won a lot of races hands and heels as well and that day I rode, when, I thought I had him covered when I come into the straight, as soon as I asked him for an effort the horse is peaking on his run, it’s like he’s going as fast as he, just wanted to get in a bit with me and I promise you if I’d tested him with the whip he would have lost momentum and run into horses. And if I put the whip in the left hand he would have lost momentum, I might of got a smack on him but I just feel, I just feel that the horse was running at his best. But, you know like if the horse went true for me, would have made my job a lot easier, but when I had him out in the centre of the track for some reason he just wanted to get in a little bit and I wasn’t willing to test him and let him run in them couple of horses because I just felt like I would have thrown away all my chances.”

Steward Taylor then put the proposition:

“...on the last two occasions he responded pretty well to the whip and that he’s certain to win and his run at Pinjarra seem to, when you got into him he seem to fight back quite well. He certainly didn’t show any signs through those two runs that he was wanting to lay down.”

Mr Hall agreed and admitted the horse did not want to lay in at all in those two earlier runs.

Mr Watkins then spoke of his experience in these terms:

“...From my experience from riding horses, when they want to lay in, you have to hold them out, like Peter said, if he goes for the whip there’s a fair chance that horse is going to duck in. The other reason horse’s lay in is because they’re sore. I don’t know anybody ridden here. The other reason horse’s lay in they either want to find the rail, which I find a lot of young horses, well a lot of older horses too want to find the rail because a lot most of their trackwork is done on the rail so that if you get out of riding them on the rail, the other think is when horses want to lay in or hang, their sore. Are you saying that a jock maybe thinks a horse is hanging for some reason should he keep flogging him if he thinks he might be sore.”

Mr Watkins told the Stewards that he did not bet on horses he trained but only derived income from percentages. The Chairman of Stewards acknowledged Mr Watkins was “*...one of the best or better horsemen in the State*”.

CHARGE AND THE CONVICTION

Despite Mr Hall’s explanations and Mr Watkins’ support of the jockey’s ride, the Stewards decided to lay a charge for breach of Rule 135(b) of the Rules of Thoroughbred Racing.

Rule 135 states:

- (a) *Every horse shall be run on its merits.*
- (b) *The rider of every horse shall take all reasonable and permissible measures throughout the race to ensure that his horse is given full opportunity to win or to obtain the best possible place in the field.*
- (c) *Any person who in the opinion of the Stewards has breached, or was a party to breaching, any portion of this Rule may be penalised, and the horse concerned may be disqualified.*

The particulars of the charge were:

"Over the final 300m in Race 7 the Corporate Bruce Handicap run over 1300m at Belmont on Wednesday, 5th September 2012 you rode YSMAEL with an insufficient degree of vigour, purpose and urgency when it was both reasonable and permissible to do so and consequently did not completely test it and give it full opportunity to win the race."

Mr Hall pleaded not guilty to the charge and asserted:

"Look I feel like I was getting the best out of this horse. If I'd pulled the whip on the horse, no way, the horse would have run in. That was, I was, the best way of trying to win that race on that horse."

The inquiry Chairman responded:

"Can you see from my comments looking at the film that there was ample room for you to allow that horse to shift in and if it shifted in under the whip you wouldn't have caused any impediment to any other horse."

To which Hall acknowledged:

"Yes I wasn't prepared to take that chance."

Despite Mr Hall's persistent explanations and arguments, the Stewards decided the matter against Mr Hall on the following basis:

"Australian Racing 135(b) is a rule directed at the obligations of the Jockey during the running of a race. The obligation to take all reasonable and permissible measures to win or achieve the best possible place in the field is to be judged objectively. The nature of the rule was succinctly dealt with by the Honourable T.E.F. Hughes AC QC, Principal Member speaking for the appeal panel on 5th June 2003 in an appeal by licensed Jockey Chris Munce. It was said that the task of administering this rule is not always easy. One must keep it clearly in mind that on its true interpretation it is not designed to punish a jockey unless on the whole of the evidence in the case the Tribunal considering a charge under the rules is comfortably satisfied that the person charged is guilty of conduct that in all the objective circumstances fell below the level of judgement reasonable to be expected of a jockey in the position of a person charged in relation to a particular race. The relevant circumstances in such a case may be numerous, they include the seniority and experience of the person charge. They include the competitive pressure under which

the person charged was riding in the particular race. They include any practical necessity for a person charged to make a sudden decision between alternative courses of action. The rule is not designed to punish jockeys who make errors of judgement unless those errors are culpable by reference to the criteria described. And from the appeal by Jockey Stephen Miller which was number 413, we are also aware of judgements of Justice Perignon and Judge Goran from New South Wales Harness Racing Appeal that deal with the equivalent ruling in Harness racing. In making our findings Mr Hall in relation to the charge and from all the evidence presented we are entirely aware of the standard of proof in matters as serious as this which have the potential to impact upon your livelihood. We are required to make findings of facts using the Brigenshaw Standard working to the higher level. The Panel has arrived at a unanimous decision for the following reasons Mr Hall. Your major defences to this charge are that YSMAEL was laying inwards and was not finishing the race off in a genuine manner. The Stewards do not believe that this is evident to the degree you were inhibited in being unable to fully test and extract the best from YSMAEL. This belief is based on the live observations of myself and also from the viewing of the patrol films that are related to this particular race. In this race you were positioned to the centre of the track and you were well clear of other runners particularly MCBLITZAM, the winner, which was a considerable distance to your inside. As such it was both reasonable and permissible to ride YSMAEL with vigour, purpose and urgency at an acceptable and expected level to demonstrate that YSMAEL was being fully tested. In these circumstances Stewards were of the opinion that you should have used the whip and applied full vigour to and it was clearly reasonable and permissible to take this course of action. Your actions in not riding YSMAEL in your normal vigorous style including pulling the whip in all of the circumstances of this race cannot be explained and are completely unreasonably in our opinion. Your riding style and manner is well known to the Stewards, we see you as a strong, senior accomplished rider who rides forcefully and with vigorous whip use as demonstrated in the previous two races of YSMAEL on the 9th August 2012 at Pinjarra and at Belmont on 29 August 2012. These hallmarks of your riding were noticeably lacking in Race 7 at Belmont on Wednesday, 5 September 2012 with an unacceptable explanation for this given. The rules of racing do not specifically state that you must use the whip however it is a tool that is always generally used to encourage and extract the maximum effort from your mount in the run to the finish. Accordingly there is an expectation that the whip will be used within the rules and we feel that this race was no exception to that given the circumstances that you were in."

Some brief discussion followed regarding Mr Hall's riding experience and personal circumstances which led to the following determination as to the penalty:

"..., we say that under ARR.135(b) is a serious breach of the Rules (sic). This particular rule is central to the integrity of racing as the betting public must be able to bet on races on the basis that the horse will be given the full and fair opportunity to win or obtain the best possible place in the field. Should such a belief be undermined serious consequences to the industry would follow. We say that this was a clear and obvious breach of the rule. It involved a favoured runner finishing in second position and not being given the full opportunity to win a midweek Metropolitan race by one of the State's most senior and experienced riders. Accordingly we place the offence at the upper end of the scale. We had a look at previous penalties Mr Hall and from our records it shows that penalties range under this Rule from a reprimand to three months suspension from riding in races. We did have a look at your record Mr Hall, it shows that you commenced as an Apprentice in May 1982 and you have recorded one previous offence under this same rule in May of 1995 and you were suspended for a period of 6 weeks and a subsequent appeal to the Racing Penalties Appeal Tribunal Number 256 was dismissed. Mr Hall we've also taken into account your personal circumstances and we understand perfectly

that any interruption to your license (sic) to ride in races will have a significant effect on not only you but your dependents and we also take into account the significance of forthcoming race meetings. We consider the provisions of Australian Rule of Racing 196 (sic) and we believe that a suspension from riding in races for a period of three months is appropriate under all the circumstances Mr Hall."

APPELLANT'S POSITION AS TO CONVICTION

At the outset of the appeal some fresh evidence was presented on the appellant's behalf. It comprised a veterinarian's brief report in respect of his examination of YSMAEL on 15 September 2012, being 10 days after the race in question, and DVD's of a number of Mr Hall's races. Some of the race footage revealed Mr Hall employing the whip but on other occasions it showed he did not. Mr Hall also gave some commentary on various race films which were shown including the race in question, after which he was questioned by Mr Davies QC. I formed the conclusion at the end of the commentary and questioning that Mr Hall's descriptions of the various rides which I was shown did not materially add anything to what he had earlier stated to the Stewards at their inquiry.

Mr O'Sullivan presented a strong submission arguing that special weight should be given to Mr Watkins' evidence. Counsel relied on the fact that the Chairman of Stewards had acknowledged that the trainer was "...one of the best, or better horsemen in the State". Further, that this trainer does not bet on the horses he trains but rather only derived his livelihood from training and from his percentages of the prize monies. The point was emphasised that at no stage in the proceedings was Mr Watkins critical of Mr Hall's ride. Despite the fact that Mr Watkins had the most to lose from the outcome of the race, Mr Watkins nevertheless considered the quality of Mr Hall's ride to have been appropriate or acceptable. I acknowledge there was logic to this argument regarding Mr Watkins' objectivity.

I have already more than liberally quoted from Mr Hall's evidence. It was entirely clear what his defence was. Mr Hall's approach clearly was not lost on the Stewards who accurately summarised it in their reasons which I have also quoted. According to Mr O'Sullivan this was a case where a senior experienced jockey had relied on his own

judgment which led him to ride in the manner he considered to be most appropriate on the day. Whilst there clearly was an absence of whip use it was said Mr Hall still did ride the race out vigorously by employing his hands and heels to motivate YSMAEL. There were good reasons not to use the whip, namely the risk of the horse veering in and the fact it was going as fast as it could and potentially would lose momentum. Further it was submitted momentum could also have been lost had Mr Hall attempted to change hands with the whip.

In addition to his argument on the facts, Mr O'Sullivan provided some helpful written submissions on the relevant cases. I gave these decisions careful consideration. Counsel acknowledged that the "bar" confronting an appellant that needs to be cleared in order to win an appeal of this nature for this type of offence, was set higher in this State than in other jurisdictions.

RESPONDENT'S POSITION

Mr Davies QC in reply referred to the fact that each of the Stewards who comprised the inquiry panel knew the appellant's riding style. Only in extreme cases of this type can a Steward's decision be dislodged. To do so requires something outside what was "*fairly and squarely*" open. Further it was argued the only sensible way to interpret the Rule was to give paramount consideration to the Stewards' opinion. Two films of earlier races proved YSMAEL does respond to the whip. It was submitted the second placed horse in the race in question was not tested due to the appellant's failure to use the whip. It cannot be said to have been totally unreasonable not to have attempted to use the whip on this occasion.

Senior Counsel further submitted the vet certificate which was produced at the appeal hearing was irrelevant as there was no suggestion at the Stewards' inquiry of any mouth problem to the horse. The real issue was the insufficiency of the vigour employed by Mr Hall on this occasion compared to some of his other races. It was totally proper to use the whip. The issue was not whether YSMAEL would have got up or not as a consequence

of its application. With 100 metres to go the jockey's chosen method was not working. The Stewards were therefore entitled to conclude it was not appropriate to continue to persevere with it to the finishing line. Mr Watkins' evidence was not determinative of anything. It was merely his opinion.

ARGUMENTS AS TO PENALTY

Mr O'Sullivan argued Mr Hall had a good riding record as his only other breach of the Rule in question had occurred over 17 years previously. As Mr Hall had been refused a stay of his penalty he had already served what amounted to a month of suspension from riding. This, it was submitted, should be adequate punishment in all of the circumstances. I was told the average penalty for this type of offence was 46 days. During that time Mr Hall had missed out on the lucrative Kalgoorlie races. Although the Stewards had concluded the offence was at the upper end of the scale of severity the horse was only beaten by half a length. According to counsel for the appellant the ride was exemplary absent the use of the whip. Consequently it was not at the upper end of the scale.

Mr Davies responded with the proposition that to rely on the average of the range of penalties imposed for this breach was of no value. I was then referred to the various examples of previous offences and penalties from the table of penalties imposed under Rule 135 (b) since January 1998 which the Stewards had produced. It was submitted Mr Hall's potential loss in having been excluded from the Kalgoorlie round was not relevant to the decision which the Stewards made. Senior counsel emphasised the fact that towards the end of the race Mr Hall had been in contention for a relatively long period of time. YSMAEL was the only one likely to beat the leader. YSMAEL had genuine prospects of winning the way it was positioned had the jockey "*got stuck into it*". But he failed to do so. "*It was a horrible spectacle*" according to senior counsel.

REASONS FOR CONFIRMING THE CONVICTION

I concluded the fresh evidence before me was neither relevant, in the case of the vet report, nor persuasive so far as the films and Mr Hall's explanations were concerned. Consequently none of it made any material difference to the outcome.

I was not persuaded by the argument for the appellant as to the inappropriateness of the conviction. There had not been demonstrated to be any gross error on the part of the Stewards. I was satisfied Mr Hall's ride could be categorised as a bad ride in the sense of there having been an ill-judged finish. Further, his excuse for failing to use the whip over the final stages was not subject to reasonable explanation. I was persuaded by senior counsel's argument on that aspect.

After considering the quoted passages from the cases which Mr O'Sullivan referred me to in his written submissions, I reached the conclusion that to uphold the appeal in this case would be inappropriate. To decide to uphold the appeal would amount to a mere substitution of one set of views and contentions as to the quality of the ride for another. To overturn the opinion reached by the Stewards in this case would in effect amount to not more than an adoption of the opinion of the affected jockey, as supported by his trainer, instead of endorsing the unanimous opinion which had been reached by the Stewards on the material before them. Clearly though the jockey's evaluation of both the ride and the likely reaction of the horse to the whip action could not be ignored. Despite that I was satisfied this was not a case where the subjective evaluation by the jockey, even with the trainer's support, should prevail over the objective assessment of the body of men who viewed the race live and conducted the inquiry into it.

In reaching this conclusion I was conscious of the fact that the panel of Stewards which dealt with the matter was a strong one comprising as it did the Chief Steward of Thoroughbreds, two senior Stipendiary Stewards and one further Stipendiary Steward. The Stewards' panel in question comprised very well qualified and capable men whose

professional roles and responsibilities are to assess matters of this nature objectively from all perspectives. Stewards are charged under the Rules with the obligation of protecting the reputation and standing of the racing industry. In carrying out these duties they must maintain the public's confidence in the integrity of the racing industry. It is in the public interest that there be ongoing encouragement of the public to be interested in racing and motivated to wager on the outcomes of races. I was satisfied that the Stewards were not unreasonable in reaching the conclusion which they did of the ride on the evidence before them despite the earnest argument of the affected jockey. The Stewards came to that conclusion after a fair hearing in which Mr Hall was given proper opportunity to endeavour to persuade them to his point of view. Balanced against the Stewards' assessment was the opinion of the jockey in question who called on all his riding experience and competence to try and convince the Stewards of his innocence. I acknowledge Mr Hall's versatility as a jockey includes his undoubted capacity to intuitively assess the optimum way to extract the maximum out of his steed during a race.

Despite the fact that the jockey's argument was aided and supported by the very experienced Mr Watkins, I resolved to accept the propositions of counsel for the Stewards. I concluded, as urged upon me by Mr Davies, that the ride did not amount to a proper spectacle of competition in the public arena where members of the public had invested money on the outcome of the race. The riding performance under scrutiny was not a mere error of judgment which was made or had occurred reflexively in the heat of the moment. Rather, the decision not to apply the whip was a deliberate act on the part of an experienced rider who had the benefit of enough time to evaluate the situation and make an appropriate reasoned decision. Had Mr Hall elected to ply the whip there was a possibility or potential for it to have resulted in the adverse consequences as suggested by the rider. But on the other hand the Stewards were quite entitled to conclude it was necessary to test the horse which may well have accelerated as a consequence and could have therefore won the race. Whether it would have made a material difference to the outcome no-one will ever know. However what we do know, as eloquently described by

Mr Davies, was that an unseemly spectacle unfolded at the end of the race in question. Mr Hall had ridden to a position at the closing stage in the race where whip action, were it to have been applied, did have a realistic prospect of making a difference. According to the Stewards the absence of such action meant that it was appropriate to conclude on balance that the horse had not done or been allowed to do its best in the circumstances. The Stewards firmly reached that conclusion and the video of the race which I viewed clearly supported it. I was satisfied with the reasonableness or appropriateness of it as a proposition. This unsatisfactory situation occurred at the time in the race when the Chairman of Stewards had decided the riding style looked abnormal for Mr Hall. It lacked his usual fluency, balance and vigour quite apart from the failure to apply the whip. I could find nothing wrong with the Stewards' conclusion that:

“... it was both reasonable and permissible to ride YSMAEL with vigour, purpose and urgency at an acceptable and expected level to test YSMAEL was being fully tested ... you should have used the whip and applied full vigour and it was clearly reasonable and permissible to take this course of action.”

I was easily persuaded by the proposition that in the final stages of the race, when the Stewards said the whip action was called for, that there was no competitive pressure which prevented or inhibited testing YSMAEL under the whip. The situation was just the opposite. I adopt what Mr Davies said in this aspect as well. The film of the race which I viewed made this entirely clear. There was no stress or pressure in the relevant part of the race which obliged or called for a sudden choice of options by Mr Hall which could exonerate him.

Clearly the only factor that was responsible for the election by the jockey not to apply the whip was his conscious failure to do so. The horse's behaviour on the day and its temperament during the race in question did not play a part. No such factors were present to sufficiently mitigate or excuse what transpired. At the same time it is appropriate to acknowledge there was no sinister purpose in the jockey's riding behaviour. The Stewards

recognised this by not charging Mr Hall with the more serious offence.

I was satisfied there was merit in the conclusion of the Stewards that the rider's conduct, when viewed dispassionately, fell short of objective standards reasonably expected of a jockey of Mr Hall's experience. I concluded the Stewards were entitled to arrive at the determination that this ride was outside the permissible standards of competent riding. In other words it was not beyond the bounds of reasonableness for these Stewards to conclude as they did on the evidence before them. The Stewards reached the conclusion that the ride was lacking due to insufficient fluency, urgency, style and vigour coupled with the absence of whip use. Further these features meant it was not Mr Hall's usual ride. The consequence of this was the horse was not fully tested. I found nothing inappropriate with these conclusions in the context of the wording of the Rule despite Mr Hall's evidence to the contrary and acknowledgement of the use of the whip. The times of the previous race were consistent with the Stewards' conclusion.

For these reasons I concluded there was no error made by the Stewards. Further, it could not be said their determination was contrary to law. That explains why I found there was no merit in the grounds of appeal and why I dismissed the appeal as to conviction.

REASON FOR AMENDING THE PENALTY

I agree with the Stewards' conclusion that Mr Hall's riding tactics over the concluding stages of the race amounted to a serious breach of the Rules. However, to label it, as the Stewards did, as being "at the upper end of the scale" in my assessment was an error. I concluded that to categorise it as being at or close to the top end of the scale of failing to give full opportunity did overstate the seriousness of the offence. In reaching that conclusion I was influenced by a range of factors. The outcome of the race was so relatively

close. Whilst the small margin was not relevant to the question of guilt or innocence it arguably had some relevance to the outcome on penalty. Mr Hall's explanation of his riding tactics was presented with complete conviction throughout the inquiry proceedings and also at the appeal hearing. I found the explanation to be plausible although it did not exonerate Mr Hall. Further it was supported by the evidence of Mr Watkins. In evaluating the seriousness of the breach the appellant's position was also aided by the fact that he is both a very versatile and busy rider who enjoys a very good record. There was only one earlier offence of this type which had occurred so long ago, despite the frequency of his riding engagements in the interim. I did not consider enough weight was given to Mr Hall's record. I was also satisfied the penalty was too severe based on the authorities I was referred to.

After carefully examining the range of penalties identified in the table presented on behalf of the Stewards, I concluded the penalty imposed on Mr Hall should be reduced. I did not consider it should have attracted the most severe penalty of the range of penalties. This was an error. The discretion to set the penalty contained in Rule 196 is a very wide one. This discretion is not conditioned or qualified by the key phrase contained in Rule 135(b) "in the opinion of the Stewards". The wording of the penalty rule gives the Tribunal more latitude in interfering with the sentencing process. My conclusion was that it was an error to punish Mr Hall for his transgression at the top end of the scale, namely three months suspension, but that the offence did require more than a middle of the range length of suspension.

For these reasons I upheld the appeal as to penalty. I set aside the three months penalty. I concluded the appropriate penalty should be a two months suspension from riding and I so ordered.



DAN MOSSENSON, CHAIRPERSON