

RACING PENALTIES APPEAL TRIBUNAL
REASONS FOR DETERMINATION

APPELLANT: JOCELYN ANNE YOUNG

APPLICATION NO: A30/08/835

PANEL: MS K FARLEY SC (CHAIRPERSON)

DATE OF HEARING: 14 MAY 2020

DATE OF DETERMINATION: 14 MAY 2020

IN THE MATTER OF an appeal by Jocelyn Young against the decision made by the Racing and Wagering Western Australia Stewards of Harness Racing on 27 April 2020 to suspend her for 21 days for breach of Rule 149(2) of the Rules of Harness Racing.

Mr G Hall Snr appeared for the Appellant

Ms B Scott appeared for the Racing and Wagering Western Australia Stewards of Harness Racing.

Background

1. Following the running of Race 7 at Pinjarra Paceway on Monday 27 April 2020 (the WASBA/Allwood Stud King-Lethbridge Memorial Westbred Mares Ms Pace (2185m)), Stewards held an inquiry seeking an explanation of the driving tactics of reinsperson Jocelyn Anne Young (Ms Young) in her drive of pacer IMANA CAPRI, the horse having finished last in the race.
2. Footage of the race shows IMANA CAPRI racing three-wide for the majority of the race before giving ground over the concluding stages of the race. At one point (in the later stages of the race) another horse driven by Mr De Campo overtook IMANA CAPRI four wide on the track.
3. Having questioned Ms Young regarding her tactics and reviewed video of the race, Stewards found that Ms Young had a charge to answer under Rule 149(2) of the Rules of Harness Racing. That Rule states:

"149. Race to win or best placing.

(2) A driver shall not drive in a manner which in the opinion of the stewards is unacceptable."

4. Ms Young "reserved" her plea in relation to the charge, which Stewards took as a plea of not guilty.
5. Following further discussion between Stewards and Ms Young, the Stewards found the charge against Ms Young proven. In effect, the finding of the Stewards was that Ms Young's driving was unacceptable insofar as, having been prevented by DELIGHTFUL, driven by Mr Suvaljko, from assuming a place in a one wide position, she continued to drive IMANA CAPRI three wide for the majority of the race, rather than restraining the mare to give it some respite. She then gave ground at the 400 metres and ran last.
6. Stewards then went on to consider penalty. In relation to penalty, it was noted that:
 - a) Ms Young was a full time driver, who had recently also started training.
 - b) She was an A Grade Driver.
 - c) She had previously breached Rule 149(2) in 2017, however the circumstances were evidently dissimilar in that the previous breach was for interference.
 - d) In this matter, no other horse's position was affected by her driving aside from her own.
7. A penalty of 21 days suspension was imposed.

The Appeal Against the "Unacceptable" Finding

8. Ms Young appealed against both conviction and penalty on 1 May 2020 (within time).
9. The Appeal was heard by teleconference on 14 May 2020. At the hearing I gave leave for Ms Young to be represented by Mr Garry Hall Snr. Ms Scott appeared for the Stewards.
10. Mr Hall submitted that Ms Young's driving tactics were not unacceptable but sound. Her intention was to push forward, take the position one wide next to the then leader but was overtaken by Mr Suvaljko's horse (over which she had no control) and that rather than restrain her mare, Ms Young had (legitimately) decided to "wait it out" in the three wide position rather than lose ground that she may not regain. She was trying to win the race but was (legitimately) thwarted by Mr Suvaljko.
11. Mr Hall did concede that racing three wide in a harness race was "not a good look", but emphasised that no other runner was impeded and that IMANA CAPRI pulled up well.
12. Ms Scott submitted that it was open to Ms Young to restrain her mare once overtaken by Mr Suvaljko's horse, Mr Suvaljko having indicated he would not hand up a position to her.
13. Ms Scott submitted that in not restraining the mare, Ms Young had made the horse cover more ground and increase pace, notwithstanding that she could not achieve the position she sought. This was, in the opinion of the Stewards, unacceptable.
14. At the hearing of the appeal on 14 May, I dismissed Ms Young's appeal that the Stewards erred in forming the opinion that her drive was unacceptable for the purpose of Rule 149(2).

15. I indicated that such a ground is extremely difficult to succeed upon, given that the Rule (and similar rules) involves the "opinion of the Stewards". I indicated that this Tribunal is not permitted to substitute its own opinion for that of the Stewards.
16. This clear interpretation of the ability of the Tribunal to interfere with a finding of the Stewards based upon their opinion was recently considered by me in Parnham v RWWA Stewards Appeal no. 825 of 2019. I referred in that decision to the previous decisions of Luciani v RWWA Stewards Appeal no. 626 of 2004, and Rogers v RWWA Stewards Appeal no. 739 of 2012.
17. Paragraphs 41 and 42 of the Parnham decision relevantly read:

"More significantly, as was said by the previous Chairperson Mr Mossenson in Luciani V RWWA Stewards Appeal 626 of 2004, which was also an appeal against the finding of careless riding:

"The only opinion that is relevant for the purposes of the Rule is that of the Stewards and not the opinion of any other person or party, not the jockey, not other riders in the race, nor the person representing the appellant in the course of an appeal. In order for this Tribunal to overturn a decision of the Stewards in relation to this particular rule and upset a conviction for this type of offence, it must be demonstrated to the reasonable satisfaction of the Tribunal that, armed with all the relevant facts and information, no reasonable body of Stewards could have reached the decision and formed the opinion which the Stewards in question have of the particular racing incident".

In Rogers v RWWA Stewards Appeal 739 of 2012 Mr Mossenson said, having quoted from Luciani above:

Judging the quality of any ride can clearly be an onerous and technical responsibility. It is entirely appropriate for it to be left to the Stewards under the Rules. Stewards are the best persons equipped to deal with such matters...It is an integral part of their overall responsibility to set and then reinforce the standards and qualities applicable to competitive riding by the industry's professional racers. Whether or not a charge should be laid and thereafter a person be convicted of a riding offence is appropriately left largely to their assessment. They are in a unique position to form an opinion and decide the fate of any rider under review."

18. Those paragraphs clearly state the limited circumstances in which this Tribunal can overturn the Stewards opinion. Those circumstances do not arise in this case.

The Appeal Against Penalty

19. Whilst it is clear that the Stewards took into account Ms Young's good record (setting aside the 2017 matter which was committed in different circumstances), the fact that driving was her sole income, that no other horse was affected, and whilst it is clear that a period of suspension was open to the Stewards, it is somewhat unclear as to how the Stewards found that a 21 day period was appropriate.

20. It was only after that period had been imposed, that the Chairman referred to similar penalties being imposed upon Mr Reed and Mr Harper.
21. Mr Hall submitted that all options were open to the Stewards by way of penalty, including a reprimand. He submitted that the Rule was not intended to cover the situation Ms Young found herself in, when she was trying to win the race in accordance with the trainer's instructions and was thwarted by another driver and found herself "out of luck". Whilst it was "not a good look" for a horse to race three wide for a long period, the horse was not in fact adversely affected, and no other horse was impeded, by what perhaps in hindsight was a poor decision by a young but promising driver.
22. Ms Young's offence was not without mitigation. What may be seen in hindsight as a poor decision to race three wide in what it transpired was a hopeless position, it must also be seen in light of the circumstances in which she found herself.
23. The footage provided to me indicates that towards the end of the race it did become clear that Ms Young's mare had no hope of continuing to push for position and she faded quite clearly to last place.
24. Whilst unacceptable in the opinion of the Stewards, the drive was not aggravated by having impeded any other runner, and a subsequent vetting disclosed no damage or distress was caused to IMANA CAPRI. The unacceptable drive could be attributed to poor judgement in a race where necessary decisions needed to be made under pressure from other runners. It is not at the upper end of similar rule breaching, or even in the more common circumstances which will lead to a finding of unacceptable driving.
25. In all of the circumstances of the race and Ms Young's driving, I found that a 21 day suspension was manifestly excessive, and it was for those reasons that I upheld the appeal against penalty, quashed the 21 day suspension and instead imposed a 14 day suspension.

Karen Farley

KAREN FARLEY SC, CHAIRPERSON

