

RACING PENALTIES APPEAL TRIBUNAL DETERMINATION

APPELLANT: MR CHRISTOPHER VOAK

APPLICATION NO: 21/53061

PANEL: MS K FARLEY SC (CHAIRPERSON)

DATE OF HEARING: 21 DECEMBER 2021

DATE OF ORAL DETERMINATION: 21 DECEMBER 2021

IN THE MATTER of an appeal by Christopher VOAK against the decision of the RWWA Stewards of Harness Racing to impose a suspension of three weeks for a breach of Rule 168(1)(e) of the Harness Rules of Racing

Mr C Voak self-represented.

Mr B Lewis appeared for the Racing and Wagering Western Australia Stewards of Harness Racing.

REASONS FOR THE DETERMINATION OF MS K FARLEY SC (CHAIRPERSON)

1. At the Pinjarra Trials on Wednesday 8 December 2021 Mr Voak drove JOEY JAMES in Trial 6.
2. RWWA Deputy Steward L. Austin was the Supervising Steward for that trial and was watching JOEY JAMES as he was driven in front coming in to the front straight.
3. Mr Austin was of the view that JOEY JAMES was running a very good trial. He was therefore “very surprised” when he saw Mr Voak use his whip in a sideways motion, rather than a flicking motion, taking the whip around the horse’s hocks. Mr Austin saw the horse react and was concerned enough to speak with Mr Voak after the last trial.
4. Mr Voak did not deny that he had taken the horse around the hocks with the whip. His explanation to Mr Austin was that the trainer had told him (Mr Voak) that the horse was a “noted stopper” and Mr Voak thought that it “might have been the best way to get the horse to finish the race off”.

5. Following a report by Mr Austin, Stewards convened an inquiry on Friday 10 December 2021 at Gloucester Park. Mr Austin made a statement to the inquiry explaining what he had seen. He stated that the horse did react and that was an indication to him that the horse had felt the blow.
6. Mr Voak did not challenge Mr Austin's evidence. He admitted that his action with the whip was intentional and accepted that his action was unacceptable. He agreed with the Chairman of the Panel that he had a "bad brain fade" and was acting "...in some way to try...and keep the horse going and not let it stop."
7. Having heard from Mr Austin and Mr Voak, the Panel adjourned, and upon resumption advised Mr Voak that he would be charged with improper driving contrary to rule 168(1)(e) of the RWWA Rules of Harness Racing. Mr Voak was not charged with an offence pursuant to rule 156 of the Rules. Rule 156 regulates the use of whips in harness racing.
8. Mr Voak had previously been charged with whip transgressions, but had previously been fined. He had also previously been fined for breaching rule 168(1)(e) by whip use. Mr Voak had not been charged with a similar offence within the previous two years.
9. Mr Voak strongly advocated for the imposition of a fine. He submitted that a suspension would be "catastrophic" to his capacity to earn and pay his bills and be a constructive member of the community.
10. Having shortly adjourned to consider penalty, Stewards imposed a three week suspension of Mr Voak's reinsperson's licence.
11. Mr Voak appealed against this penalty by way of Notice of Appeal to the Tribunal dated 13 December 2021. Mr Voak's sole ground of appeal was that the penalty was manifestly excessive.
12. The matter was heard by me on 21 December 2021. At the hearing, I dismissed the Appeal and advised that I would provide reasons later.
13. A contention that a penalty is in all the circumstances manifestly excessive cannot be upheld on the basis that the penalty is shown to be harsh or severe. It must be demonstrated to be manifestly excessive.
14. Such an argument can be successful if the penalty imposed far exceeds a range of penalties imposed in similar circumstances, or if the penalty is shown to have been imposed on the basis of an incorrect consideration. No range of penalties would seem to apply to charges laid pursuant to rules such as rule 168 as they can cover such a wide range of behaviour.
15. Stewards must of course determine each case on its merits and must exercise their discretion appropriately in each individual case.
16. I cannot substitute my own discretion for that of the Stewards unless I am convinced that their discretion miscarried or was applied erroneously.

17. In this case Mr Lewis for the Stewards submitted that, whilst the Stewards accepted that previously fines had been imposed for improper driving by virtue of using a whip in the vicinity of a horse's legs, the serious nature of this offence meant that a deterrent penalty was called for in this instance.
18. The offence was aggravated by the fact that contact was made with JOEY JAMES and the horse was seen to react.
19. Whilst not an aggravating factor, of relevance was that Mr Voak had a similar offence under the same rules in June 2019 and "numerous" offences under the "whip rule" (rule 156).
20. Mitigating factors identified by the Stewards were that Mr Voak pleaded guilty and readily acknowledged the offence. He was forthright and honest during the inquiry.
21. There was only one blow to the horse and Mr Voak voiced immediate regret for his actions.
22. The penalty was indeed harsh. It appeared more severe than previous penalties imposed by Stewards for similar offences. However, I am not convinced that Stewards' discretion miscarried or was applied erroneously.
23. The full range of applicable penalties was open to the Stewards to consider, from reprimand through to fines and suspension. The Stewards chose suspension due to the perceived need to send a strong deterrent message for such an "unacceptable" "inexcusable" and "flagrant" breach of the rules (p. 19 TS).
24. I can find no error in the Stewards reasoning when exercising their discretion in setting upon suspension as the appropriate penalty.
25. Whilst I may have imposed a suspension of a shorter period than that imposed of 3 weeks, I cannot substitute my own discretion for that of the Stewards.
26. There being no error shown, the Appeal was dismissed.

Karen Farley

KAREN FARLEY SC, CHAIRPERSON

