

TASMANIAN RACING APPEAL BOARD

Appeal No 10 of 2007/08

Panel:	Mr R Pearce (Chairman) Mr G Elliott Mr B McKay	Appellant:	Mr K Hall
Appearances:	Mr Larkins on behalf of the stewards	Rule:	Harness Rule AR149(2)
Heard at:	Launceston	Penalty:	2 x four week suspension (served concurrently)
Date:	22 January 2008	Result:	Upheld

REASONS FOR DECISION

These reasons concern two appeals, each arising from separate drives of the appellant, Mr Kevin Hall, on 9 December 2007 in Launceston. As a consequence of each drive Mr Hall was charged with breaches of Rule 149(2), which provides “a *person shall not drive in a manner which in the opinion of the stewards is unacceptable.*” On each charge the stewards suspended Mr Hall for four weeks and ordered that the suspensions be served concurrently. Mr Hall appealed each decision.

The first appeal concerns Mr Hall’s drive on a horse *Fair Dinkum Joe* in the City of Launceston Cup. It was an open class race over 2,698 metres with a good quality field. *Fair Dinkum Joe* was an emergency but gained a start from Gate 3. The stewards found that Mr Hall’s drive was unacceptable in that he permitted the horse to maintain too fast a pace between the start and about the 1609-metre mark.

In that race the horse began well and reached the lead. The favourite, *Flaming Roadstar*, raced to his outside and challenged for the lead. Mr Hall elected to maintain the lead. He did so until about the 1,000-metre mark. At that stage his horse commenced to tire, the favourite crossed to the lead. Mr Hall’s horse from then on continued to lose ground ultimately being beaten by more than 100 metres. The stewards’ concern arose when the times and films were reviewed in the days following the race meeting. That information revealed that the lead-time, that is the time for the race from the start to the 1609-metre mark, was 78.9 seconds. That, we are told, is 2.3 seconds faster than any other recorded time for a race over that distance from a mobile start and 5.56 seconds faster than average. Armed with this information the stewards reviewed the films and formed the opinion that, given the disclosed class and ability of the horse, it was unacceptable that Mr Hall had elected to maintain the lead in the back straight when challenged over an extended period. They say that he should have eased the pace or handed up the lead and given his horse some respite so it could finish the race off.

Mr Hall says that the horse had come through the classes well and he had a high opinion of it. He said it had considerable potential. It won five races in a row albeit at a lesser class in races

up to a mile with three of those races in sub two-minute mile pace. Mr Hall went into the race with confidence, the horse having worked extremely well, he said, over the race distance. He said his horse raced better when leading.

We have considered all of this evidence and viewed the race films. It seems to us to be important that the acceptability of Mr Hall's drive ought not to be judged with the benefit of hindsight. In our view the determination of whether the drive was unacceptable must be judged by testing Mr Hall's actions against what could be expected of a reasonably competent driver armed with the information that was or should have been known by Mr Hall at the time his allegedly wrongful actions took place.

There was discussion about whether the horse's performance was affected by illness. For the reasons I have explained we consider this to be of no assistance. Stewards would of course argue that the horse's ultimate performance demonstrates the result of the unacceptable driving, but we must express caution here as well. In our view that approach risks placing too much weight on the result of the race rather than Mr Hall's actions at the relevant time. Stewards say Mr Hall should have realised his horse was being driven too fast. They take into account in their assessment the horse's ability and class compared to the rest of the field. However, our observations of the race do not disclose any obviously inordinate speed. The favourite was to the outside. The third and fourth placed horses were immediately behind. Mr Hall's horse was racing kindly and with good form. He didn't use the whip. He released the reins when challenged but didn't need to drive vigorously.

Does this mean that it was unacceptable that Mr Hall, when challenged in the back straight, elected to maintain this pace to retain the lead? We are not satisfied, despite what was subsequently demonstrated to be a very fast pace, that it was so unacceptable as to warrant punishment. For that reason the appeal is upheld.

The second appeal by Mr Hall relates to a charge for a breach of the same rule in the following race. The circumstances are very similar. In this race he was driving *Hole Lot Fire* in the Three Year Old Championship. It was a 2,200 metres race. His horse started from Gate 4 and having shown good gate speed reached the lead. The favourite in the race *Cat Bay* started from the outside of the front row and after the start was outside the leader. It challenged for the lead in the back straight on the first occasion. The stewards found that it was unacceptable that Mr Hall did not hand up to *Cat Bay*. They reached that conclusion, again, following a post race analysis of the times once they became available. It was unacceptable, it is contended, because, given the horse's ability compared to the other horses in the field and the speed that it was going (as disclosed by the times), it should have been given respite from that fast pace so as to enable it to finish off the race. The horse, as in the last case, tired from the 800-metre mark and was distanced at the finish.

Mr Hall's actions must again be judged at the time that they occurred. That is, was his drive unacceptable when judged against what would be expected of a reasonably competent driver armed with the information that was or should have been known by Mr Hall at the time that the allegedly wrongful actions took place?

Mr Hall said that he had and still has a high opinion of this horse. The horse's form was better than it appeared and it had worked very well against another well-performed horse in the period immediately before this race. He intended to drive it confidently. When the favourite challenged, the driver, he said, swore at him and told him to hand up but he still did not do so.

The question for us is whether, knowing what he knew about the horse, it was unacceptable that he didn't hand up. We are not satisfied that he should have done so. Whilst the fact that his horse later tired suggests that he may have been better to do so, we must judge Mr Hall at the time that the actions took place. His horse was pacing well, he had the favourite covering ground to his outside and he judged, not unreasonably in our view, that he was able to perform appropriately from that position notwithstanding the fast pace. To find otherwise would be, in our view, to counsel perfection with the benefit of hindsight. For these reasons we uphold the appeal.

Mr Hall's deposits will be returned.

DATED: 24 January 2008.