

**RACING APPEALS TRIBUNAL****QUEENSLAND****NOTICE OF DECISION**

APPEAL NO RH001-07  
APPELLANT: David William Lewis  
RESPONDENT: Queensland Harness Racing Board  
DATE: 27 March 2007  
APPEARANCES: Mr J E Murdoch SC appeared on behalf of the Appellant  
Mr Martin Knibbs (Chief Steward) appeared on behalf of the Respondent

**REASONS FOR JUDGEMENT**

Mr Leo Williams AO – Chairman  
Mr Brockwell Miller – Deputy Chairman  
Mr Dennis Standfield - Member

This is an appeal by David Lewis against a conviction and penalty following a drive by him at the Gold Coast on 15 February 2007. The Stewards convicted Lewis of a breach of Rule 149(1) of the Rules of Harness Racing which Rule provides as follows:

“149(1) A driver shall take all reasonable and permissible measures during the course of a race to ensure that the horse driven by that driver is given full opportunity to win or obtain the best possible placing in the field.”

The Stewards opened an inquiry following the race on 16 and 27 February and following the hearing convicted Lewis. The matter went from there to the First Level Appeal Committee of the Queensland Harness Racing Board who maintained the conviction.

The appellant was represented before the Tribunal by Mr Murdoch SC. Mr Murdoch in his Submissions cited the case of McCoy (RT012-05) in which the Tribunal had previously considered this Rule. The judgement in that case contains the following comment:

"The difficulty with this type of Rule is that the Stewards' decisions are made with the benefit of hindsight and based on the formation of opinions about what should or should not have been done in the heat of the moment in a race when jockeys are under pressure to make snap decisions."

The Rule is clear enough but its application can cause problems as to what can or should be taken into account in determining what constitutes a breach.

In this case the Stewards took the view that Lewis by moving from a one out, one back position in the field onto the pegs made an error in judgement of sufficient gravity to breach the Rule. The Stewards took the view that it should have been obvious to any reasonable driver that this action denied his horse every opportunity to win and to obtain the best possible place in the field. As the race unfolded Lewis found himself trapped on the inside against the pegs and other horses moved up outside him denying him a run to the finish.

This Rule is contained in Part 8 of the Rules of Harness Racing which is entitled "Required Racing Standard". Rules 147 and 148 deal with the situations relating to failure to allow a horse to run on its merits i.e. pulling a horse or coercing or assisting someone to do so.

The other Rule in Part 8, Rule 149(1), (2) and (3), is drafted in fairly broad terms and its application and enforcement is somewhat coloured by what precedes it. Rules 147 and 148 deal with intentional quasi criminal acts followed by Rule 149 which when viewed in its context has to be looked at in the light of something more than a simple mistake.

A proper application of this Rule cannot be made on the basis that the Stewards think the drive could or should have been better made.

The Tribunal's view is that to invoke this Rule circumstances or measures taken by the driver must make it obvious to any reasonably informed person watching the race that the horse has been denied the opportunity to win or obtain the best possible place and that the driver has seriously fallen short of a reasonable standard.

Part 8 goes on to deal with driving in a manner which in the Stewards' opinion is unacceptable. Again it is a Rule which the Tribunal believes should only be invoked with clear facts to support a breach.

In the present case Lewis justified his drive on the simple basis that by moving back in his horse would cover less ground.

Mr Knibbs, on behalf of the Board, in his reference to McCoy's case distinguished Lewis's action on the grounds that it was not a snap decision and that he had adequate time to decide to make the sideways and inward move, and that such a move was an unreasonable action.

He referred to the use of the term "snap" in the context of McCoy's case and maintained that what Lewis did was not a snap decision. Perhaps the use of the word "snap" in the Reasons for Decision was unfortunate but the Tribunal is of the view that to maintain a conviction for breach of this Rule there has to be more evidence than a mere difference of opinion by the Stewards who always have the benefit of hindsight.

Obviously a race involves a number of horses and drivers and changes in position and speed. An error of judgement by a driver in the course of a race should not expose him to breach of the Rules provided that it is just that, an error of judgement. Blatant stupid mistakes, clearly wrong tactics and such circumstances are capable of bringing a driver within the ambit of the Rule but what subsequently proves to be a wrong decision is not on its own enough.

The Tribunal finds that although Lewis's drive is open to fair criticism within the context of the race it was not such as should have attracted a charge under Part I, Rule 149.

The evidence of the video does not sustain the conviction when the relevant standard of proof is considered.

The appeal is allowed and the deposit is refunded.



**Leo Williams AO**  
Chairman

**Brockwell Miller**  
Deputy Chairman

**Dennis Standfield**  
Member