

**GREYHOUND AND HARNESS RACING APPEALS TRIBUNAL
NEW SOUTH WALES**

TRIBUNAL: JUDGE B. R. THORLEY

**ASSESSORS: MR A. J. MULLINS
MR K. RUSSELL**

APPEAL OF MR G. W. INNES

DECISION

Rule 162(1) of the Australian Harness Racing Rules provides, so far as is relevant:

"A driver shall not—

(y) fail to adhere to minimum time standards for sections of a race."

In order to give effect to this rule, the Authority introduced a minimum sectional standard for Harold Park. This was expressed to be effective as from 1 May 2007 for all races at Harold Park. The expression by the Authority is in the following words:

"(1) Any Driver of a horse leading in a race who fails to adhere to a minimum time standard of 64 seconds for the first half of the last mile (ie, where the time exceeds 64 seconds) shall be guilty of an offence.

(2) The Stewards may refrain from taking action against a Driver guilty of an offence in (1) if, in the opinion of the Stewards, there are circumstances justifying the existence of a sectional time slower than 64 seconds for the first half of the last mile.

These circumstances include but are not limited to:

- (a) a relatively fast lead time in the race,
- (b) the race being a 2YO event over a longer distance, or
- (c) a lower standard of race.

(3) The Stewards are to impose a fine of \$100 for a first offence, with a discretion to impose a greater fine in the case of repeat offenders.

On 27 May 2008 driver Wayne Innes was in charge of Cohabit in the fifth race at Harold Park. He took the lead with that horse and was, after its running, called before the stewards and informed that the time for the first half of the last mile for the performance of his horse was 64.7 seconds. The transcript reveals the following exchange:

"Mr INNES: Are you sure I went 64.7?

CHAIRMAN: Oh, positive.

Mr INNES: How would you be positive?

CHAIRMAN: Absolutely positive.

Mr INNES: Did you clock it yourself?

CHAIRMAN: I did actually, yes.

Mr INNES: Did you?

CHAIRMAN: Now, you got fined on 13 May \$100.

Mr INNES: Yes.

CHAIRMAN: It is now up to \$200.

Mr INNES: Are you going to fine me \$200? You're joking! That clock's wrong.

CHAIRMAN: 64.7.

Mr INNES: That clock is wrong, Mr Chairman.

CHAIRMAN: Well, you—"

A little later in the transcript appears the following further exchange (page 3):

"Mr INNES: When the clock's wrong. The clock doesn't work half the time, Mr Chairman. Will you agree with me—

CHAIRMAN: You take it up with Harold Park."

We have to say at the very outset that this hearing before the stewards was not conducted in accordance with the standards of procedural fairness that we would normally expect. The Tribunal is aware that there are breaches of rules committed by drivers which are probably regarded as minor matters and which are dealt with in a very arbitrary and peremptory fashion. The thresholds for appeals to this Tribunal do not encourage the situation where this Tribunal is asked with any frequency to be exposed to what then transpires. Indeed, in our memory, this is the first appeal that this Tribunal has had in respect of a charge under this particular rule. Hence our

opportunity of making observations about the necessity for continuing adherence to procedural fairness has not presented itself to us.

When a driver is called before the stewards and an allegation is to be made to him, it has to be indicated to that person, after due inquiry, precisely what charge it is that is to be laid, particulars of that charge have to be provided, and a full opportunity is to be afforded to the person so charged to plead in a formal way and to present whatever evidence he or she considers appropriate.

Here, the transcript clearly reveals that right from the outset Mr Innes was going to be found guilty, and indeed the transcript suggests that the quantum of the fine was the first thing that the Appellant heard. Moreover, right from the outset the Appellant indicated his belief that there was something amiss with the performance of the timing system in use at Harold Park. That issue having been raised, and it having been recognised by the chairman of stewards that there may have been an issue there in the context that there had been some impairment of the timing device earlier in the evening, it was beholden for the stewards to adjourn the inquiry and to seek information from the Harold Park authorities as to the performance and reliability of the timing system. It was not appropriate that the Appellant be told himself that he should take it up with the Harold Park authorities. It was for the stewards to make those inquiries and to bolster their own allegations, not for the Appellant to disprove them.

These considerations alone would be sufficient for us to say that we think that this hearing before the stewards was defective and that the appeal should be upheld. There are, however, a couple of other matters to which we would wish to make reference. Here, at this hearing before the Tribunal, the chairman of stewards, apparently recognising what was transpiring, offered to have the matter remitted back to the stewards when a more fulsome inquiry would be afforded the Appellant. This was clearly an inappropriate submission to make. Moreover, an endeavour was made at this hearing to demonstrate that in fact the timing system was not defective. For this purpose, a letter was tendered from Mr Dumesny, the Chief Executive of the New South Wales Harness Racing Club Ltd, which asserts that the calibration system in use ensures that the timing system is accurate. Once more we repeat, it is too late at this hearing to do things that should have been done at the time of the stewards inquiry.

We, further, are somewhat concerned about the actual policy statement. The stewards are enabled to refrain from taking action if there are circumstances which would in their opinion so justify. We have set these out in the earlier part of these reasons. They do not *ex verbis* include such matters as a slower track affected by weather conditions, or the existence, for example, of a severe head wind which might be calculated to lower performance times. They do refer to a lower standard of race. This particular race in question is a race which had been previously destined for Menangle but had been transferred to Harold Park. The contestants in it, as described by Mr Innes, were "country horses". Whether or not "country horses" might be expected to produce slower times is not for this Tribunal to decide,

although we do note that the sectional standard produced by the Authority is applicable for "all races at Harold Park".

The circumstances contained in the policy statement refer to a longer distance and a lower standard. We have to ask the questions: Longer than what? And lower than what? These matters are not spelt out and must present a measure of confusion for the stewards who are charged with enforcement of these measures.

For these reasons the appeal will be upheld. The stewards' findings and orders will be set aside. It is directed that the Appellant's appeal deposit be returned to him.

B. R. Thorley, Judge
16 July 2008