



COMMISSION HEARING

TORONTO, ONTARIO – MARCH 24, 2009

**IN THE MATTER OF THE RACING COMMISSION ACT, S.O. 2000, c.20;
AND IN THE MATTER OF THE APPEAL OF
STANDARDBRED LICENSEES GREGG MCNAIR, FRANK DETTORE
AND THE HORSE WESTERN SHORE**

On August 18, 2008, the Judges at Mohawk Raceway issued Standardbred Official Ruling SB 38287 to Won The West with a penalty of “finished 2nd placed 4th” for violating Rule 18.08.02 of the Rules for the following reasons: “did go inside 2 consecutive pylons during the stretch drive and was lapped on by #1 ‘Western Shore’ and #2 ‘Eagle Luck’ in Race 7, August 16/08”.

Ronald E. Parsons (“PARSONS”), trainer of the horse, Won The West, appealed Standardbred Official Ruling SB 38287 to the Ontario Racing Industry Board of Appeal (“Board of Appeal”).

The Board of Appeal allowed PARSONS’ appeal.

Gregg McNair (“McNAIR”), trainer of the horse, Eagle Luck, Frank J. Dettore (“DEETTORE”) owner of the horse, Eagle Luck, Ronald C. Michelon (“MICHELON”), Brittany Farms (“BRITTANY”), Ervin Miller Stable Inc. (“ERVIN”), and Riverview Farms (“RIVERVIEW”) co-owners of the horse, Western Shore, appealed against the decision of the Board of Appeal.

On March 24, 2009, a Panel of the Ontario Racing Commission (“ORC”), comprised of Chair Rod Seiling, Vice Chair Hon. James M. Donnelly, and Commissioner Brenda Walker, was convened to hear the appeal.

Jennifer Friedman appeared as counsel for the Administration. Robert Burgess and James Geis appeared as counsel for MICHELON, BRITTANY, ERVIN and RIVERVIEW. Gerald Sternberg appeared as counsel for McNAIR and DETTORE. Larry Todd appeared as counsel for PARSONS.

Upon hearing the testimony of Senior Judge Michael Brown, Assistant Manager of Racing Michael Wilson, ORC Licensed Driver Mark MacDonald, and ORC Licensed Driver Greg Grismore, reviewing the exhibits filed, and upon hearing the closing submissions, the Panel allowed the appeal as follows:

- i) The order of finish reverts as posted by the Judges...Western Shore, finished third, placed second, Eagle Luck, finished fourth, placed third and Won The West, finished second, placed fourth;
- ii) Purse monies, driver and trainers’ fees are to be distributed accordingly.

The transcript with the Panel’s Reasons for Decision is attached to this Ruling.

DATED at Toronto this 2nd day of April 2009.

BY ORDER OF THE COMMISSION


Rob McKinney
Acting Executive Director



REASONS FOR DECISION

Overview

1. Standardbred licensees Gregg McNair, Frank Dettore and the owners of the horse, Western Shore, appealed a ruling of the Standardbred Industry Appeal Board dated January 14, 2009, wherein the Board overruled a decision of the Judges at Mohawk Raceway in the Canadian Pacing Derby held on August 16, 2008 at which time the horse Won The West was placed fourth from a second place finish for violating SB Rule # 18.08.02. (appended at the end of this Ruling)

Background

2. The Judges at Mohawk Raceway, following the running of the Canadian Pacing Derby with a purse of \$702,000 and carded as the seventh race on August 16, 2008, posted the inquiry sign concerning a possible violation of SB Rule No. 18.08.02 (Ex. 2, Tab 18). Senior Ontario Racing Commission (ORC) Judge, Michael Brown, testified that as a part of standard operating procedures the Judges review the video replay of each race to ensure there was no rule violation that the Judges may have missed watching the race live.

3. In watching the video replay the Judges observed that the horse, Won The West, went inside two pylons at the head of the stretch. The Judges also interviewed the horse's driver, Greg Grismore, via telephone regarding the incident.

4. Following this process and pursuant to ORC memorandum, July 9, 2003, dealing with pylon violations under Rule 18.08.02, the Judges placed Won The West fourth as he was lapped on at the finish line by both Western Shore, moved from third to second and Eagle Luck, moved from fourth to third place. The current Rule 18.08.02 is identical to former Rule 18.08 (a). The memorandum is appended at the end of this Ruling. The Monday following the race, Won The West's trainer, Ron Parsons, viewed the race replay with the Mohawk Judges and notified them he would be appealing their decision (Ex. 1, Tab 12). Judge Brown stated that on that basis the Judges issued a ruling, SB 38287 (Ex. 1, Tab 11).

5. The Standardbred Industry Appeal Board heard Mr. Parson's appeal on January 14, 2009 with a decision issued that same day (Ex. 1, Tab 6). That Board overturned the Judges decision thereby restoring the original order of finish.

6. The connections representing the horses, Western Shore and Eagle Luck, filed notices of appeal with the ORC with respect to that decision (Ex. 1. Tabs 1, 2, 3 & 4). A Notice of Hearing (Ex. 1, Tab 5) was sent to all the parties for March 24, 2009. As per ORC regulation and with the consent of all the parties, the appeals were combined and heard as one.

7. Larry Todd, legal counsel for Won The West's interests objected at the commencement of the hearing to the Administration being a party to the hearing on the basis it had time to file a Notice of Appeal and to so notify him. Jennifer Friedman, legal counsel for the ORC, argued that such notice was not required based on past practice. Her position was supported both James Geis and Robert Burgess, legal counsel for the Western Shore interests and Gerald Sternberg,



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legal counsel for Eagle Luck's connections. The Panel ruled that the Administration of the ORC, as it has in past practice, would have standing at the hearing, and that the Panel would give due consideration to the Administration's position.

8. Mr. Todd's position was that SB Rule No. 18.08.02 identifies two alternative preconditions for a breach of the Rule as follows:

In the opinion of the Judges, the horse must either have improved its position or gained an unfair advantage.

9. Mr. Todd argued that the Judges' ruling made reference to neither precondition (Ex.1, Tab 11). He contended that they erred by applying the July 2003 ORC memorandum (Ex. 1, Tab 9) before they found that required element of the offence.

10. The driver of Won The West, Greg Grismore, was not found at fault by the Judges, nor was there an appeal lodged against that finding. Therefore this Panel was not required to deal with any issue related to his driving conduct.

11. Mr. Grismore testified that he did indeed go inside the second pylon just past the head of the stretch but he went over the top of the first one and that he distinctly felt the bump from his wheel hitting it at the base. Therefore, according to his evidence, the horse should not have been subject to the placing. It was Mr. Grismore's position that on viewing the race replay film (Ex. 8) one can see "plain as day" the pylon move toward the track, whereas movement toward the finish line may have supported his testimony. The still pictures (Ex. 1, Tab 14) indicate the pylon contact was with the inside of the sulky wheel. He testified that he was on the lead the whole time, did not gain advantage and actually lost some momentum in going sideways to some extent and having to straighten his horse.

12. Mark MacDonald, the driver of Eagle Luck, testified that he had to follow Won The West for safety reasons as the horse moved inside the pylons at the head of the stretch. He testified that the films indicated that Mr. Grismore's horse did go inside two consecutive pylons, which constituted a rule violation, a rule that is very familiar to the horse racing participants.

13. The Administration and Appellants' position was that about ten years ago, for safety reasons, the hub rail was removed from racetracks and replaced by a series of pylons indicating where the hub rail would have been. While this was a significant advancement regarding safety, the downside was that it now became possible for a horse or its sulky to move inside the pylons in whole or part and then return to the racing surface to continue the race.

14. The industry problem was how to address this issue by a fair and consistent response. An absolute prohibition disqualifying the horse for going inside a pylon was rejected. By way of extreme example, it was deemed to be unfair to disqualify a horse leading by 15 open lengths, which drifted a sulky wheel inside the last pylon before the wire. Accordingly, the twin fairness concepts were introduced into the Rule – "unfair advantage" or "improve racing position".



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15. The difficulty was that assessment of fairness was a subjective standard capable of inconsistent application. By various Judges, by the very nature of racing, enforcement must be and must be seen to be consistent and fair.

16. Industry stakeholders conferred and devised an objective standard for determining the fairness issue. That objective standard is that going inside two or more pylons is deemed to confer an unfair advantage. Violation involving a single pylon was left to the Judges to make a fairness determination. That standard was incorporated into the penalty memorandum of 2003. The Rule and the memorandum read together enable the Judges to objectively and consistently determine the fairness element of the breach. The memorandum was promulgated throughout the industry. It has been incorporated into race programs at WEG tracks identifying for the public, the penalty for pylon violations. That protocol has been universally applied at Ontario tracks since 2003.

17. The Judges' procedure is for two of the three Judges to view the live race with binoculars from the Judges' stand atop the grandstand. The third Judge watches a video monitor. If a questionable incident occurs, the Judges check their original impression against all films of the race. Their protocol for suspected pylon violations is:

1. Determine whether the horse or sulky in whole or part went inside the pylons.
2. Determine whether that action was the result of interference or being off the racing surface.
3. Determine the fairness issue on the basis that a horse is considered to have an unfair advantage if the violation is two or more pylons.
4. Determine whether the horse was lapped on by one or more horses as depicted by the photo-finish camera.
5. Impose the appropriate placement under the penalty memorandum.

18. According to Judge Brown's testimony, the Judges did not ignore the fairness issue before addressing penalty. They followed the industry-wide protocol of an objective standard to achieve a predictable, consistent result. Having followed that protocol and having made a finding of violation of two or more pylons, it was unnecessary to incorporate a finding of unfairness in their written ruling.

19. The Judges decision was that Mr. Grismore's horse, Won The West did go inside two consecutive pylons and that he was not forced there or interfered with causing him to go there. As per Mr. Grismore's own testimony, he was having trouble steering the horse and it went there on its own accord. It was also noted that the horse wore a burr head pole. This device is used by trainers to help stop a horse from moving toward the side of the head it is attached to.

Issue

20. Did Won The West go inside two consecutive pylons during the running of the Canadian Pacing Derby on August 16, 2008, at Mohawk Raceway? Was Won The West forced and or interfered with thus causing the horse to go inside the pylons? Is the industry practice described in the evidence soundly based and was it fairly and consistently applied?



Decision

21. After carefully reviewing the submissions, the exhibits tendered and considering the testimony, the Panel allows the appeal. Therefore, the order of finish reverts as posted by the Judges, Ex. 1, Tab 15. In result, Western Shore, finished third, placed second, Eagle Luck, finished fourth, placed third and Won The West, finished second, placed fourth. Purse monies, driver and trainers' fees are to be distributed accordingly.

Reasons For Decision

22. The Panel's conclusions must be based on the oral testimony and the physical evidence tendered (films/photographs). That evidence must be clear and convincing.

23. Industry stakeholders identified an objective standard for determining the fairness issue ("gain advantage" or "improve position" under Rule 18.08.02).

24. That standard was that any time a horse goes inside two or more pylons there is by the very nature of the act a "deemed" advantage. If the hub rail was still present, the horse would be slowed down by the contact with the rail or by the driver being forced to take a strong hold of the horse via the reins to avoid a possible serious accident.

25. That objective standard was incorporated into the penalty memorandum of 2003. The rule and the memorandum read together provide a consistent and predictable standard by which the Judges determine the fairness issue. As stated, the memo was widely promulgated throughout the industry by posting and paddock meetings. It has been incorporated into race programs at Woodbine Entertainment Group tracks thereby communicating to the public the penalty for pylon violations. That protocol has been universally applied at Ontario tracks since 2003.

26. The pictures and video clearly show the inside of the sulky wheel hitting the first of the two pylons. This means the sulky is outside the racecourse at the first pylon, and as all parties agreed, the wheel was outside the next pylon.

27. The evidence is clear that:

- Won The West did go inside two consecutive pylons
- The horse was not interfered with or forced to go inside the pylons
- Won The West was lapped on at the finish line by both Western Shore and Eagle Luck

28. On the basis of the evidence, the Judges did not ignore the fairness issue before addressing the penalty. By finding a two consecutive pylon violation and applying the industry protocol, they found that there was unfair advantage. Accordingly, there was a rule violation. They followed that industry-wide objective standard to achieve a predictable, fair and consistent result. Having followed that protocol, it was unnecessary to recite a finding of unfairness in the written ruling.



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29. The Industry Appeal Board made a finding of a one-pylon violation. That decision did not trigger the objective standard approach.

30. The industry practice described in the evidence is soundly based. Fairness and consistency in rulings is vital. The object standard is fair to all and achieves predictability. There is nothing inherently wrong in reading and applying the rule and memorandum in this manner. That objective fairness conveyed is preferable to the previous chaos resulting from subjective assessment by the Judges as to what constitutes unfair advantage. The evidence clearly indicates the rule is well understood and consistently applied.

31. The Panel suggests that the Administration of the ORC consider codifying its July 2003 memo by way of a Policy Directive to prevent any future misunderstanding of the relationship between the Rule and the memo.

DATED this 2nd day of April 2009.

Rod Seiling
Chair

Ontario Racing Industry Board of Appeal

RULING

APPEAL OF RONALD PARSONS, Cambridge, ON (License # R99664)

Against the Judges' decision to place the horse "WON THE WEST" from 2nd to 4th for allegedly violating ORC Rule 18.08.02 (If, at a racetrack which does not have a continuous solid inside hub rail, a horse while on stride or part of the horse's sulky leaves the course by going inside the hub rail or other demarcation which constitutes the inside limits of the course, the offending horse shall be placed back where, in the opinion of the judges, the action gave the horse an unfair advantage over other horses in the race, or the action helped the horse improve its position in the race, in addition, when an act of interference causes a horse or part of the horse's sulky to cross the inside limits of the horse, and the horse is placed by the Judges, the offending horse shall be placed behind the horse with which it interfered. Drivers, who in the opinion of the Judges, leave the racing strip when not forced to do so as a result of the actions of an other driver and/or horse may be fined or suspended by the Judges) in the 7th race on August 16, 2008 at Mohawk Raceway. Ruling SB38287.

The Ontario Racing Industry Board of Appeal, comprised of Norm Paquette (chairman), Bill McDermott, and Brian Webster who sat at Toronto, Ontario, on Wednesday, January 14, 2009, to hear and dispose of said appeal. Judge Tom Miller represented the Ontario Racing Commission. Mr. Larry Todd represented Mr. Parsons and the owners of "Won the West".

Having reviewed the race patrol films, having heard sworn testimony of Judge Mike Brown, Driver Greg Grismore, and Owner Bill Robinson, duly recorded, having given full consideration to the evidence presented, it was the unanimous decision of the Board to **ALLOW** the appeal.

The Board finds that the horse "Won the West" driven by Greg Grismore did bear left shortly after entering the home stretch and the left wheel of his sulky came into contact with one pylon and went inside the next pylon. The horse quickly returned to the racing surface and finished the race in 2nd place. The manoeuvre was entirely without pressure from other horses as the driver momentarily checked his horse to prevent it from further drifting to the left.

The Board finds that the contact and straddling of the pylons as referred to herein, did not give "Won the West" an unfair advantage nor did it improve his position in the race. The appeal is allowed and the original order of finish is hereby restored.

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Legal Services

10 Carlson Court Suite 400 • Toronto, ON M9W 6L2 • Tel: (416) 213-0520 • Fax: (416) 213-0520

Ontario Racing Industry Board of Appeal

The original order of finish:

- 1st - Mister Big
- 2nd - Won the West
- 3rd - Western Shore
- 4th - Eagle Luck
- 5th - Zooka

BY ORDER OF THE BOARD,

Dated at Toronto, this 14th day of January 2009



Angela Wilson
Administrative Coordinator.

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Ontario
Racing
Commission

10 Carlson Court
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Standardbred Official Ruling

Series No. **SB 38287**

Date of Birth

Month	Day	Year		

Licence No.

2	B	B	3	8
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Date

AUG 18/02

Track

MIDLAND

Name of Participant

WON THE WEST

Address of Participant

The Penalty of

FINISHED 2ND PENALTY 4 M.

is hereby ordered against the above named for the following reasons:

(Designate in full the rules violated and the race and/or place where the violation took place)

ORC Rule 18.08.02

*DID GO INSIDE 2 CONSECUTIVE
PLEAS DURING THE STRAIGHT DRIVE
AND WAS LAPPED ON BY #1 "WESTERN
SHORE" AND #2 "RACE LUCK" IN RACE 7
AUG 16/02*

RULE 6.15 Fines imposed in accordance with the rules are payable forthwith upon their imposition and before the participant races again, unless there has been an appeal filed. A licensee who fails to pay such fine may be suspended until the fine is paid, and such suspension will result in a penalty of not less than \$25.00.

By Order of the Judges

[Signature] _____

[Signature] _____

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JAN 27 2009
Legal Services

[Signature] _____

[Signature] _____

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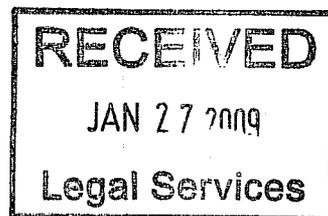
Memorandum

July 9, 2003

TO: ALL JUDGES

FROM: Bill Fines
Supervisor, Standardbred Racing

RE: Penalties assignment for Rule 18.08 (a)



Effective July 9, 2003, penalties prescribed for Rule 18.08(a), which deals with going inside the pylons, shall be applied as follows:

Any horse or any part of the horse's sulky that leaves the race course by going inside the pylons, when not forced to do so as a result of the actions of another driver and/or horse or without being interfered with by another driver and/or horse, shall be placed as follows:

- a) If any horse or any part of the horse's sulky goes inside two (2) consecutive pylons, the offending horse shall be placed behind all horses that are lapped on to the offending horse at the wire,
- b) If any horse or any part of the horse's sulky goes inside three (3) consecutive or more pylons, the offending horse shall be placed last.

The following guidelines for driver penalties will apply:

	Purses over \$5,000	Purses under \$5,000
1 st offence	\$100	\$50
2 nd offence within 1 year of 1 st offence and within 750 drives of the 1 st offence	\$200	\$100
3 rd offence within 1 year of 1 st offence and within 750 drives of the 1 st offence	\$500	\$150