



IN THE MATTER OF THE RACING COMMISSION ACT, S.O. 2000, c.20;

**AND IN THE MATTER OF THE APPEAL OF
LICENSEE DANIEL W. CLEMENTS**

On July 27, 2009, the Judges at Grand River Raceway issued Standardbred Ruling 39686 to Daniel W. Clements ("Clements") as follows:

The horse PL DANGEROUS driven by Daniel W. Clements in race 4, July 27, 2009 at Grand River Raceway was placed from 2nd to 7th for making a break in stride in the 1st turn and violating the following rules: 22.27(c) did fail to continuously lose ground while on a break; 18.08.02 did leave the course and the action gave the horse an unfair advantage over other horses in the race and the action helped the horse improve its position in the race; 22.05.01(b) did impede the progress of other horses in the race and the action caused them to break from their gait; 22.09 the horse PL DANGEROUS is placed for violating the rules listed above.

On July 27, 2009, Clements filed an appeal of Standardbred Ruling 39686.

On July 30, 2009, a Panel of the Ontario Racing Commission ("ORC"), comprised of Vice Chair Hon. James M. Donnelly, convened for the purposes of hearing the appeal.

Jennifer Friedman represented the Administration of the ORC. Clements appeared on his own behalf.

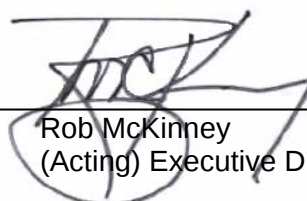
After considering the Agreed Statement of Facts, appraising the testimony of ORC Driver Luc Ouellette, ORC Driver Trevor Henry, Senior Judge Craig Walker and Clements, reviewing the exhibits filed and upon hearing closing submissions, the Panel dismissed Clements' appeal as follows:

- Although obliged to do so by Rule 22.27(a) Clements failed to 'take the horse to the inside where clearance existed'.
- Although obliged to do so by Rule 22.27(c) Clements failed to 'continuously lose ground while on the break'.
- Clements was in breach of Rule 22.05.01 by 'impeding the progress of another horse'.
- By leaving the race course by going inside four consecutive pylons, Clements was in violation of Rule 18.08.02.
- With substantial issue in balance the burden of proof on the Administration is on a balance of probability with an evidential burden of cogent evidence both clear and compelling. In the view of the Panel that burden has been met.

The Panel's Reasons for Decision is attached to this Ruling.

Dated this 12th day of August, 2009.

BY ORDER OF THE COMMISSION



Rob McKinney
(Acting) Executive Director



REASONS FOR DECISION

1. This Decision was released July 30 with Reasons to follow. These are the Reasons.

Background

2. This is an appeal by Daniel Clements (Clements) driver of "PL DANGEROUS" in race 4, Grand River Raceway, July 27, 2009. PL DANGEROUS finished 2nd and was placed 7th.
3. The appeal comes forward on an emergency basis. The draw for the Battle of Waterloo race on Monday is delayed pending this determination. In consequence the Chair directed that the proceeding be heard by the Vice Chair sitting as a panel of one under the authority of Section 4.2.1 SPPA. The hearing proceeded at 8:00 a.m. on Thursday, July 30th, 2009.
4. Standardbred Ruling 39686 concisely articulates the circumstances and rule violations as determined by the Judges. Following their review of the race films and interviews with drivers Ouellette, Henry and Clements, the Judges ruled as follows:

The horse PL DANGEROUS driven by Daniel W. Clements in race 4, July 27, 2009 at Grand River Raceway was placed from 2nd to 7th for making a break in stride in the 1st turn and violating the following rules: 22.27(c) did fail to continuously lose ground while on a break; 18.08.02 did leave the course and the action gave the horse an unfair advantage over other horses in the race and the action helped the horse improve its position in the race; 22.05.01(b) did impede the progress of other horses in the race and the action caused them to break from their gait; 22.09 the horse PL DANGEROUS is placed for violating the rules listed above.

5. LUCKY ACQUISITION (Trevor Henry) finished 6th and was placed 5th. DALEYS INTEREST (Luc Ouellette) finished 7th and was placed 6th.

The Appeal

6. CLEMENTS indicated that he was aware of his right to be represented by counsel but on short notice was unable to make arrangements. He advised that he intended representing himself and was prepared and ready to do so.

7. On consent the Administration filed a book of documents and Agreed Statement of Facts.

The video tapes, both pan and front and back tower shots, were played and replayed in sufficiency for all during the course of the hearing.

8. Driver Luc Ouellette gave evidence that PL DANGEROUS made a break going into the first turn and did not lose ground. He claimed that PL DANGEROUS interfered with LUCKY ACQUISITION which in turn interfered with his horse DALEYS INTEREST. He noted that PL DANGEROUS did not move to the safety lane and did not lose ground.

9. The failure to lose ground was supported by the evidence of Trevor Henry and Senior Judge Craig Walker. Clements testified denying any breach of the Rules of Racing.



Finding of fact

10. Based on the Agreed Statement of Facts, the documents filed, the video evidence and the oral evidence on this Hearing, the following findings of fact are made by this Panel:

- PL DANGEROUS did “break from its gait” in the first turn. The horse was on lead or contending for the lead at that time. In so doing it was carrying LUCKY ACQUISITION two-wide and DALEYS INTEREST three-wide in a three-across format.
- The break was protracted as the horses continued around the turn.
- Although obliged to do so by Rule 22.27(a) Clements failed to “*take the horse to the inside where clearance existed*”. At best PL DANGEROUS moved a few inches to the inside so that the inside race bike wheel left the race course by passing inside the pylons. The safety lane was clear and available immediately inside the pylons.
- Although obliged to do so by Rule 22.27(c) Clements failed to “*continuously lose ground while on the break.*” Throughout the extended break, Clements maintained his speed and position on lead and on the “rail”.
- By failing to take the horse to the inside, by failing to continuously lose ground Clements impeded the progress of LUCKY ACQUISITION and DALEYS INTEREST by improperly carrying them two and three wide. Thereby LUCKY ACQUISITION and DALEYS INTEREST were deprived of fair opportunity to contest the race. Clements was in breach of Rule 22.05.01 by “*impeding the progress of another horse.*”
- By leaving the race course by going inside four consecutive pylons Clements was in violation of Rule 18.08.02

Rule 18.08.02

11. Interpretation of Rule 18.08.02 is as provided by “*Memorandum to all Judges by the Supervisor of Standardbred Racing July 9, 2003*” (appended hereto). That Memorandum introduced an objective standard for interpreting “*gain advantage*” or “*improve position*” as used in the Rule. The objective standard was analyzed and discussed in the Gregg McNair, Frank Dettore Ruling SB 005/2009 of April 2, 2009 as follows:

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.

12. In this case there is an “*advantage gained*” as deemed by the Memorandum. In addition there is clear and demonstrable objective proof of that “*advantage*” by the protracted break in gait during which position was maintained.

13. By virtue of the four consecutive pylon violation and combined operation of the Memorandum of July 9, 2003 and Rule 18.08.02 the Judges were obliged to place PL DANGEROUS last. In addition to the pylon violation there were breaches as follows:

- Failing to take the horse to the inside
- Failing to continuously lose ground
- Impeding LUCKY ACQUISITION and DALEYS INTEREST

14. Any one of those rule violations could result in PL DANGEROUS being placed behind the impeded horses which finished sixth and seventh in a seven horse field.

A Departure by this Panel from a finding by the Judges

15. In a nonessential component of their ruling, the Judges found LUCKY ACQUISITION and DALEYS INTEREST broke stride because PL DANGEROUS:

Did impede the progress of other horses in a race and the action caused them to break from their gait.

16. Upon the evidence on this hearing attributing those breaks to the actions of PL DANGEROUS remains unproven. Unquestionably LUCKY ACQUISITION and DALEYS INTEREST each broke from its gait. Unquestionably each had been impeded. The causation linkage between the impediment by PL DANGEROUS and the break is less clear because:

- There was a brief time lapse between PL DANGEROUS’ breach of the Rules and the breaks in gait by LUCKY ACQUISITION AND DALEYS INTEREST.
- There was no contact amongst the horses.
- There was adequate clearance amongst them.
- The horses were green two-year-old pacers (LUCKY ACQUISITION second lifetime start – DALEYS INTEREST fifth lifetime start).
- The horses (colts if you will) were competing for the lead through the entire first turn and thereby were subject to some continuing stress and urging.



17. The reason for the breaks by LUCKY ACQUISITION and DALEYS INTEREST remains undetermined. However, in light of the other findings of fact and Rule breaches that causation link is irrelevant to the disposition of this Appeal.

Clements' Contentions

18. In his presentation Clements relied upon his record of conformance with the rules of racing established over many years in the industry. That claim was uncontested. However the resulting status of years of good conduct does not constitute a valid defense to these driving breaches.

19. Clements persisted in a claim that the Judges came to a premature decision before hearing his version of events. This assertion was totally unsupported by the evidence. It is specifically contradicted by Judge Larry Hughes notes made at the time of the inquiry "*phoned Dan Clements and he said he followed the Breaking Rules and didn't interfere with anyone – looked at films one more time – made our decision.*" Further relating to the claim that the judges came to a premature decision – this hearing is more than a review of the conduct of the Judges' Inquiry. This is a fresh hearing termed *de novo*. This panel decides the issue on the evidence at this hearing.

20. Clements contended that the Judges made further findings of misconduct by him after their original Ruling. There is no impropriety in providing full explanations for their decision and penalty.

Standard and Burden of Proof

21. A substantial consequence follows resolution of this issue. The first two finishers in this race qualify for the Battle of Waterloo to be raced on the Monday following this hearing. By finishing 2nd, PL DANGEROUS qualified for the final. By disqualification that opportunity was lost. With substantial issue in balance the burden of proof on the Administration is on a balance of probability with an evidential burden of cogent evidence both clear and compelling. In the view of the Panel that burden has been met.

Result

22. In consequence the Appeal is dismissed. The Judges' Ruling on the disqualification and placement is confirmed.

DATED this 12th day of August 2009.

James M. Donnelly
Vice Chair

Attachments

- 1 – Standardbred Rules
- 2.- Memorandum of July 9, 2003



Standardbred Rules

Rule 22.05.01

A driver shall not commit any of the following acts which are considered violations of driving rules:

- (b) Impede the progress of another horse or cause it to break from its gait.

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 course, 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 another driver and/or horse may be fined or suspended by the Judges.

Penalties for drivers violating proviso of Rule 18.08.02 are as follows:

1. For the first offence:
 - a fine of \$100 shall be assessed
2. For the second offence within a year of the first offence and within 750 drives of the first offence:
 - a fine of \$300 shall be assessed
3. For the third offence within a year of the first offence and within 750 drives of the first offence:
 - a minimum fine of \$500 plus a suspension for 3 days shall be assessed
4. For the fourth offence within a year of the first offence and within 750 drives of the first offence:
 - a minimum fine of \$1,000 and a suspension for 5 days shall be assessed

Rule 22.09

In the case of interference, collision, or violation of any rules, the offending horse may be placed back one or more positions in that heat or dash, and in the event of such collisions, interference or violation preventing any horse from finishing the heat or dash, the offending horse may be disqualified from receiving any winnings and the driver may be fined or suspended. If a horse is set back, it must be placed behind the horse with which it interfered. If an offending horse has interfered with a horse involved in a dead heat and the offending horse is set back, it must be placed behind the horses in the dead heat.

Rule 22.27

When a horse breaks from its gait in a race the driver shall:

- (a) take the horse to the inside or outside of other horses where clearance exists;
- (c) continuously loses ground while on the break.

Ontario
Racing
Commission

9th floor
20 Dundas Street West
Toronto ON M5G 2C2
Tel (416) 327-0520
Fax (416) 325-3478

Commission
des courses
de l'Ontario

9^e étage
20 rue Dundas ouest
Toronto ON M5G 2C2
Tél (416) 327-0520
Téléc (416) 325-3478



Memorandum

July 9, 2003

TO: ALL JUDGES

FROM: Bill Fines
Supervisor, Standardbred Racing

RE: Penalties assignment for Rule 18.08 (a)

RECEIVED

JAN 27 2004

Legal Services

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