

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT : COLIN DAVID BROWN

APPLICATION NO. : A30/08/139

PANEL : D MOSSENSON (CHAIRMAN)
J SYME (MEMBER)
T MULLIGAN (MEMBER)

DATE OF HEARING : 9TH JULY 1993

IN THE MATTER OF an appeal by Mr Colin Brown against the determination of the Western Australian Trotting Association Stewards on 22nd June 1993 against the 12 months disqualification under Rule 215.

Mr J Courtis appeared for the appellant

Mr R J Davies, QC appeared for the respondent

Rule 215 states:

"A Driver who does not permit a horse to race on its merits or who so drives his horse that he prevents it from racing to its best advantage or from having the best opportunity to win or obtain the best possible place in the field shall be guilty of an offence and liable to be dealt with accordingly."

At a hearing before the Stewards the Appellant was charged as follows:

"That as driver of THE SLEEK BYRD in Race 4 the HMAS Fremantle Pace at Gloucester Park on Friday the 11th of June 1993 you have not permitted THE SLEEK BYRD to race on its merits by driving as you have so done, deliberately driving your horse above its capability."

Counsel for the Appellant submitted there was a breach of the rules of natural justice in relation to the manner in which the Stewards conducted their inquiry which subsequently led to the Appellant being convicted.

The Tribunal is satisfied that the Stewards are entitled to run their inquiries as they choose, provided the person charged knows exactly what he has to face and is given a proper opportunity to answer the charge. The inquiry in question was run according to the usual procedure. This meant that at different times in the course of the overall inquiry the Stewards performed different functions. It is well settled law that the mere fact Stewards are empowered to fulfil various and inconsistent roles, does not constitute an infringement of the rules of natural justice.

The Tribunal is satisfied that the Stewards did give the Appellant a fair hearing in that, despite having expressed opinions based on the observations that were adverse to the Appellant, they did keep their minds open in the sense of being ready and willing to be persuaded by Mr Brown up until the point when they considered the question of his guilt or innocence. The totality of the evidence is capable of supporting the conclusion which the Stewards reached.

The appeal is dismissed and the Stewards' conviction is confirmed.

Despite feelings of sympathy for the Appellant arising out of the personal implications a lengthy disqualification brings, the Tribunal cannot substitute its penalty for that of the Stewards unless it is demonstrated that an error by the Stewards imposing the penalty has occurred. The Tribunal is not satisfied that an error has occurred in the circumstances of this serious offence.

Accordingly the penalty is confirmed. The suspension of operation of that penalty now ceases to operate. There will be no refund of the lodgement fee that was paid upon the institution of the appeal.

Dan Mossenson

DAN MOSSENSON, CHAIRMAN

