

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT : PAUL JAMES HARVEY

APPLICATION NO. : A30/08/191

PANEL : MR P HOGAN (PRESIDING MEMBER)
MR JOHN SYME (MEMBER)
MR JOHN PRIOR (MEMBER)

DATE OF HEARING : 9 MAY 1994

IN THE MATTER OF an appeal by Mr Paul Harvey against the determination of the Western Australian Turf Club Stewards on 16 April 1994 imposing a two month suspension for a breach of Rule 137(a).

Mr T Percy, instructed by Mr T Kavenagh, appeared for the appellant

Mr F Powrie appeared for the WATC Stewards

Rule 137 states:

"Any rider may be punished if, in the opinion of the Stewards:

(a) He is guilty of careless, improper, incompetent or foul riding."

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

".... in the opinion of the Stewards you took your mount PLAY FOR WINGS inwards near the 250 metre mark and in so doing bumped PARIS BRUNCH ridden by Jason Brown, bumping that horse in onto the heels of LADY MARJ ridden by Patrick Carbery, causing it to check."

APPEAL AGAINST CONVICTION

This is the unanimous decision of the Tribunal.

The appellant was charged with improper riding with in that in the opinion of the Stewards he took his mount inwards near the 250 metre mark and in so doing bumped PARIS BRUNCH ridden by Jason Brown, bumping that horse in onto the heels of LADY MARJ ridden by Patrick Carbery, causing it to check. The appellant submits that in order to sustain a charge of improper riding as opposed to careless riding it is required that there be found real or potential interference together with intention to cause that interference. Further, it is said to be a more serious offence than careless riding.

We accept the submission that improper riding is a more serious offence than careless riding. We also accept that improper riding requires the mental element. Indeed the parties appear to be agreed on those points. The appellant submits that there is nothing in the evidence which would allow the stewards to find the offence proved to that high standard.

We do not agree. The stewards' video of the race showed graphically the action of jockey Harvey and the result. We would describe his actions as deliberate and definite. The taking of the horse in occurred quite quickly but was intentional and a definite motion. The degree of interference was extreme. We are of the view that there was ample evidence to prove all elements of the offence, namely real interference, intention and a degree of seriousness to take it out of the category of careless riding. For these reasons the appeal is dismissed.

APPEAL AGAINST PENALTY

This is the unanimous decision of the Tribunal. The appellant was suspended for two months following his conviction on a charge of improper riding. In the penalty phase of the hearing the stewards said that the appropriate penalty might have been three months. It was reduced to two months because of the appellant's demeanour.

The appellant now appeals against two month suspension. It is well settled that an appellate tribunal such as this would not interfere with a penalty unless it can be shown that this sentencing exercise miscarried in some way. That may occur when a mistake is made to the facts, when an error is made as to legal principle, or when the penalty itself is so excessive as to manifest error.

We are of the opinion that the penalty in this case was so excessive as to manifest error. The offence may be categorised as at the lower end of the scale of improper riding. For that reason we reduce the penalty to a period of 4 weeks suspension to run from today's date.

Half of the fee paid on lodgement of the appeal be refunded.



PAT HOGAN, PRESIDING MEMBER

