

**DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL**

APPELLANT : JASON OLIVER
APPLICATION NO. : A30/08/246
PANEL : MR D MOSSENSON (CHAIRPERSON)
DATE OF HEARING : 2 MARCH 1995

IN THE MATTER OF an appeal by Mr J Oliver against the determination of the Western Australian Turf Club Stewards on 23 February 1995 imposing a 23 day suspension under Australian Rule of Racing 137(a).

Mr T Percy, instructed by Kavenagh & Co, appeared for the appellant.

Mr J Zucal 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 the Stewards' inquiry, the appellant was charged as follows:

"... you allowed your mount DUAL CELEBRATION to shift in near the 700m mark and in doing so tighten TRUE BATTLE, which in turn has shifted in onto TONED DOWN, which in turn has moved in onto TUTORIAL, TURLAY and KRESTAFUN, S. O'Donnell, with all horses checking to various degrees and indeed, KRESTAFUN struck the running rail and lost considerable ground. The Stewards do acknowledge in this charge that there was a gap between you and Mr. Rudland on your inside near the 700m, but it is our opinion that the manner in which you have shifted in has caused this tightening to other runners. ..."

Gentlemen, I understand quite clearly the argument that has been put to me forcibly by Mr Percy and I do confess that initially I was sympathetic to it as, on the face of it, it did seem to have some considerable cogency. The circumstances, however, took on somewhat of a different light when I had the benefit Mr Zucal addressing me and taking me through the film and explaining things from the perspective of the Stewards.

The relevant rule in question is couched in language which specifies that an offence is committed if in the opinion of the Stewards a particular thing occurs. It is the case that I must determine this appeal on the basis of whether reasonable Stewards viewing this particular incident may reasonably have come to the same conclusion which these particular Stewards did. Unless no reasonable Steward could have come to that conclusion then I have no alternative but to endorse the decision reached by the Stewards.

I am satisfied in all of the circumstances that the Stewards were entitled to come to the opinion which they did of this incident and were entitled to conclude that the manner in which Mr Oliver rode his mount in allowing it to shift in and to tighten the adjoining horse was the cause of the difficulties experienced by the other horses and did cause the incident to occur in this race.

I therefore dismiss the appeal on the question of the conviction.

The penalty aspect of the appeal has raised some interesting issues. The Stewards, for example, have claimed that in the light of the fact that the suspension of the operation of the penalty has altered the races which Mr Oliver may miss, that he has in effect benefited from the stay in that he will in fact incur a less severe penalty than the Stewards had intended. It has also been put to me by Mr Zucal that there is some perception out there that Mr Oliver's conduct in applying for the stay and in resisting having this matter brought on last week is, in some way, an abuse of the process.

Whilst it is relevant and proper for Mr Zucal to bring these matters to my attention, in these proceedings, I am not persuaded that any conduct on Mr Oliver's part, in this particular matter, in any way amounts to an abuse of the system. He was after all entitled to exercise his rights and to apply for a suspension of the operation of the penalty in the circumstances where the matter could not be brought on fairly and properly at the short notice that was contemplated last week.

The suspension of operation application was dealt with on its merits. Even although the Tribunal normally grants stays sparingly, this proved to be one of those occasions when it was appropriate for an order to be made in favour of an appellant.

Having dealt with those issues it is necessary, of course, to determine whether or not this penalty is appropriate in all of the relevant circumstances.

I am not persuaded, in view of having the benefit of watching the film closely and having heard the explanations from both sides, that this particular incident deserves a penalty any different from that which was imposed. I am satisfied that it was a serious offence and the imposition of the 23 days suspension does fall within the proper range which could properly be imposed for this particular matter.

I therefore dismiss the appeal on the question of the penalty. Both the conviction and the penalty are confirmed.

The fee that was paid on lodgement of the appeal is forfeited.



DAN MOSSENSON, CHAIRPERSON



31/3/1995