

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

APPELLANT : SPENCER KEITH KNIGHT

APPLICATION NO. : A30/08/250

PANEL : MR P HOGAN (PRESIDING MEMBER)
MS P HOGAN (MEMBER)
MR L ROBBINS (MEMBER)

DATE OF HEARING : 23 MAY 1995

IN THE MATTER OF an appeal to the Tribunal by Mr S K Knight against the decision of the Western Australian Turf Club Stewards on 15 and 25 April 1995 imposing a suspension of 3 months under Australian Rule of Racing 137A(1).

Mr T F Percy with Ms D Davies - Article Clerk, instructed by Karp & Monaghan, appeared for the appellant.

Mr T van Merwyk, instructed by Parker and Parker, appeared for the WA Turf Club Stewards.

Rule 137A states:

"(1) The Stewards may punish any rider who in a race or trial, or in a race or trial, or in trackwork, uses his whip in an excessive, unnecessary or improper manner. ..."

At the Stewards' inquiry, the appellant was charged as follows:

"... as the rider of PUCKER UP a runner in Race 1, the Foundry Hotel Maiden a race run at the Kalgoorlie-Boulder Race Club's meeting held on the 15th of April, 1995, you used your whip in an improper manner. The improper manner being that you changed your whipping action to an outward motion in the home straight, when THE BARBER ridden by Apprentice T. Walsh improved his racing position on your outside. That motion caused both THE BARBER and Apprentice Walsh to be struck with the whip on a number of occasions. ..."

This is the unanimous decision of the Tribunal. The appellant appeals against a penalty of 3 months suspension following upon his conviction for an offence against Australian Rule of Racing 137A(1).

The evidence before the Stewards and now before us, discloses that the appellant was the rider of the horse PUCKER UP. That horse ran in the Foundry Hotel Maiden on the 15th of April, 1995, at the Kalgoorlie. Amongst the other horse in the race was THE BARBER ridden by Apprentice Troy Walsh. After the conclusion of the race the Stewards opened an inquiry into Mr Knight's ride on PUCKER UP, particularly over the final 300 metres and particularly the whip action that he used.

The evidence taken into account by the Stewards included a video film of the race and the oral evidence of both the appellant and Apprentice Walsh. At the conclusion of the inquiry, the Stewards' charged Mr Knight with the offence under Australian Rule of Racing 137A(1). The particulars being "... as the of PUCKER UP a runner in Race 1, the Foundry Hotel Maiden a race run at the Kalgoorlie-Boulder Race Club's meeting held on the 15th of April, 1995, you used your whip in an improper manner. The improper manner being that you changed your whipping action to an outward motion in the home straight, when THE BARBER ridden by Apprentice T. Walsh improved his racing position on your outside. That motion caused both THE BARBER and Apprentice Walsh to be struck with the whip on a number of occasions. ..." The appellant pleaded not guilty but was convicted.

We are of the opinion that the facts did not support a charge or conviction under Australian Rule of Racing 137A(1). In our view, Australian Rule of Racing 137A(1) can only apply to the use of the whip in relation to the riders own horse. It cannot relate to another horse or rider. We reach that view because of the context in which the phrase "improper manner" appears in Australian Rule of Racing 137A(1). It follows immediately upon the words excessive and unnecessary which can only relate to the riders own horse. Further support for this construction is to be found upon a reading of Australian Rule of Racing 137B where similar terminology is used in relation to the use of spurs which can only relate to a riders own horse.

Still further support is to be found in a reading of Australian Rule of Racing 137A(2) which in its own terms relates to the rider's own horse.

The Tribunal is bound to act according to equity, good conscience and the substantial merits of the case. For that reason we have considered all that that has been placed before us relating to the appellant's conviction, notwithstanding that he has not appealed against that conviction. The conviction cannot stand being unsupported by the evidence. We set aside the determination of guilt and the penalty imposed.

The fee paid on lodgement of the appeal is to be refunded.



PATRICK HOGAN, PRESIDING MEMBER



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