

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

APPELLANT : JEREMY HUSTWITT
APPLICATION NO. : A30/08/254
PANEL : MR P HOGAN (PRESIDING MEMBER)
DATE OF HEARING : 30 MAY 1995

IN THE MATTER OF an appeal to the Tribunal by Mr J Hustwitt against the decision of the Western Australian Turf Club Stewards on 18 May 1995 imposing a suspension of 10 days under Australian Rule of Racing 137(a).

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, or ..."

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

"... as the rider of WESTERN PRINCESS permitted your mount to shift inwards near the 600 metres and in doing so tightened HISTORIC EVENT ridden by Jockey D. Grenfell, causing that horse to be restrained and as a result lost a little ground. ..."

The appellant appeals against his conviction on a charge of careless riding. The evidence discloses that the appellant was the rider of the horse WESTERN PRINCESS. That horse was a runner in the NCS Commercial Queen Handicap at Northam on Thursday, 25 May 1995. Following the race the stewards held an inquiry. Following upon the inquiry the appellant was charged that he, as the rider of WESTERN PRINCESS permitted his mount to shift inwards near the 600 metres and in doing so tightened HISTORIC EVENT ridden by Jockey D. Grenfell, causing that horse to be restrained and as a result lost a little ground.

The appellant pleaded not guilty but was convicted. Before me on appeal he argues that the evidence was not sufficient to support the conviction. The evidence available to the Stewards included a video of the race together with the oral evidence of the appellant himself and jockeys Grenfell and Alderman. Importantly, as well, the evidence included an eyewitness account given by Steward Carvosso.

In support of the appellant's case his advocate Mr Ryan makes a number of submissions, all of which have some significance. Firstly it was said that the inquiry proceeding the charge may have been in some way unfair because it did not begin in the usual way with a statement of the limits of the inquiry and a warning that a charge may follow. That was probably an oversight by the Stewards' panel on the day. In any event, in my view, it assumes no significance in this appeal as at number of points through the inquiry it became obvious what the incident was. The appellant himself understood it and gave his own version of it without any difficulty. Further the charge itself specified was the incident was.

The next point was that it is said that Steward Carvosso's evidence cannot be relied upon for two reasons. Firstly, it is said that he was demonstrably wrong as to where the incident happened and secondly and it is said that he had a head on view rather than a side on view, and thus his evidence is in some way less reliable.

As to the first point, it can be said that Steward Carvosso was not entirely wrong. The video shows that the incident probably happened around about the 7 - 800 metres but in my view nothing turns on that point. As to the second criticism that may have been made about Steward Carvosso's evidence, that is somewhat less reliable because he had a head on view. In my view again, when looked at critically nothing turns on that point. Steward Carvosso was there, he was watching. His very job was to be present and watch the race. Indeed because he was present, it could be said that he also had the benefit of being able to judge such things as speed and depth of vision. These things, of course, are not available to us when we watch a video after the event.

Going on, It was said on the appellant's behalf that jockey Grenfell had decided and agreed to let the appellant take the lead so that he, that is jockey Grenfell, could take the sit behind the leader. This was probably was the case as the appellant said in his own evidence at page six "He actually said to me, you go, you know". However, that does not mean that Jockey Grenfell agreed to allow his horse to be tightened as it obviously was on the video. Indeed, he stated in his evidence at page one "When Jeremy was coming across, he was trapped three deep and when he was coming across he just, there wasn't just enough room, just a little bit too short. And I just had to get on his back leg and I had to pull off it which I might have tightened Phil Alderman up a bit as well but I've tried to keep it off both sir."

In all the circumstances there was ample evidence which the Stewards could find the charge of careless riding proved. It is not proper that this Tribunal here substitute any opinion that it may have for the opinion of the Stewards. Certainly not when there was evidence that they could come to the conclusion which they did. For these reasons the appeal against conviction is dismissed.

As to the appeal against the penalty it is worth repeating what has been said on many occasions before in other courts apart from this Tribunal that sentencing is indeed a matter of discretion. A penalty will not be interfered with unless it can be shown that some error of fact or law has been made or that insufficient weight has been given to a relevant circumstance or that an irrelevant circumstance was taken into account.

None of those things seemed to have occurred in this case. The appellant spoke on penalty. The Stewards had his record and disclosed that he had not been suspended for anything for a number of years. He was a person with, what we commonly call a good record, the Stewards knew that. They knew what rides he had coming up. It cannot be said that any mistake was made.

The other point then is to consider whether or not the penalty here imposed was so outside the range of penalties normally imposed for this type of offence as to demonstrate error. In my view, from what has been given to me now from both the appellant's side as to what penalties are commonly imposed and what has been given from the respondents' side. It is clear that this penalty certainly was not outside the range and I think it is equally clear that the penalty was at the lower end of the scale.

For those reasons the appeal against penalty is dismissed. The fee paid on lodgement of the appeal is forfeited.



PATRICK HOGAN, PRESIDING MEMBER

6 / 6 / 1995

