

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

APPELLANT : KEVIN KEYS

APPLICATION NO. : A30\08\260

PANEL : MR D MOSSENSON (CHAIRPERSON)
MR P HOGAN (MEMBER)
MR J PRIOR (MEMBER)

DATE OF HEARING : 25 JULY 1995

IN THE MATTER OF an Appeal to the Tribunal by Mr K Keys against the decision of the West Australian Trotting Association Stewards on 25 July 1995 imposing a suspension of 6 months under Australian Rules of Trotting Rule 469(a)

Mr G Winston was granted leave to represent the appellant.

Mr W Sullivan represented the WA Trotting Association Stewards

At the Stewards' inquiry Mr Keys was charged with a breach of Rule 469(a) of the Rules of Trotting which states that:

"No person shall:

- (a) *either by himself or any other person do or permit or suffer any act or thing to be done during the progress of any race or prior or subsequent thereto in connection therewith, which the Stewards or Controlling Body shall deem to be fraudulent, corrupt, foul or improper, in any way, or by which other persons may suffer or otherwise be penalised."*

The specifics of the charge were:

"... that in Race 7 at Northam on 5th July the Avon Valley Stakes, when driving MIA BELLA racing towards the front straight on the last occasion, and with your right arm holding your whip in that hand, you struck Mr. Miller on at least two occasions on the right side of his body, and the Stewards, under that Rule deem it to be foul driving..."

Mr Keys appealed on the following grounds:

"I was found guilty of a deliberate Act, namely foul driving and the evidence does not prove this fact. I maintain my innocence and claim the incident was accidental and misread by the Stewards. I am also appealing against the severity of the sentence"

The first submission made on behalf of Mr Keys is that the striking, if it occurred at all, was entirely accidental, and that there was no intent on the part of Mr Keys. From what the Tribunal has read in the transcript, and seen on the video that argument cannot be supported.

The second submission is that the Stewards failed to observe the incident in the course of the race, therefore did not corroborate the evidence given in relation to it given by Mr Miller at the inquiry. The Tribunal is satisfied that this fact is irrelevant provided that there is some evidence upon which the Stewards could rely in order to arrive at their conclusion.

The advocate for Mr Keys also relied on the fact that the official film is unclear in relation to the incident. However the enhanced film which was shown at the continuation of the inquiry on the 10 July 1995 more clearly shows the incident. The appellant has admitted through his advocate he cannot comment on Mr Miller's evidence. That evidence in relation to the inquiry is quite clear, and provides a proper basis for Stewards to have come to the conclusion which they did.

The wording of the relevant rule specifically empowers the Stewards to convict in circumstances where they deem an act to be foul. It is inappropriate for the Tribunal to substitute its own opinion where the rule is so couched. Further the Tribunal is not satisfied that the Stewards have fallen into any error, rather they were entitled on the evidence to convict.

As to the penalty there are no extenuating circumstances which occurred in this matter as occurred in Appeal 197 of L B Harper so as to justify the Tribunal interfering with the penalty which was imposed.

Accordingly both the conviction and the penalty are confirmed. The suspension of the operation of the penalty now automatically ceases.

The lodgement fee is forfeited.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

