

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT : AIDEN WARWICK
APPLICATION NO. : A30/08/268
PANEL : MR D MOSSENSON (CHAIRPERSON)
DATE OF HEARING : 12 JULY 1995

IN THE MATTER OF an appeal by Mr A Warwick against the decision of the Western Australian Trotting Association Stewards on 1 September 1995, imposing a 14 day suspension under Rules of Trotting Rule 440(a).

Mr J Warwick was granted leave to represent the appellant.

Mr R Mance represented the WA Trotting Association Stewards.

Rules of Trotting Rule 440 states that:

"(a) Any driver who, in the opinion of the Stewards, caused or contributed to any crossing, jostling or interference by foul, careless or incompetent driving shall be deemed guilty of an offence against these Rules and may be dealt with accordingly. ..."

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

"....one of causing interference by careless driving and that being when racing, the careless driving, being when racing in the back straight after completion of a lap and racing on the rails and Mr.Suvalijko was making ground on your outside, that you caused interference to Mr.Suvalijko's drive and you've shifted up in a one out position contacting the leg of MOSTLY FINE and causing that horse to be checked and break gait."

Mr Warwick has appealed against the finding of guilt by the Stewards in relation to that incident in Race Six, The Keith Rowatt Handicap, held at the Golden Mile Trotting Club on Friday 1 September 1995.

The ground of appeal is that the Stewards did not take into account all of the evidence.

I have had the benefit of listening to the respective arguments from both sides, of viewing the video and of studying the transcript of evidence. I am not persuaded that the Stewards failed to take any of the relevant evidence into account.

It seems to me that at best the argument for the appellant is simply that he does not agree with the opinion which the Stewards have arrived at in relation to the particular incident. The Stewards, after investigating the matter, reading the charge and giving Mr Warwick the opportunity of addressing the charge, do specifically say at page eight of the transcript that "... *after considering all evidence put forward to Stewards they find Mr Warwick guilty ...*".

In those circumstances the appeal against conviction is dismissed and I confirm the finding of the Stewards.

In relation to the penalty Mr Warwick has argued that the penalty was too severe in all of the circumstances. He has relied on a couple of other incidents and other convictions in which he says a less harsh penalty was imposed and argues that the penalties should be the same because the same rule has been broken and he cannot see any difference.

I am not persuaded by that argument. Each of these incidents have to be considered in relation to their own peculiar or special facts and circumstances. It is very difficult to believe that there can be identical facts and circumstances in relation to two separate incidents involving separate horses, or different horses in different races.

So far as the Lewis incident is concerned, which was heavily relied upon by Mr Warwick, the record will show that the contact that was made was a minor contact, and the Tribunal was dealing with a driver described by the Stewards as being "*probably a role model*" for the industry. Further, the circumstances of that incident were described as being "*a small error of judgement*".

In the case of this particular incident the video shows and the transcript reveals that the Stewards regarded this as a serious incident. Mr Suvaljko was severely checked.

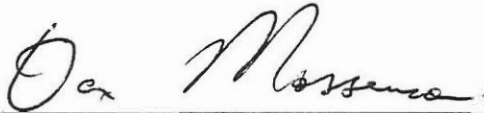
The Stewards concluded after considering everything that was put forward to them that they did not believe that a fine was appropriate for this incident. Although the Stewards were not specifically told of the possibility of Mr Warwick having a two week suspension imposed missing out on the Kalgoorlie round, it is appropriate, I believe, to presume that the Stewards would have had that factor in mind when they arrived at the penalty which they did.

I am persuaded on the materials that have been supplied to me that the usual or normal penalty for causing interference is a 14 days suspension.

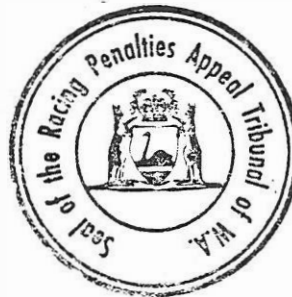
I am not persuaded in the circumstances that a fine is appropriate. It has not been demonstrated that the Stewards were in error in imposing the penalty which they did. It is not appropriate for the Tribunal to tinker with the penalty and to substitute its own exercise of discretion for that of the Stewards, who have the benefit of observing the incident and hearing the evidence that was presented first hand from the persons who attended at the inquiry. For these reasons I am not persuaded that the appeal succeeds as to the penalty and the appeal is dismissed in regard to the second aspect as well.

I confirm both the conviction and the penalty.

The fee that was paid will be forfeited.



DAN MOSSENSON, CHAIRPERSON



18 /10/1995