

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

APPELLANT : **THOMAS WILLIAM SHEEHY**

APPLICATION NO. : **A30/08/269**

PANEL : **MR D MOSSENSON (CHAIRPERSON)**
 MS P HOGAN (MEMBER)
 MR P HOGAN (MEMBER)

DATE OF HEARING : **21 SEPTEMBER 1995**

IN THE MATTER OF an appeal to the Tribunal by Mr T Sheehy against the decision of the Western Australian Trotting Association Stewards on 9 September 1995 imposing a 14 day suspension under Rule of Trotting Rule 440(a)

Rule 440(a) states:

"Any driver 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:

".... causing interference by careless driving and interference being when racing to the winning post or racing after the start and to the winning post on the first occasion you've been careless by allowing MUSCOVY WARRIOR to get down the track and tighten the ground of Mr. Buswell down onto Mr. Prentice and down onto Mr. Brown, those horses being severely checked with other runners, so we believed that you caused interference by allowing your horse to shift down the track...."

Mr Sheehy has appealed against his conviction under Rule 440(a) of causing interference near the start of Race five, "The Bunbury Mitsubishi Stakes" at Bunbury Trotting Club on 9 September 1995 on the grounds in effect that the Stewards erred in making their finding. The relevant rule is prefaced by the words "in the opinion of the stewards" which means that for Mr Sheehy to succeed in this matter the Tribunal must be persuaded that no reasonable stewards could have come to the conclusion which these Stewards did on the evidence which was available to these Stewards.

After carefully considering all of the submissions, examining the transcript and closely watching the video on numerous occasions we are satisfied that it was open to the Stewards to form the opinion of the incident which they did.

Accordingly, we are not persuaded that the Stewards have erred, and we dismiss the appeal and confirm the conviction.

Mr Sheehy also appealed against the severity of the penalty.

In arriving at our decision on Mr Sheehy's penalty we have been influenced by the following facts and circumstances:

1. That there was uncontradicted evidence presented by reinsperson Kersley, that Mr Sheehy in effect did not cause any interference.
2. That Mr Buswell's evidence to some degree was elicited by leading questions and therefore the weight of that evidence is open to some question.
3. That the appellant's evidence and his supporting submissions were credible.
4. The full extent of the incident was not necessarily totally attributable to the appellant's conduct.

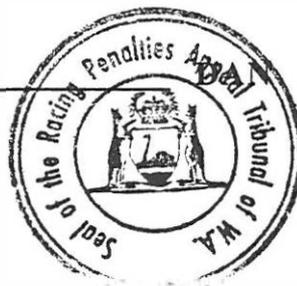
For these reasons we are satisfied that this is a marginal case which does not justify the usual penalty. Although Mr Sheehy was granted a suspension of operation of his penalty on the 12 November he did in fact miss the meeting on the 11 November and in practical terms suffered the loss of some drives at the next meeting. In all of these circumstances the Tribunal is satisfied that the appropriate penalty is a suspension of Mr Sheehy's licence up to and including the time of the making of the direction to suspend the operation of the penalty.

The penalty is amended accordingly.

The lodgement fee is forfeited.

De Mossenson

CHAIRPERSON



MOSSENSON,

11/10/95