

DETERMINATIONS AND REASONS FOR DETERMINATIONS OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPEAL - 277

APPELLANT: **PAUL ANTHONY JOHN DYSON**

APPLICATION NO.: **A30/08/277**

IN THE MATTER OF an appeal by Mr P A J Dyson against the determination made by Western Australian Turf Club Stewards on 3 November 1995 imposing a 4 week suspension and a 2 week suspension to be served cumulatively under Rule 175(a).

AND

APPEAL - 278

APPELLANT: **DENNIS DAVID GUNDRY**

APPLICATION NO.: **A30/08/278**

IN THE MATTER OF an appeal by Mr D D Gundry against the determination made by Western Australian Turf Club Stewards on 3 November 1995 imposing a 4 week suspension under Rule 175(a).

PANEL: **MR D MOSSENSON (CHAIRPERSON)**

DATE OF HEARING: **16 NOVEMBER 1995**

Mr T F Percy, instructed by Kavenagh & Co, represented both appellants.

Mr F J Powrie represented the WA Turf Club Stewards.

By consent these two appeals have been argued together arising as they both do out of similar incidents which occurred in the course of trials conducted at the Bunbury Race Course on 22 October 1995.

Both appellants are licensed jockeys with the Western Australian Turf Club. Both appellants were convicted of improper actions in breach of Australian Racing Rule 175(a).

In the case of Mr Dyson there were two convictions namely:

1. for improper action by extending his left arm and holding onto the number cloth of the horse NOEL'S GIFT ridden by J Taylor for approximately 30 metres after entering the straight in trial 7; and
2. for attempting to grab the number cloth of TOP DEAL ridden by P Farrell at or near the 200 metre mark in trial 9.

Mr Dyson was suspended from riding in races for one month until the 2 December 1995 in relation to the first charge and for 14 days in relation to the second charge to be served cumulatively and ceasing at midnight the 16 December 1995.

In the case of Mr Gundry, he was convicted of the improper action in the 6th trial of extending his left arm and holding the packing of the horse SPICE RACK ridden by J Taylor for approximately 50 metres on straightening. Mr Gundry was suspended for a period of one month ceasing at midnight on the 2 December 1995.

It is clear from the transcript that both riders pleaded guilty and co-operated with the Stewards in the course of the hearings. In dealing with the penalties the Stewards have gone to some trouble to set out and explain the reasons and bases for their decisions. It appears that all of the factors that were mentioned are relevant and are appropriate considerations to be evaluated by the Stewards.

In the circumstances of these appeals and in order for me to interfere with the penalties, I must be persuaded that the penalties are so excessive as to manifest error on the part of the Stewards. Counsel for the appellants has spelt out a significant number of reasons in support of his submission that the penalties in all of the circumstances are excessive. I do agree with all of the submissions which have been made on this point which are contained in paragraphs 1 of the respective outlines of submissions save as to the allegation that is made in each case in paragraph (c) regarding the trials not being conducted or overseen by Stewards I do not see any need to repeat these submissions.

I am satisfied that in financial terms the suspensions are disproportionate to the gravamen of the offences and are excessive having regard to the penalties arrived at following appeals to the Tribunal for more serious offences of improper riding. I am comforted by the observations of Mr Powrie to the effect that we are not likely to see another incident like this again. Hopefully the message has got through to participants as a result of the actions of the Stewards as to the appropriate conduct which is required of riders at trials.

For the reasons given I do uphold both appeals. I am persuaded that both appellants, who were not granted suspensions of operations of their penalties, have served long enough for their misconduct now that they have missed five city meetings.

I set aside the penalties in each case and order that the suspensions in each case shall cease from midnight 16 November 1995. I also order a refund of the lodgement fees.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

16/11/95

