APPEAL 286

DETERMINATION AND REASONS FOR DETERMINATION OF

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: **MARK DAVID MILLER**

APPLICATION NO: **A30/08/286**

PANEL: **MR J PRIOR** **(PRESIDING MEMBER)**

DATE OF HEARING: **30 NOVEMBER 1995**

IN THE MATTER OF an appeal by Mr M D Miller against the determination made by Western Australian Turf Club Stewards on 25 November 1995 imposing a one month suspension under Rule 137(a).

Mr J J Miller was granted leave to represent the appellant.

Mr R J Davies QC represented the WA Turf Club Stewards.

Australian Rule of Racing 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. ..."

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

> *"...you with careless riding in that you were the rider of PRO CHALLENGE, a runner in Race 2, the Premier Hotel Class One Handicap run over 1300 metres on the Pinjarra Race Club's meeting on Wednesday, the 22nd of November 1995, did near the 1150 metre mark permit your mount to shift in carrying ASCOT KING ridden by D Shaw, inwards and eventually Jockey Shaw, having to restrain from your heels and bump heavily with SHASHA ridden by Apprentice D. Miller, which in turn clipped the heels of MARCEL ridden by D. Dunn, dislodging Apprentice Miller. ..."*

This is an appeal against a conviction and penalty for breach of Rule 137(a). The appellant was convicted of careless riding and suspended for one month.

The Stewards convicted the appellant on the lowest level of riding which breaches the rule, that of being careless. The crucial words in this rule is that a rider may be punished, if in the opinion of the Stewards he rode in one of the culpable ways described.

As an appeal court it is not for me to substitute my opinion for that of the Stewards. It is for me to decide if on the evidence before me the Stewards erred in coming to the opinion that the appellant rode carelessly. In other words, was there a manifest error. The Stewards were not required to be satisfied of guilt beyond reasonable doubt but to the standards set out in *Briginshaw v Briginshaw (1938) 60 CLR 336.*

It is clear from the transcript that the stewards in coming to their decision that the appellant was guilty relied on the evidence given to them by four jockeys who rode in the relevant race, a Steward who observed the relevant part of the race and the race videos. It was the totality of this evidence that allowed them to come to the opinion that this jockey rode carelessly. The evidence all the other jockeys gave the Stewards other than the appellant was consistant with the Stewards' interpretation of the video footage. The Steward Nalder's evidence further corroborated these facts.

In the circumstances I am unable to find that the Stewards opinion was not reasonably open on the evidence that was available to them. I am satisfied that the appellant was given a fair hearing. He was given ample opportunity to question witnesses, introduce evidence and comment on the evidence that was available to the Stewards at the inquiry. I therefore dismiss the appeal against conviction.

In relation to the appeal against the severity of the penalty, it is incumbent on the appellant to satisfy me that the penalty of one month suspension was excessive in all the circumstances or the Stewards erred in exercising their discretion as to penalty. The Stewards took into account the appellant's record and the circumstances of the appellant's riding. The appellant had been warned previously for a similar riding behaviour.

I am not persuaded on anything I have heard or seen that an error in the Stewards penalty discretion has been demonstrated. The appeal against penalty is therefore dismissed

The fee paid on lodgement of the appeal is forfeited.

John Prior

JOHN PRIOR, PRESIDING MEMBER
15 /12/95

Seal of the Racing Penalties Appeal Tribunal of WA