

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

APPELLANT: **LINDSAY BRETT HARPER**

APPLICATION NO: **A30/08/291**

PANEL: **MR P HOGAN (PRESIDING MEMBER)**

DATE OF HEARING: **18 JANUARY 1996**

IN THE MATTER OF an appeal by Mr L Harper against the determination made by Western Australian Trotting Association Stewards on 12 January 1996 imposing a 14 day suspension under Rule 440(a).

Mr L Harper represented himself.

Mr M Skipper represented the WA Trotting Association Stewards.

Rule 440(a) of the Rules of Trotting states:

"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:

"...of causing interference by careless driving and the specifics of the charge are that in the run to the finish of Race 7 you've allowed LAKE STREET to move up the track to such an extent that its eventually caused interference to SMOOTH BUSINESS and taking that horse up into Mr Kersley's drive TABARET, Mr De Campo has had no racing room at all...."

This is an appeal against conviction. The appellant was the trainer and driver of the horse LAKE STREET. That horse ran in Race 7 in the 1996 Be Active WA Pacing Cup - 5th Prelude - at Gloucester Park on 12 January 1996 .

The appellant pleaded not guilty but was convicted. He appeals on the ground that he is not guilty and that the evidence placed before the Stewards was not given the correct interpretation. The evidence at the inquiry consisted of the race films together with the observation of the Chairman of the Stewards made at the winning post. As well, Mr Harper himself gave evidence as did Mr De Campo the driver of SMOOTH BUSINESS. The Stewards conceded evidence given by way of

hearsay from Mr Kersley the driver of TABARET and as well conceded evidence from Dr Rieusset that LAKE STREET was lame in the off side foreleg . Mr Kersley's evidence tended to blame Mr De Campo for moving into a place where there was not enough room and that appears at page two of the transcript. Mr Kersley's view was confirmed in his letter dated 18 January 1996 tendered to the Tribunal here today as Exhibit 2. Further on page five of the transcript, the Stewards did not argue the point that lameness could cause the horse to move up the track. Mr Harper wished to call both Mr Kersley and Dr Rieusset but effectively was not given an opportunity to do so.

In my view that did not amount to a denial of natural justice so as to require the Stewards decision to be overturned. The Stewards accepted what both had to say by way of hearsay and then proceeded to place appropriate weight on that evidence in the light of all the other evidence. To the extent that denial of natural justice was developed as a ground of appeal here today that ground fails.

The evidence before the Stewards required them to consider a number of different rules and the interaction between those rules . Rule 440(a) had to be considered being the rule under which the appellant was charged. Once the Stewards accepted that LAKE STREET was lame and that lameness could have caused the horse to move up the track, they also had to consider then the operation of Rule 442(a). The Stewards did consider this particular rule and focused attention in their questioning on whether in their opinion the appellant did or did not cease urging his horse forward. The appellant at the Stewards hearing at page thirteen of the transcript and at the appeal today maintained reliance on Rules 450(a) and 452. Rule 450(a) required the appellant to take all reasonable and permissible measures to ensure that his horse was given the best opportunity. Rule 452, although it does not expressly say so, also clearly must require a driver to operate only within the rules. In my view there was nothing in the case that shows that the Stewards failed to correctly apply the rules. What the case comes down to is a judgement to be made by the Stewards on all the available evidence. This is made clear by Rule 440(a) itself which requires the Stewards to act on their opinion. In effect, the appellants ground of appeal alleges that the Stewards opinion was wrong. For the appellant to succeed on that ground it must be demonstrated that on the evidence the Stewards could not reasonably have arrived at that opinion.

The appellant has failed to discharge that onus in this appeal. There is nothing to show that the Stewards were not entitled to come to the conclusion which they did on the available evidence. For these reasons the appeal will be dismissed.

The appellant appeals against his penalty of fourteen days suspension of his Reinspersons Licence following upon his conviction for the offence of a breach of Rule 440(a), namely careless driving. In the imposition of a penalty the Stewards have to exercise a discretion. Because the imposition of the penalty is an exercise of discretion it can only be overturned on an appeal if the appellant can demonstrate that some irrelevant factor was taken into account, or some relevant factor was not taken into account, or the penalty imposed was so far out of the range normally imposed as to demonstrate error within itself.

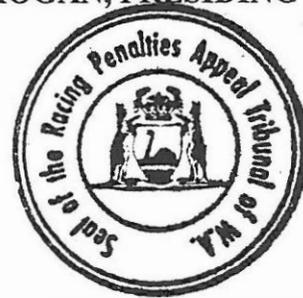
At the time the Stewards imposed the penalty they heard from Mr Harper in mitigation and in particular Mr Harper put to the Stewards the drives that he had coming up. Clearly within the rules the Stewards have a discretion to suspend operation of the penalty. They did that to a certain extent and to the extent they deemed appropriate. Mr Harper spoke in mitigation of penalty and put that very point to the Stewards. It cannot be said that Stewards failed to take into account the fact that his penalty may have been stayed for a longer period to include both the Monday and Friday meetings in the following week. Whatever the Stewards practice is or is not, clearly their practices are governed by Rule 10. They did hear Mr Harper on Rule 10 and his reasons for asking for a delay

in operation of the penalty to allow him to fulfil his engagements. It cannot be said that there has been any error in the imposition of the penalty in that respect. It is not apparent that any irrelevant factor was taken into account in fixing the penalty. The interference caused to the other horses is a relevant factor. The horses connections and the punting public are also relevant factors. Despite any indication of what Mr De Campo may have won or not have won had he properly finished the race, in my view what remains only to be considered is whether the penalty imposed was so far out of the range as to manifest error itself. Clearly it was not, as it was accepted by Mr Harper, or certainly not disputed by him, that people are commonly suspended for short periods of time for offences of this nature.

Bearing in mind all of those factors and for those reasons the appeal against penalty itself will be dismissed. The fee paid on lodgement of the appeal is forfeited.

P. J. Hogan.

PATRICK HOGAN, PRESIDING MEMBER



25/1/96