

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

**APPELLANT:**                      **JASON DOUGLAS FRY**

**APPLICATION NO:**              **A30/08/294**

**PANEL:**                              **MR P HOGAN    (ACTING CHAIRPERSON)**  
   **MR J SYME       (MEMBER)**  
   **MR F ROBINS    (MEMBER)**

**DATE OF HEARING:**              **22 FEBRUARY 1996**

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**IN THE MATTER OF an appeal by Mr J Fry against the determination made by Western Australian Trotting Stewards on 9 February 1996 imposing a three month disqualification under Rule 481 of the Rules of Trotting.**

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Mr W J Horn was granted leave to appear for Mr Fry.

Mr M Skipper represented the Western Australian Trotting Association Stewards.

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Rule 481 of the Rules of Trotting states:

*“No person shall act in a manner discreditable or injurious to those persons participating in the sport of harness racing.”*

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

*“...that your behaviour towards Mrs. Hall tonight, as she described is injurious to her as a person participating in the sport of harness racing.”*

At the inquiry the Stewards heard from licensed person Mrs Hall to the effect that the appellant had made a disparaging snorting noise at and to her. She was distressed by it. Mrs Hall further alleged that during the brief adjournment at the inquiry itself, the appellant had made an inappropriate hand gesture towards her.

The Stewards heard this evidence as outlined above from Mrs Hall. They also heard evidence from Miss Norris who was nearby to the first alleged incident. She gave evidence to the effect that nothing was heard. Evidence by way of hearsay was given by Mrs Hall's son. Although he was nearby, he could not quite hear what was said.

The appellant himself gave evidence. He denied the allegation of making an inappropriate hand gesture. However, as to the allegation of making a disparaging noise, one of the things the appellant said at page five of the transcript was:

*"Yeah, the only think (sic) that I could say is if Mrs. Hall feels that I made a noise towards her and if I did, it wasn't definitely towards you and I apologise if you think I did."*

The Tribunal is of the view that the comment amounts to an admission by the appellant that he made the noise complained of and was sufficient for the Stewards to convict him. Quite apart from that, the Stewards were also entitled to except as truthful the account given by Mrs Hall on both incidents. It was a matter of credibility and there has been nothing put before the Tribunal which would demonstrate that the Stewards were not entitled to accept Mrs Hall's evidence.

For these reasons the appeal against conviction is dismissed.

#### AS TO THE PENALTY

The Stewards imposed a disqualification of three months. The Stewards took into account the appellant's previous record including a conviction for a similar offence in 1994. As to that matter, the appellant committed an offence against the very same person, namely Mrs Hall. The \$500 fine imposed was suspended for twelve months. The appellant has no other convictions of a similar nature and his record generally is not one to be proud of but relates mainly to driving offences.

Whilst we accept that disqualification has in the past been imposed for offences under this rule in other cases, the Tribunal is of the view that this penalty is too severe in the circumstances of this case. It was certainly not the most serious offence under this rule as was conceded by the Stewards here today.

The Tribunal is of the view that the imposition of a fine without the benefit of suspending it would better suit the circumstances of this case. For these reasons we allow the appeal against the penalty. The penalty of three months disqualification is set aside and in lieu thereof a fine of \$500 is substituted.

The fee paid on lodgement of the appeal is forfeited.



PATRICK HOGAN, ACTING CHAIRPERSON

11/13/96

