



3. that Mr Skipper, the Chairman, after viewing the material stated "*I don't know if Mr. Byrnes would have time to avoid your outward movement Mr. Langdon*".

The Tribunal also notes that the other driver called before the Stewards, Mr O'Sullivan agreed that "*that's what seemed to have happened*" and he said that after Mr Byrnes had stated that Mr Langdon had moved really quickly.

Mr Langdon submitted to the Tribunal:

1. that Mr Byrnes' horse TIBET has run down twice immediately before the incident, which can be seen from the manner in which Mr Byrnes moved his arms and the horse correspondingly moved its head to the left and that the video clearly shows this;
2. that TIBET was racing with two lugging poles and it was only its second race in Australia. The point being made was that it was used to running under different circumstances;
3. that there was no contact made between Mr Langdon and Mr Byrnes or their respective horses or sulkies; and
4. that Mr Langdon was entitled to move out when he did, the problem being caused by Mr Byrnes moving down at the same time.

The Tribunal had the benefit of viewing two different videos of the matter taken from two different angles and these films were watched carefully several times. Taking into account the evidence of Mr Denney, the two drivers called before the Stewards and the video material, the Tribunal rejects the submissions put forward by Mr Langdon. Mr Langdon has not persuaded the Tribunal that the Stewards failed to correctly apply the rules.

Rule 440(a) requires the Stewards to act on their opinion. There is nothing before the Tribunal to show that they were not entitled to the conclusion they arrived at after hearing from Mr Denney, Mr Langdon, the other two drivers and of course, after viewing the videos numerous times. For those reasons the appeal against conviction is dismissed.

On the question of penalty, the Stewards imposed a 14 day suspension having indicated to Mr Langdon that for the last few months they have been strong on penalties when careless driving is involved and they do not issue fines for that offence. The Tribunal would agree that, in circumstances where interference is caused by careless driving, suspension is the appropriate penalty.

Mr Delaney informed the Tribunal that the minimum suspension period imposed by the Stewards for this offence is 14 days. The Tribunal does not agree that it is appropriate to set a minimum period of suspension. Each case must be assessed on its own facts. Putting aside the circumstances of the driving which should be looked at each time a suspension is imposed, some 14 day suspensions may involve a driver missing, for example, one meeting of no particular significance. Others, such as occurs here, may involve a driver missing a number of meetings, one or more of which may be of particular significance. Mr Delaney also informed the Tribunal that the Stewards do not consider it to be a relevant factor that the horse interfered with may not have been placed. In the Tribunal's opinion that is a relevant consideration. Here TIBET may have lost one or two points due to the interference but it appeared quite clear from the video that it was not going to achieve a place in the race.

Mr Langdon has a good record and the effect of the 14 day suspension is that he will miss the opportunity of success in the Inter Dominion Pacing Championship as well as the three Victorian race meetings he mentioned. In light of his good record, in light of the severe impact of the 14 day suspension on his particular circumstances and in light of the fact that the interference did not cause TIBET's failure to achieve a place in the race, an appropriate period of suspension is, in the Tribunal's opinion, one of 7 days.

The Tribunal, therefore, upholds the appeal against the severity of penalty, dismisses the 14 day suspension period and substitutes a suspension of 7 days to expire at midnight on 12 March 1996.

The fee paid on lodgement of the appeal is forfeited.



PAMELA HOGAN, PRESIDING MEMBER

12/3/96

