

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: COLIN DAVID BROWN
APPLICATION NO: A30/08/299
PANEL: MR D MOSSENSON (CHAIRPERSON)
DATE OF HEARING: 14 MARCH 1996

IN THE MATTER OF an appeal by Mr C D Brown against the determination made by Western Australian Trotting Association Stewards on 5 March 1996 imposing a 14 day suspension under Rule 440(a).

Mr P Marsh was granted leave to represent the appellant.

Mr M Skipper represented the WA Trotting Association Stewards.

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

"... that in the run to the finish of Race 3 when you've manoeuvred PLACID ARC for a clear run forward you allowed the horse or manoeuvred the horse up the track sharply, so that runners on the outside have also been obliged to check up the track. That's Mr. Warwick whose then taken Mr. Coulson up the track and the end result being that the contact occurred to BEEFY T between the sulky of Mr. Coulson and BEEFY T..."

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."

This is an appeal by Mr Brown against the conviction which was imposed in relation to an offence which occurred in Race 3, the 1996 Ausdrill Inter Dominion Pacing Championship, Heat 4 at Gloucester Park on 5 March 1996. Mr Brown following an inquiry by the Stewards was charged with causing interference by careless driving.

I have had the benefit of hearing submissions by Mr Marsh on behalf of Mr Brown as well as submissions from Mr Brown personally. I have also have the opportunity of examining the transcript and of studying the film of the race. Further from the Stewards I have heard from Mr Skipper and also Mr Delaney.

The appellant in the notice of appeal claims that he is "*Not guilty of the charge*". He further appeals against the penalty which has been imposed on the basis that the "*Stewards failed to take all evidence into consideration when assessing penalty*". In support of the appeal against conviction Mr Marsh relied on a number of factors including an incident which occurred at the 150 metre mark from home and the time differential between that interference and the incident in question.

I am not persuaded that the Stewards were in error in coming to the conclusion which they did of the incident in question because of, or as a result of any failure to take into account the 150 metre from home interference. In my opinion there was a sufficient gap between the two incidents for the second one, which was the subject of the conviction, not to be said to have been directly caused by that which had occurred earlier in the course of the race.

The rule in question is prefaced by the words "*in the opinion of the Stewards*". I am not persuaded that these Stewards have come to an opinion which any reasonable Stewards armed with all of the relevant facts and knowing the information that these Stewards knew would have arrived at. I am satisfied that the Stewards were entitled to convict Mr Brown of this offence in the light of all of the relevant facts and circumstances. For that reason the appeal as to conviction fails.

On the question of the penalty, I am being asked to conclude that there was a failure by the Stewards to consider all of the evidence. A range of propositions were put to me by Mr Marsh including such things as the interruptions which occurred in the course of some of the evidence that was presented at the inquiry. I am not persuaded that any of the arguments which Mr Marsh has put forward demonstrates that the Stewards were in error in arriving at the penalty which they did.

It is also worth noting that some benefit was gained by Mr Brown in the fact that the Stewards exercised their discretion to defer the operation of the suspension to enable Mr Brown to drive on the Friday night.

Nothing has been placed before me to persuade me that the Stewards have overlooked any irrelevant consideration in arriving at the penalty. In those circumstances, the appeal as to penalty also fails.

The appeal is dismissed. The fee paid on lodgement of the appeal is forfeited.



DAN MOSSENSON, CHAIRPERSON

12/4/96

