

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: **BRIAN HANCOCK**

APPLICATION NO: **A30/08/300**

PANEL: **MR D MOSSENSON (CHAIRPERSON)**

DATE OF HEARING: **14 MARCH 1996**

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

Mr B Hancock represented himself.

Mr M Skipper represented the WA Trotting Association Stewards.

This is an appeal by Mr Brian Hancock in relation to a conviction by the Stewards of causing crossing by careless driving in breach of Rule 440(a) of the Western Australian Trotting Association Rules of Trotting. The incident occurred in Race 5, the 1996 Ausdrill Inter Dominion Pacing Championship Heat 2 at Gloucester Park on Friday, 1 March 1996. As a result of the conviction Mr Hancock was suspended for 14 days.

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

".... that when Mr. Jones has commenced his forward move in the three wide line he's commenced to race to your outside and been obliged to check DESPERATE COMMENT wider on the track to avoid your outward movement."

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."

In the notice of appeal the grounds state firstly that Mr Hancock was "Not guilty of the charge - not a careless act" and secondly, that the "Penalty is too severe given the circumstances".

It is clear from looking at the transcript that Mr Hancock has virtually acknowledged at the bottom of page six that the conduct in question does amount to a breach of the relevant rule. I have been told by Mr Hancock, in the course of his submissions, that there are different rules in different States. He alleges that he did not know that his conduct at the particular time was a breach of the Rules in this State. Ignorance of the Rules do not excuse Mr Hancock. He is clearly a most experienced driver who has driven on previous occasions in this State and been subject to the Western Australian rules before.

Mr Hancock has presented his submissions to me in a most open and forthright manner and has acknowledged that "when in Rome one must do what the Romans do" and one must play it by the local rules.

The particular rule in question specifies that a person shall be deemed guilty if, in the opinion of the Stewards, the offence occurs. It is not appropriate for me to substitute my own opinion of the incident for that of the Stewards. In order for Mr Hancock to succeed in this matter he must persuade me that no reasonable Stewards, armed with all of the relevant information, which these Stewards had, could reasonably be expected to have come to the same opinion which these Stewards did of the incident.

Nothing which Mr Hancock has said and nothing which has been presented before me tonight persuades me that these Stewards were in error in forming the opinion which they did of the incident. Accordingly, the appeal in relation to the question of conviction fails.

I have been told by Mr Skipper that the penalty which was imposed is consistent with the penalties imposed on other drivers in this State for this type of offence where the Stewards are dealing with a driver with a good driving record. Mr Hancock, in essence, is throwing himself on the mercy of the Tribunal and inviting the Tribunal to afford him the opportunity of driving tomorrow night in the final of this important series. Despite his request for sympathy, he has not put forward any foundation for persuading me that the penalty which was imposed is inappropriate or that the Stewards are in any way in error in imposing a 14 day suspension on him in all of the relevant circumstances.

That being the case I am of the view that the appeal fails as to the penalty.

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

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

12/4/96

