

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

APPELLANT: **ANDREW LOUIS DE CAMPO**
APPLICATION NO: **A30/08/302**
PANEL: **MS P HOGAN (PRESIDING MEMBER)**
DATE OF HEARING: **18 APRIL 1996**

IN THE MATTER OF an appeal by Mr A L De Campo against the determination made by Western Australian Trotting Association Stewards on 12 April 1996 imposing a 21 day suspension under Rule 440(a).

Mr A De Campo represented himself.

Mr M Skipper represented the WA Trotting Association Stewards.

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

"...the Stewards are issuing a charge against you under the provisions of Rule 440(a). It's a charge of causing interference by careless driving. Specifics to the charge are that when you have been put wider on the track while Mr Lewis was racing in the front straight to receive the bell you drove JUST ASK back down the track in an endeavour to regain your position and the end result was that you have checked Mr Lewis' horse and also JUST ASK broke up and the runner following PALEFACE BRET was also checked."

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."

The Stewards found Mr De Campo guilty of careless driving and suspended him for twenty one days. The Tribunal has before it the transcript of the proceedings before the Stewards and also film from three different angles showing the incident. The same film was viewed a number of times during the course of the inquiry and again during these appeal proceedings.

In response to the Stewards' contention, Mr De Campo says that he at no stage went four deep and that he only moved out after he and Mr Lewis broke. He believes he was holding his spot at a three and a half deep position. He says that there was no room for Mr Lewis to come out when he did and

also that he should not have pushed out when JUST ASK's head was in front of RECAP WITH GOLD's head.

To support his case Mr De Campo produced a statement from the driver who he says was behind him in the three wide line at the time of the incident. Although this driver (Mr Hallows) did not give evidence before the inquiry, Mr Skipper for the Stewards did not object to Mr Hallows' statement being placed before the Tribunal.

Mr Hallows' opinion, based on his observation of what occurred, was that Mr Lewis was at fault as he was not in a position to move up the track and that "*when Mr De Campo's horse broke up he appeared to be still in the three wide line*". Mr Skipper effectively submitted that little weight should be placed on Mr Hallows' observations as he is relatively inexperienced; that he would have been directing his attention to matters other than the incident alone; and that if he had been watching all that occurred, he would have taken evasive action which the video reveals clearly did not occur. On the other hand, according to Mr Skipper, Mr Delaney (whose observations appear at page one of the transcript) is an extremely experienced Steward who was in the best position to observe the incident.

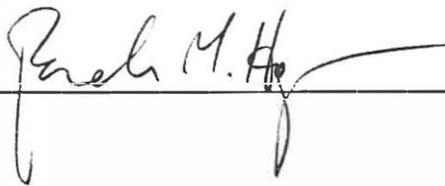
Having carefully viewed the video material and re-examined the evidence in the transcript as given before the Stewards, the Tribunal is satisfied that it was open to the Stewards to form the opinion of the incident which they did.

Accordingly the appeal against conviction is dismissed.

Mr De Campo has submitted that in the circumstances the 21 day suspension is a severe penalty. Mr Skipper for the Stewards explained that the minimum penalty imposed on drivers for careless driving is 14 days suspension and that that has been the case since last November. It appears that the only reason for imposing the 21 days suspension in this case was that 19 days earlier Mr De Campo had breached the same Rule.

In the Tribunal's opinion the fact of a recent conviction for a breach of the same Rule is not a matter that should be used, on its own, to increase the penalty imposed for a subsequent breach. The Tribunal agrees with Mr De Campo that, in the circumstances of this particular incident, the imposition of a 21 day suspension is excessive and that the appropriate penalty should be one of 14 days.

The fee paid on lodgement of the appeal is forfeited.



PAMELA HOGAN, PRESIDING MEMBER

29/4/96

