

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

APPELLANT: **MICHAEL HUGH HARDIE**

APPLICATION NO: **A30/08/314**

PANEL: **MR MOSSENSON (CHAIRPERSON)**
 MR J PRIOR (MEMBER)
 MR F ROBINS (MEMBER)

DATE OF HEARING: **7 AUGUST 1996**

IN THE MATTER OF an appeal by Mr M H Hardie against the determination made by the Western Australian Trotting Association Stewards on 15 July 1996 imposing a twelve month disqualification under Rule 448(a) of the Rules of Trotting.

Mr Hardie represented himself.

Mr W J Delaney represented the WA Trotting Association Stewards.

This is a unanimous decision of the Tribunal.

Mr Hardie appeals against the determination of the Western Australian Trotting Association Stewards made on the 15 July 1996 in relation to the driving tactics adopted on ATLANTA BRAVE in Race 1 of the Sealanes Seafood Market Transition Stakes at Gloucester Park on 17 May 1996.

The Stewards charged Mr Hardie with a breach of Rule 448(a) that "*Every horse shall be raced on its merits.*"

The specifics of the charge were that:

"... your deliberate action in restraining your horse ATLANTA BRAVE at the rear of the field when you had the option of improving your position in the back straight on the second last occasion during the slowest quarter of the race, was such that your horse was prevented from racing on its merits...."

Mr Hardie pleaded not guilty but was convicted by the Stewards.

The Chairman of Stewards, in announcing the conviction stated:

"... The Stewards have carefully considered all evidence tendered at various stages of this inquiry into your driving tactics on ATLANTA BRAVE in Race 1, the Sealanes Seafood Market Transition Stakes at Gloucester Park on Friday, the 17th of May 1996. We have viewed video replays of the race in question. The horses W.A. performances prior to that race and its subsequent winning performance at Gloucester Park on the 7th of June (sic). Evidence was taken from yourself and individual members of the Stewards Panel. In addition, we had the opportunity of listening to opinions of your driving tactics of the 17th of May expressed by Drivers K.D. Young, L.B. Harper and C.D. Brown, who were called by you as part of your defence. Certain comments expressed by Mr. Young led Stewards to believe that he was bias (sic) to a degree. His opinions were therefore treated with some reservation. Mr. Harper was unable to make specific comment on the relevant section of the race and restricted his opinion to general terms. Mr. Brown's opinion of the circumstances you found yourself in, agreed with Mr. Harper's assessment, that it would have been a difficult decision for you to make in deciding whether to obtain a three wide trail a lap and a half from home. In the Steward's view, difficult decision making is part and parcel of race driving and is influenced by factors such as those mentioned by Mr. Brown of the horse's standing in the betting and logically therefore its ability. In this case we are presented with a horse well in the betting and which has clearly demonstrated that it is a strong staying type. As Stewards of many years combined experience, we are satisfied that you are guilty of the charge. Your action in restraining ATLANTA BRAVE at the rear of the field during the slowest quarter of the race when you had the opportunity to improve your position, was a deliberate one, which prevented your horse from racing on its merits."

Rule 448(b) specifies that:

"The Stewards may, fine, suspend or disqualify any driver who in their opinion does not race his horse on its merits."

As to penalty, the Stewards stated:

"... Mr. Hardie the matter of penalty is always given a great deal of thought and deliberation by Stewards. We're all part of an industry which relies heavily on the integrity of the people in it. With the Stewards being charged with the responsibility of ensuring that our industry functions in a proper manner and the interests of all involved in it are protected. You have been found guilty of not allowing a horse to race on its merits, which is one of the most serious offences in harness racing. The Stewards are to some extent aware of your financial situation and also accept that this is the first time you have been found guilty of an offence of this nature. After considering all factors we believe the appropriate penalty to be one of 12 months disqualification..."

At the hearing, before the Tribunal, Mr Hardie amended his grounds of the appeal to deal both with the conviction and the severity of the penalty.

The Tribunal had the benefit of the transcript of the various proceedings before the Stewards, the submissions made before us as well as the opportunity of viewing not only the video of the race in question, but also one other video of Mr Hardie driving ATLANTA BRAVE.

The wording of Rule 448(b) coupled with the evidence allowed under Rule 449 means that in order for the Tribunal to be persuaded to interfere with the conviction of a driver, it must be satisfied that

no reasonable Stewards could reasonably have come to the opinion to which these Stewards did, armed with the same information that the Stewards had before them. We are not persuaded by anything which has been put to us by Mr Hardie that these Stewards were not entitled to form the opinion that ATLANTA BRAVE was not raced on its merits. Indeed from our viewing of the video we are satisfied Mr Hardie restrained his horse from moving forward for a considerable part of the race. In the light of that fact, the Stewards were entitled to come to the opinion which they did.

Accordingly, the appeal fails as to conviction.

As to penalty, Mr Hardie failed to produce any information which would persuade the Tribunal that the Stewards were in error in imposing the 12 month disqualification. The Tribunal has been told by the Stewards that the usual penalty which is imposed in Western Australia for an offence of this nature is a period of 12 months disqualification as a minimum. From the Tribunal's examination of the South Australian decision of Wayne Jacques (RAT 17/96 15 May 1996) the Tribunal is satisfied that the extenuating circumstances justified reducing the penalty, and that the explanation for the original penalty of a period of 6 months disqualification may be explained on the basis that the Stewards in South Australia adopt a more lenient approach than those in New South Wales, Victoria and Western Australia. Despite that fact in the South Australian case the Tribunal stated that:

"This is a most serious offence and one which would ordinarily attract a period of disqualification. It is imperative that horses be driven honestly for the public to have confidence in harness racing.

These are difficult times for the Racing Clubs generally. Public confidence must be retained if the racing industry is to survive."

The Tribunal is satisfied that the Stewards are entitled to adopt the view that the offence of failing to race on merit is one of the most serious offences in harness racing and that it should be dealt with by an appropriate period of disqualification. In the circumstances we are satisfied that the 12 month disqualification is appropriate. Accordingly, we dismiss the appeal in relation to the penalty as well.

The fee paid on lodgement of the appeal is forfeited.



DAN MOSSENSON, CHAIRPERSON



27/08/96