

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: LINDSAY BRETT HARPER

APPLICATION NO: A30/08/317

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR T MULLIGAN (MEMBER)
MR J SYME (MEMBER)

DATE OF HEARING: 27 AUGUST 1996

IN THE MATTER OF an appeal by Mr L B Harper against the determination made by Western Australian Trotting Association Stewards on 16 August 1996 imposing six weeks suspension under Rule 440(a).

Mr L B Harper represented himself.

Mr M J Skipper represented the WA Trotting Association Stewards.

This is an appeal against the conviction for breach of Rule 440(a) of the Rules of Trotting which has been made on the basis that there was not an infringement of the ease out rule and claiming a failure by the Stewards to give adequate consideration to the circumstances surrounding the incident.

The actual charge was of causing interference by careless driving. The specifics of the charge are that:

"...when you've manoeuvred MOLYNEUX MARY NZ from the rails towards the one wide line, you've been racing in such a position on Mr. Warwick's horse HIGHVIEW CARE, that that horse has been checked and broken gait. ..."

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."

After having read the transcript and the other written materials placed before us, after viewing the film and hearing the submission from both sides, the Tribunal is not persuaded that the Stewards were in error in forming the opinion which they did of the incident.

The transcript reveals that the Stewards did in fact give every reasonable consideration to Mr Harper's point of view in the course of the inquiry. Mr Denney's evidence of the incident is clear and is supported by the film.

Accordingly, the appeal as to conviction is dismissed.

After taking into consideration the material in the transcript that is relevant to the penalty and to the submissions that have now been made, the Tribunal is satisfied that the penalty which was imposed is within the range of penalties which are currently being imposed for these types of offences. In the circumstances applicable to this matter, it has not been demonstrated that there has been any error committed on the part of the Stewards in imposing the particular suspension on Mr Harper.

The Tribunal has come to the conclusion that it is not appropriate to impose a fine as distinct from a suspension in view of the number of previous convictions against Mr Harper which have taken place during the course of this year.

In those circumstances, the appeal in relation to penalty is also dismissed.

The fee paid on lodgement of the appeal is forfeited.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

12 /09/96

