

- (1) The Stewards erred in convicting the appellant, the conviction being against the evidence and the weight of the evidence;

The particulars of that ground are as follows:

- (a) there was no evidence that the appellant caused any interference or rode carelessly during the course of the race;
 - (b) the finding of the Stewards was contrary to all the evidence heard at the inquiry.
- (2) the Stewards erred in taking into account matters not the subject of evidence;
 - (3) the decision of the Stewards to convict the appellant was not open to them on the totality of the evidence;
 - (4) the Stewards erred in failing to give adequate reasons for conviction; and
 - (5) the penalty was excessive in all of the circumstances of the case.

In relation to appeal ground one, that being an appeal against conviction. It is clear that there were four pieces of evidence available for the Stewards to consider. Firstly, the original viewing of the race. Secondly, the various pieces of video taped race footage of the race. Thirdly, the evidence of some jockeys who rode in the race. Fourthly, the evidence of a jockey as to a horse who participated in the race and such horse's previous behaviour in races.

The Stewards, as a tribunal of first instance, were entitled to regard what evidence they considered relevant and give such evidence the weight they considered appropriate. The Stewards were also, at first instance, in the best position to assess the credibility of the witnesses. The evidence of the jockeys in the race in question differed considerably at the various hearings as to what caused the movement of the horses at the 900 metre mark. From the transcript and the submissions of counsel for the Stewards, it is clear considerable weight was placed on the race footage by the Stewards.

As has been previously stated in a number of appeals, this rule is couched in language which specifies that an offence is committed, if in the opinion of the Stewards, a particular thing occurs. This has been conceded by both counsel in this matter. It is not a case of substituting one's own opinion for that of the Stewards. Nevertheless, I accept from counsel for the appellant the submission that the opinion which the Stewards come to must be reasonable and must be in accordance with the evidence.

Having seen the race footage on a number of occasions and having perused the transcripts of the various hearings, I am unable to be satisfied that the Stewards' opinion was unreasonable or not in accordance with the evidence. The race footage which was the basis for the Stewards' finding of careless riding has been of assistance in this matter. I am therefore unable to find that the Stewards erred in this respect and this ground fails.

With respect to ground two that being another ground of appeal against conviction. I am not persuaded that the Stewards took into account matters not subject to evidence. As stated previously, the Stewards have primarily relied on the race footage. There is nothing to indicate or persuade me that the material referred to at page 18 of the transcript played any part in the Stewards' decision. For this reason this ground fails.

With respect to ground three, for the reasons set out in relation to ground one, I am satisfied that the decision of the Stewards was open to them on the totality of the evidence. For this reason this ground of appeal fails.

With respect to ground four, I find the task of deciding this matter has become more difficult due to the Stewards failure to give reasons when finding the appellant guilty as charged. For the reasons set out at page four, paragraph two in Gibbs v The Western Australian Turf Club (Appeal 253), I am not satisfied that the appellant suffered any unfairness or that the decision is void.

In relation to the penalty, it is clear from the transcript that the Stewards considered at least three matters when imposing penalty. Nothing that I have seen in the transcript or heard in counsel's submissions persuades me the sentencing discretion has miscarried. The penalty is within the appropriate range of penalties for such an offence and I have been unable to find any manifest error on the part of the Stewards in imposing a penalty of 14 days suspension.

For these reasons the appeals against both conviction and sentence fail.

The order which was made on 24 September 1996 directing the suspension of the operation of the penalty automatically ceases to operate.

The suspension will be completed at midnight on 6 October 1996.

The fee paid on lodgement of the appeal is forfeited.

John Prior

JOHN PRIOR, PRESIDING MEMBER

1 / 10 / 96

