

DETERMINATION AND REASONS FOR DETERMINATION OF  
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: MATTHEW JOHN SAW  
APPLICATION NO: A30/08/323  
PANEL: MR D MOSSENSON (CHAIRPERSON)  
DATE OF HEARING: 25 SEPTEMBER 1996

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IN THE MATTER OF an appeal by Mr M J Saw against the determination made by Western Australian Trotting Association Stewards on 12 September 1996 imposing a 21 day suspension under Rule 440(a) of the Rules of Trotting.

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Mr M J Saw represented himself.

Mr W E Sullivan represented the WA Trotting Association Stewards.

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This appeal arises out of an incident which took place during the running of Race 5, the Swan Brewery Emu Export Cup, held at the Golden Mile Trotting Club meeting on 12 September 1996.

As a result of the incident the Stewards conducted an inquiry after which they charged Mr Saw under the provisions of Rule 440(a) of the Rules of Trotting dealing with causing crossing due to careless driving.

The specifics of the charge were:

*"... that racing towards the front straight on the second last occasion when you were racing in the two wide line, Mr. Warwick was in a three wide line and making ground on your outside, you've shifted ground from inside of him shifting him up the track. Mr. Warwick lost his racing position as a result of that."*

Mr Saw pleaded not guilty. After receiving further evidence the Stewards concluded that a breach of the rules had occurred. On the subject of the penalty the Stewards had the following to say to Mr Saw:

*"... we feel that it was totally avoidable, Mr. Warwick was making ground on your outside. You were fully aware of the "ease-out" rule. We also believe that you did have time to go back when Mr. Warwick contested the position prior to entering the front straight and we're taking into account your good driving record. Penalties that have been handed down for similar incidents with drivers of a good driving record, there's been a suspension of 21 days and we don't believe that there's any extenuating circumstances in regard to the horse's racing characteristics, we believe it was a controlled movement and as a result of that the*

*Stewards are suspending your driving licence for a period of 21 days and that will commence at midnight tonight and will expire after midnight on the 3/10/96 ..."*

Mr Saw appealed against the harshness of the penalty and at the same time applied for and was granted a suspension of operation of the penalty pending hearing of the appeal unless otherwise ordered.

The relevant rule, namely Rule 440(a) of the Rules of Trotting specifies that:

*"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 support of the appeal Mr Saw invited me to observe the video of the race and to accept his interpretation of the incident. Basically, I was told that the incident was not so severe as to justify the imposition of the 21 day suspension, but rather that it was appropriate for a fine in the range of \$200 to \$300 to be imposed.

In response, Mr Sullivan explained the seriousness of the circumstances and relied upon the fact that for offences of this nature in recent times committed by other drivers equivalent penalties had been imposed to that meted out to Mr Saw. Implicitly it was argued that because of its seriousness this matter did not warrant the imposition of a fine.

I was also told that in more recent periods, that is from around the middle of this year following instructions from the Committee of the Trotting Association, the Stewards have been directed to impose harsher penalties in relation to driving offences. Indeed, since that time a number of such matters have come before this Tribunal by way of appeal. It has not been uncommon or out of the ordinary from my experience that breaches of Rule 440(a) have been dealt with on the basis of at least 21 day suspensions.

Having carefully considered the transcript of the inquiry before the Stewards, after viewing the video on a number of occasions and after hearing the submissions from both sides, I am not persuaded that the Stewards have erred in the imposition of the penalty on this occasion. Nothing which Mr Saw has told me convinces me that the 21 day suspension was too severe in all of the circumstances. Accordingly, I am of the opinion that the penalty which was imposed is appropriate.

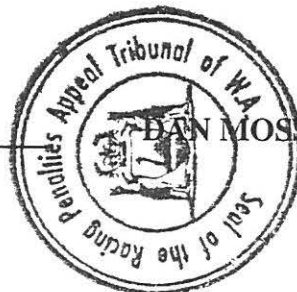
Accordingly, the appeal fails and is dismissed.

The order which was made on 18 September 1996 directing the suspension of the operation of the penalty automatically ceases to operate.

The period of suspension will now operate until 10 October 1996.

The fee paid on lodgement of the appeal is forfeited.

*Dan Mossenson*



DAN MOSSENSON, CHAIRPERSON

15 / 11 / 96