

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

APPELLANT: **JASON JAMES OLIVER**
APPLICATION NO: **A30/08/327**
PANEL: **MR P HOGAN (PRESIDING MEMBER)**
DATE OF HEARING: **10 OCTOBER 1996**

IN THE MATTER OF an appeal by Mr J J Oliver against the determination made by Western Australian Turf Club Stewards on 5 October 1996 imposing a 15 day suspension under Rule 137(a) of the Australian Rules of Racing.

Mr L Millington was granted leave to represent the appellant.

Mr J Zucal represented the Western Australian Turf Club Stewards.

This is an appeal against conviction and penalty. The appellant, Mr Oliver was the rider of REIGNLINE, a runner in Race 6 at Belmont Park on 5 October 1996. After the race the Stewards opened an inquiry into the reason for REGIMENTAL COLOURS checking neat the 200 metre mark and LYNSTED LAD being held tight at that stage and restraining.

The Stewards heard from the appellant, who was the rider of REIGNLINE. They heard from Danny Miller who was the rider of REGIMENTAL COLOURS, and from Damian Miller, who was the rider of LYNSTED LAD. The Stewards also viewed video footage of the race.

At the conclusion of the inquiry the appellant was charged with an offence of careless riding. The particulars of that charge were that:

“... in the opinion of the Stewards, you allowed your mount, REIGNLINE to shift in near the 200m and tightened REGIMENTAL COLOURS, D.R. Miller, which restrained and lost ground. ...”

Rule 137 of the Australian Rules of Racing states:

“Any rider may be punished if, in the opinion of the Stewards:

(a) He is guilty of careless, improper, incompetent or foul riding

...”

The appellant pleaded not guilty but was convicted.

He now appeals on the grounds that:

- firstly, Apprentice Damian Miller contributed to the alleged incident and was reprimanded by the Stewards;
- secondly, that the Stewards failed to take into account all the factors that contributed to the incident;
- thirdly, that the penalty was manifestly excessive in all of the circumstances; and
- fourthly, that a reprimand should have been issued by the Stewards.

As to the appeal against conviction, the particulars of that have been explained by the appellant's advocate to be that:

- (1) REGIMENTAL COLOURS was spent and tiring quickly;
- (2) LYNSTED LAD and REIGNLINE were both making a run at the same time;
- (3) Danny Miller had started to ease his horse REGIMENTAL COLOURS before the appellant crossed him; and
- (4) LYNSTED LAD had pushed REGIMENTAL COLOURS across the heels of REIGNLINE.

In my opinion none of those particulars have been made out. Whether or not REGIMENTAL COLOURS was spent and tiring quickly, in my view, is not relevant as has been pointed out by Mr Zucal on behalf of the Stewards. REGIMENTAL COLOURS was still entitled to a clear run. LYNSTED LAD was indeed attempting to make a run which the Stewards described as marginal, but in my view, that does not effect the view that the Stewards were entitled to take of the appellant's riding of REIGNLINE. Viewing of the video footage does not support the proposition that Danny Miller, the rider of REGIMENTAL COLOURS had started to ease before the appellant crossed him. The viewing of the film does support the view that LYNSTED LAD had bumped and pushed REGIMENTAL COLOURS, but in my view, not at the relevant time. Furthermore, the opinion of the Stewards must be given significant weight in the determining of this appeal.


In my view, the appeal against conviction from the rule in question here can only succeed if the appellant shows that the Stewards decision was not based on any sound foundation of fact. Put another way, the appeal would only succeed if the Stewards were manifestly wrong in coming to the conclusion which they did. In my view, that has not been demonstrated in this case.

As to the appeal against penalty, it is worth repeating that the imposition of penalty is an exercise of discretion. That discretion will only be interfered with if it can be shown that some irrelevant factor was taken into account, or some relevant factor was not taken into account, or that the penalty itself was so outside the range of penalties commonly imposed as to be manifestly excessive.

It has not been demonstrated that any of those things occurred in this case. In my view, the appeal against conviction has not been made out nor has the appeal against penalty.

In those circumstances this appeal will be dismissed.

The fee paid on lodgement of the appeal is forfeited.



PATRICK HOGAN, PRESIDING MEMBER

22/10/96