APPEAL 328

DETERMINATION AND REASONS FOR DETERMINATION OF

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT:	**RONAN P HARGADON**	
APPLICATION NO:	**A30/08/328**	
PANEL:	**MR P HOGAN**	**(PRESIDING MEMBER)**
	MR J PRIOR	**(MEMBER)**
	MR T MULLIGAN	**(MEMBER)**
DATE OF HEARING:	**22 OCTOBER 1996**	

IN THE MATTER OF an appeal by Mr R P Hargadon against the determination made by Western Australian Trotting Association Stewards on 15 October 1996 imposing a three month suspension under Rule 450 of the Rules of Trotting.

Mr G Winston was granted leave to represent the appellant.

Mr M Skipper represented the Western Australian Trotting Association Stewards.

This is the unanimous decision of the Tribunal. The appellant was the driver of the horse SIR LEKTOR which ran in Race 7, The St John Ambulance Commandery Stakes at Gloucester Park on Friday, 13 September 1996. The race was won by LONG TAN GLORY with SIR LEKTOR running second. On 24 September 1996, the Stewards opened an inquiry into the appellant's manner of driving. They were concerned with the appellant's apparent lack of vigour in driving SIR LEKTOR out in the run to the finish. The inquiry was adjourned and continued on 15 October 1996.

At the inquiry, the Stewards heard from Mr Hargadon, and viewed the video footage of the race. During the adjournment, the Stewards viewed video footage of the horse's previous performances. No other evidence was considered. At the conclusion of the inquiry the appellant was charged with an offence against Rule 450.

The specifics of the charge were that:

> "*... When driving SIR LEKTOR in Race 7 at Gloucester Park on Friday, the 13th of September 1996, by failing to apply any significant degree of vigour in urging the horse from the 300 metre mark until well into the front straight to the finish, you failed to take all reasonable and permissible measures throughout the race to ensure that you gave the horse the best opportunity to win. ...*"

Rule 450 of the Rules of Trotting states:

> *"The driver of each horse shall take all reasonable and permissible measures throughout a race to ensure that the horse driven by him is given the best opportunity to win or obtain the best possible place in the field. A driver who in the opinion of the Stewards does not take such measures may be fined, suspended or disqualified."*

The appellant pleaded not guilty but was convicted. He now appeals against his conviction on the ground that he is innocent. As explained by Mr Winston for the appellant, the ground really amounts to an assertion that the conviction cannot be supported by the evidence. The appellant argues that he did take all reasonable measures throughout the race to ensure that the horse was given the best opportunity. The appellant, through Mr Winston, made a number of submissions. He points out that SIR LEKTOR in previous runs would run down to the rails under the whip. This was supported in our view by viewing Exhibit C. The appellant did not want that to occur in this race. The appellant also points out that use of the whip generally did not result in better sectional times over the last 400 metres, in other words, driving the horse softer achieved the same result.

Further, it was pointed out that there was no motive for the appellant to want to run his horse second. Certainly no issue can be taken with that. However, the point which we see is significant is that the Stewards had all these submissions before them. The Stewards received all the relevant evidence and they heard from Mr Hargadon. On that evidence and on those submissions they formed their opinion.

Rule 450 is a rule which is couched in language which specifies that an offence is committed, if in the opinion of the Stewards, the particular thing occurs. It is not for this Tribunal to substitute its opinion for that of the Stewards, but if the appellant is able to demonstrate that the opinion which the Stewards came to was unreasonable or not in accordance with the evidence, then an appeal may succeed. The appellant has not demonstrated either of those things in this case and for these reasons the appeal against conviction is dismissed.

As to the appeal against penalty, this is the unanimous decision of the Tribunal.

The imposition of penalty or sentence is a matter of discretion. It is well established that an appeal against penalty or sentence will succeed only if some error has been made. The error may be that some relevant consideration was not taken into account or that some irrelevant consideration was taken into account. It may be that insufficient weight was given to a relevant consideration.

Further, the penalty imposed itself may be so far outside the range of penalties commonly imposed as to manifest or show mistake in itself. We note, in this case, that the penalty imposed was half of the maximum which if commonly imposed for offences of this sort. In this case we are persuaded that the sentencing discretion miscarried for the following reasons:

- firstly, we consider that insufficient weight was given to the fact that the appellant was a first offender;
- secondly, we consider that insufficient weight was given to the fact that the appellant, on all of the available evidence, could not benefit from his actions or lack of actions in this case; and
- thirdly, we are persuaded as to this view because the Stewards themselves accept that the appellant's actions in this case were at worst negligent.

For these reasons, the Tribunal is satisfied that the appeal against penalty ought to succeed and we reduce the penalty to one months suspension.

The fee paid on lodgement of the appeal is forfeited.

P J Hogan

PATRICK HOGAN, PRESIDING MEMBER
29/10/96

Seal of the Racing Penalties Appeal Tribunal of WA