

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

APPELLANT: CAMMERON BRUCE ELLERY

APPLICATION NO: A30/08/337

PANEL: MR D MOSSENSON (CHAIRPERSON)
MS P HOGAN (MEMBER)
MR P HOGAN (MEMBER)

DATE OF HEARING: 26 FEBRUARY 1997

DATE OF DETERMINATION: 26 FEBRUARY 1997

IN THE MATTER OF an appeal by Mr C B Ellery against the determination made by Western Australian Trotting Association Stewards on 14 December 1996 imposing a two year disqualification under Rule 459(a) of the Rules of Trotting.

Mr T Monaghan, instructed by Karp & Monaghan, represented the appellant.

Mr R J Davies QC represented the Western Australian Trotting Association Stewards.

Mr Ellery appeals against the severity of his two year disqualification for breach of Rule 459(a) of the Rules of Trotting. The particulars of the charge were that:

“... prior to the running of the Professional Stakes conducted at the Golden Mile Trotting Club on Friday, the 29th of November 1996, you corruptly offered directly money to Driver S.R. Young in an effort to influence him to not allow POWER PAUL to run on its merits.”

Two grounds of appeal are raised. The first alleges a failure to specify the appropriate penalty which would have been imposed but for the mitigating factors. The Tribunal agrees with Mr Davies' submission that the Stewards are not under an obligation to be so technical and specific as is required in a Court.

Ground two alleges that the penalty was manifestly excessive and fails to give adequate weight to mitigating factors. The appellant's written submissions in respect of this ground of appeal are as follows:

“2.1 Circumstances of the case place it at the lower end of the scale of seriousness for a charge pursuant to rule 459(a) given that the Appellant;

- (a) *was a minor participant;*
 - (b) *only become involved at the instigation of Huston;*
 - (c) *in becoming involved in the offence, was likely to have been influenced by Huston, a person in a position of authority and influence over him. (age, position, financial considerations);*
 - (d) *did not plan or pre-meditate, but rather acted upon the spur of the moment (about to race);*
 - (e) *stood to make little or no financial gain.*
- 2.2 *The Appellant significantly co-operated with the Stewards Inquiry showing genuine remorse. He did so by;*
- (a) *giving full and frank evidence before the Stewards Inquiry, regarding his own involvement;*
 - (b) *pleaded guilty to the offence without hesitation;*
 - (c) *giving key evidence implicating Huston, the major participant and instigator, and in doing so in circumstances of some personal difficulty.*
- 2.3 *Personal factors;*
- (a) *no previous convictions of a serious or similar nature;*
 - (b) *youth;*
 - (c) *otherwise of good character."*

In relation to paragraph 2.1 of the appellant's written submissions, the Tribunal is satisfied that the Stewards did take into account the factors referred to in (a) and (b). As to (c), it is submitted that Mr Ellery was likely to have been influenced by Mr Huston. There is no evidence that this was in fact the case. In relation to (d), whilst it is true, the Stewards make no reference to the absence of premeditation in their reasons. This was a factor that was brought to their attention by Mr Ellery. However, the fact that there was no premeditation in this matter is not necessarily a mitigating factor. As to (e) alleging little or no financial gain, the Tribunal is conscious of the fact that Mr Ellery told the Stewards that he "... *was on a 1000 if the horse won*".

As to paragraph 2.2 of the submissions, it is clear the Stewards did take into account the fact that Mr Ellery co-operated and showed remorse. As to the personal factors referred to in paragraph 2.3 of the submissions, these would have been well known to the Stewards. The fact that they have not enunciated them in their reasons does not indicate that they overlooked them.

The Tribunal is satisfied that Mr Ellery has been given a significantly reduced penalty for this most serious offence.

The Tribunal is not persuaded that any error has been demonstrated in the penalty and in the manner in which it was imposed.

Accordingly, the appeal fails. The appeal is dismissed. The fee paid on lodgement of the appeal is forfeited.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

