

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: TROY MORRISSEY
APPLICATION NO: A30/08/356
PANEL: MR J PRIOR (PRESIDING MEMBER)
DATE OF HEARING: 30 APRIL 1997
DATE OF DETERMINATION: 30 APRIL 1997

IN THE MATTER OF an appeal by Mr Troy Morrissey against the determination made by Western Australian Turf Clubs Stewards on 12 April 1997 imposing a 28 day suspension under Rule 137(a) of the Australian Rules of Racing.

Mr T Percy represented Mr Morrissey.

Mr B Lewis represented the Western Australian Turf Club Stewards.

This is an appeal against penalty for a 28 day suspension, incurred on a plea of guilty to an offence of careless riding in breach of Rule 137(a). The penalty was imposed on the 12 April 1997 after an earlier hearing on 9 April 1997.

After finding the appellant guilty in imposing the penalty, the Chairman of the Stewards at the inquiry said the following;

"... Apprentice Morrissey looking at your record it shows that you've been back from your last suspension for three weeks, 23 days to be exact just over three weeks. We see your record overall as, as a poor one now with three suspensions in that time as poor. We felt that the Stewards believe you should have been given an extra 14 days on top of your previous penalty, but we have decided to reduce that back to nine days which means that you are suspended from riding in races now for a period of 28 days and that's to commence from midnight tomorrow night so you can take your rides at Kalgoorlie tomorrow and that go through until midnight the 11th May, 1997"

There were three significant factors for consideration of the Stewards in assessing penalty in this matter and they were as follows:

firstly - the circumstances of the careless riding by the appellant in the race in question,
secondly - the appellant's personal antecedents, his record of previous convictions and in particular convictions of a similar nature; and

thirdly - whether he had pleaded guilty or not guilty to the charge.

The appellant has submitted, in essence, that the penalty of 28 days is excessive in the circumstances. The appellant has highlighted a number of grounds of appeal but, in particular, has submitted that the Stewards erred in considering only the appellant's previous record or giving excessive weight to his previous record in imposing the penalty and giving insufficient regard to the circumstances of the particular careless riding.

I am satisfied in this matter that the Stewards have erred in imposing the penalty, in particular, I am satisfied that they have placed excessive weight on the appellant's previous record. I accept that an offender's previous record, in any matter is a matter for consideration of the Stewards in imposing penalty. But, I consider that a person should not be punished merely for their previous record and, the circumstances of each particular case should be weighed with the offender's previous record.

In this matter, I am satisfied that excessive weight was imposed on the appellant's previous record and insufficient weight was placed on the circumstances of the careless riding and also the appellant's plea of guilty to the breach of the relevant rule. In those circumstances I would allow the appeal.

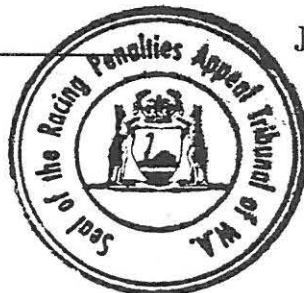
In relation to the question of appropriate penalty it seems that there is no clear tariff for these offences or other offences under Rule 137(a). To some extent every case depends on the circumstances of the individual's riding and the individual offender. I am satisfied that in this case an appropriate penalty would be a fourteen day suspension.

I do not in this case and I do not think in most cases, would I consider imposing a penalty if an appeal was successful, by considering the possible effects on the rider in the short or long term future at the date of the hearing of the Appeal. The matter should be assessed on the facts, which were before the Stewards when they imposed the original penalty in question. In those circumstances considering the facts that were before the Stewards, I am satisfied that an appropriate penalty is fourteen days suspension.

I would allow the appeal.

The fee paid on lodgement of the appeal is to be refunded.

John Prior



J PRIOR, PRESIDING MEMBER