

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: COLIN JOSS
APPLICATION NO: A30/08/360
PANEL: MR P HOGAN (A/CHAIRPERSON)
MR L ROBBINS
MR S PYNT
DATE OF HEARING: 1 MAY 1997
DATE OF DETERMINATION: 1 MAY 1997

IN THE MATTER OF an appeal by Mr Colin Joss against the determination made by Western Australian Trotting Association Stewards on 22 April 1997 imposing a 6 week suspension under Rule 440(a) of the Rules of Trotting.

Mr C Joss represented himself.

Mr M Skipper represented the Western Australian Trotting Association Stewards.

This is the unanimous decision of the Tribunal. The appellant appealed to this Tribunal against both his conviction and against the severity of the penalty imposed. Although the grounds of appeal against the severity of penalty, were not particularised, the Tribunal takes it that the appellant considers that the penalty was either inappropriate given all the circumstances or was excessive or that both of these considerations should apply.

The appellant has raised three grounds of appeal against his conviction they are:

- a) *My horse WITH DISTINCTION shifted from the 3 wide position to 2 wide position fairly within the "ease-in ease-out" Rule.*
- b) *There was no interference suffered by SILKARION (the other horse in the contest) other than that he was obligated to the 1 wide position, video footage directly after the incident shows this to be.*
- c) *There was no interference suffered to any other participant in the race.*

The appellant was charged under Rule 440(a) of the Rules of Trotting which provides relevantly 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.”

At the Stewards’ inquiry the appellant was charged as follows:

“That when you’ve endeavoured to manoeuvre WITH DISTINCTION into the one wide line racing in the front straight on the first occasion of Race 8, you’ve made contact with Mr James’s sulky, and as you heard the evidence , nearly dislodged him from the sulky.”

The charge was further particularised by the Chairman who said “... it’s a charge of causing interference by careless driving”. By way of evidence the Stewards heard from Mr Sullivan, who observed the incident from a tower. He described Mr Joss’ movement as a fairly abrupt move inwards which resulted in Mr James’ sulky almost being tipped over. That evidence was supported by the aggrieved driver Mr James who said that Mr Joss’ move was a “savage” one.

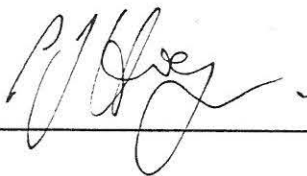
The appellant put his case clearly to the Stewards and to this Tribunal, he described his move as easing down and said that it was permitted by Rule 441. He went on to say that Mr James pushed back or retaliated and it was this unwarranted pushing back which caused Mr James’ sulky to lift. Mr Joss’ version was not accepted by the Stewards. They were the judges of fact. They were there on the night and in a position to assess matters of credibility.

The Tribunal has heard nothing from the appellant, in this appeal, to persuade us that we should depart from the finding of the Stewards. We dismiss the appeal against conviction.

As to the penalty the appellant was suspended for six weeks. The Stewards categorised the careless driving as a dramatic breach of the Rules. Penalties imposed in the recent past for similar offences range between four weeks and six weeks, therefore the penalty of six weeks cannot be said to be outside the range so as to demonstrate error.

No complaint is made of any other error in the sentencing process. In those circumstances the appeal against the penalty is also dismissed.

The fee paid on lodgement of the appeal is forfeited.



PATRICK HOGAN, A/CHAIRPERSON

