

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: PETER JOHN KIMBERLEY

APPLICATION NO: A30/08/366

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR P HOGAN (MEMBER)
MR S PYNT (MEMBER)

DATE OF HEARING: 25 JUNE 1997

DATE OF DETERMINATION: 25 JUNE 1997

IN THE MATTER OF an appeal by Mr P J Kimberley against the determination made by Western Australian Trotting Association Stewards on 14 June 1997 imposing a six week suspension under Rule 440(a) of the Rules of Trotting.

Mr P J Kimberley represented himself.

Mr M J Skipper represented the Western Australian Trotting Association Stewards.

This is an appeal by Peter John Kimberley in relation to a determination made by the Western Australian Trotting Association Stewards following an inquiry at the Wagin Trotting Club meeting held on Saturday, 14 June 1997 into an incident during the running of Race 2.

After holding a short inquiry the Stewards issued a charged against Mr Kimberley under the provisions of Rule 440(a) of the Rules of Trotting of causing crossing by careless driving. That Rule specifies 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 as you raced towards the front straight on the first occasion of Race 2, you've commenced to manoeuvre to a position towards the rails, and as a result Mr. De Campo on MODESTY is racing, commenced to race to your inside, was obliged to check that horse and it's raced roughly and lost its racing position as a result of having to be restrained by Mr. De Campo to avoid your downward movement.”

Mr Kimberley pleaded not guilty to the charge. After some further evidence was presented the Stewards found him guilty and imposed a suspension of his reinsperson's licence for a period of six weeks.

Mr Kimberley in his grounds of appeal specifies that he appeals against both the conviction and the severity of the penalty. The grounds further state that:

"I believe it was against the weight of the evidence. I was classed as a repeat offender. It was only my 2nd in 15 years."

The Tribunal has given careful consideration to the submissions which have been made and have studied the transcript of the Stewards' inquiry as well as having being afforded the opportunity of viewing the video. The Rule in question is couched in terms of *"the opinion of the Stewards"*. In the case of such a Rule it is not appropriate for this Tribunal to substitute its own opinion of the incident for that of the Stewards. In order for an appellant to succeed in relation to an appeal against this Rule it must be demonstrated that no reasonable Stewards could reasonably have come to the opinion which these Stewards did of that particular incident.

The Tribunal is not persuaded by the argument put forward by Mr Kimberley that the Stewards were in error in coming to the opinion of the incident which they did. We are satisfied that the Stewards were entitled to convict Mr Kimberley of the offence in question. Accordingly, the appeal as to conviction is dismissed.

In relation to the penalty the Tribunal is satisfied that the six week suspension does fall within the range of penalties that are currently being meted out by the Stewards for this type of offence. Mr Kimberley clearly takes umbrage with the comment made at the conclusion of the inquiry that Mr Kimberley *"falls within the category of a repeat offender"*. However, when one looks at the earlier comment of the Chairman of Stewards in this context it becomes clear as to precisely what was meant by that description. At the bottom of page 4 of the transcript the Chairman of Stewards states to Mr Kimberley:

"... that the Stewards look quite poorly at drivers who come back and who offend again in a short period of time. And it's actually a day short of a month."

The Tribunal is satisfied that the Stewards have not fallen into error in imposing the six week suspension which they have done for this particular offence. Accordingly, the appeal as to the penalty is also dismissed.

The fee paid on lodgement of the appeal is forfeited.



DAN MOSSENSON, CHAIRPERSON

