

DETERMINATION AND REASONS FOR DETERMINATION OF  
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: LINDSAY BRETT HARPER  
APPLICATION NO: A30/08/367  
PANEL: MR D MOSSENSON (CHAIRPERSON)  
DATE OF HEARING: 19 JUNE 1997  
DATE OF DETERMINATION: 19 JUNE 1997

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IN THE MATTER OF an appeal by Mr L B Harper against the determination made by Western Australian Trotting Association Stewards on 13 June 1997 imposing a 28 day suspension under Rule 440(a) of the Rules of Trotting.

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Mr L B Harper represented himself.

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

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This is an appeal by Mr Lindsay Harper in relation to an incident which occurred at Gloucester Park on 13 June 1997 during the running of Race 5, the Fremantle Dockers Handicap. Mr Harper was charged pursuant to provisions of Rule 440(a) of causing interference by careless driving.

The specifics of the charge are:

*"That as you've raced into the front straight to receive the bell in Race 5 you've manoeuvred MONEY FOR FUN from the one wide to the three wide line in an abrupt manner, as a result VAN TUNE was checked and raced roughly and also lost its racing position."*

Mr Harper pleaded not guilty. The Stewards heard evidence both from Mr Harper and Mr Graham, the reinsperson driving VAN TUNE. During the course of the inquiry the Chairman of Stewards made it clear that it appeared that the movement was fairly abrupt resulting in Mr Graham being unable to avoid the outward movement. In his evidence Mr Graham stated that his horse sort of jumped sideways to avoid the contact.

The Stewards came to the conclusion that Mr Harper was guilty as charged. Mr Harper has appealed on the basis that:

- (i) in driving his horse he did not interfere with another horse;
- (ii) that he was not guilty of careless driving; and
- (iii) on a proper construction of the Rule his driving of the horse did not amount to causing interference by careless driving.

I have had the benefit of hearing submissions from both sides and of viewing the video of the race.

The Rule in question 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.”*

I have given careful consideration to the submissions that have been put to me by Mr Harper and I am not persuaded in the circumstances that the Stewards were in error in arriving at the decision which they did. Nothing has been presented which persuades me that these Stewards were in any way unreasonable in forming the opinion which they did of the incident. It is not appropriate for me to form my own opinion and substitute my opinion for that of the Stewards in the circumstances and bearing in mind the particular wording of this particular Rule.

In view of the fact that there has been no error demonstrated on the part of the Stewards I must dismiss the appeal in relation to the question of conviction.

Mr Harper has also appealed against the severity of the penalty which has been imposed on him, namely a period of suspension for 28 days. In the appeal notice Mr Harper states that the grounds are that:

- “(i) the Stewards applied inappropriate principles in arriving at the penalty;*
- (ii) the penalty was excessive having regard to:*
  - (a) circumstances in which the offence was said to have occurred; and*
  - (b) my record.”*

I have received submissions from Mr Harper and material from Mr Skipper which enables me to resolve this matter fairly quickly.

I am satisfied in all of the circumstances that the penalty which was imposed was entirely appropriate and that it was not excessive, it having clearly been demonstrated that this penalty was within the range of penalties that have been imposed on other drivers for this particular offence. A significant body of material has been put forward comparing the driving record recently of Mr Harper with other drivers in the context of the argument raised by Mr Harper of the frequency of his driving compared with two other drivers. In the light of what has been presented by Mr Skipper I cannot in anyway be persuaded by the argument put forward by Mr Harper on that particular point.

Mr Harper at the end of the proceedings in effect craved my indulgence on the basis of the other circumstances confronting him in regard to another penalty and the extent to which he has been inhibited in his driving activity. Whilst I have taken that fact into account I am in no way persuaded that the Stewards were in error in imposing the penalty which they did in all of the circumstances. That being the case, the appeal as to penalty also fails.

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

*Don Mossenson*



MOSSENSON, CHAIRPERSON