

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: PAUL ANTHONY JOHN DYSON
APPLICATION NO: A30/08/371
PANEL: MR P HOGAN (A/CHAIRPERSON)
DATE OF HEARING: 16 JULY 1997
DATE OF DETERMINATION: 16 JULY 1997

IN THE MATTER OF an appeal by Mr P A J Dyson against the determination made by Western Australian Turf Club Stewards on 2 July 1997 imposing a 13 day suspension under Rule 137(a) of the Australian Rules of Racing.

Mr T F Percy, assisted by Mr P Harris, instructed by D G Price & Co, Barristers & Solicitors, represented the appellant.

Mr R J Davies QC represented the Western Australian Turf Club Stewards.

These are appeals against conviction and penalty.

The appellant was the rider of the horse SHAR-KEL-VAN which won race two at Belmont Park on 2 July 1997. Following the race jockey Danny Miller, the rider of PENANCE, protested. PENANCE was placed fifth. Mr Miller alleged that he had been tightened on the outside and put across the back of the other horse's heels. The other horse mentioned was STATS ROSE, ridden by jockey P Farrell. Mr Miller's allegation and protest was that he had been tightened by SHAR-KEL-VAN, ridden by the appellant.

The Stewards duly embarked on an objection hearing. The objection was dismissed. Nevertheless, the Stewards certainly found that there had been interference because they indicated their intention to enquire later that day into that interference. The inquiry was then conducted later that afternoon.

The Stewards heard evidence from jockeys Dyson, Miller and Farrell. Steward MacLean gave evidence of his observation from the main Stewards tower. Put simply Mr MacLean's evidence was:

"... just approaching the 100m SHAR-KEL-VAN ridden by Paul Dyson when riding his mount along, has shifted inwards causing PENANCE (Danny Miller) to check and lose ground."

After hearing the evidence the appellant was charged with careless riding. The particulars were that:

"... in the opinion of the Stewards, you permitted your mount to shift in near the 100m mark, thereby crowding PENANCE and causing that horse to check".

Rule 137(a) states:

"Any rider may be punished if, in the opinion of the Stewards:

- (a) *He is guilty of careless, improper, incompetent or foul riding;"*

The appellant pleaded not guilty. In his defence he made several points, most notably that the interference to PENANCE was contributed to by STATS ROSE rolling out. That was really the only point of any substance in the appellant's defence at the inquiry and here on the appeal.

It is instructive then to see what each witness and the stewards had to say about the movements of STATS ROSE. The appellant, himself in page two of the transcript, described that movement as marginal. He described it again in those terms on page nine. Mr MacLean, on page four of the transcript, described the movement as minor. Mr Farrell, the rider of STATS ROSE, described it as slight and at the three hundred mark, that is at page six of the transcript. Mr Kersley, trainer of PENANCE described it as "*some*" movement. He described it in those terms at the protest hearing. Last but not least the Stewards also had film of the incident.

The Stewards made no specific findings of fact. It is difficult to see why they should in this case. No witness seemed to be in disagreement, not even the appellant. There did not appear to be any evidentiary conflicts which needed to be resolved. The Stewards did, quite properly, refer in general terms to the evidence in finding the appellant guilty. The references to the evidence were quite sufficient for the purposes of this case.

I turn now to the grounds of appeal.

1. The Stewards erred in coming to a finding of guilt which was contrary to a finding of fact previously made in relation to the determination made by them on the protest of the race.

That ground of appeal is not made out. All that can be read into the fact that the Stewards not upholding the protest is that they were not satisfied that PENANCE would have finished ahead of SHAR-KEL-VAN without the interference. That approach is completely consistent with the wording of Rule 136(2).

2. The Stewards erred in convicting the appellant in that they came to a finding of fact that was not reasonably open to them on the evidence.

That ground of appeal as well is not made out. There was ample evidence on which the Stewards could convict. On an appeal it would be a rare thing for this Tribunal to substitute its own opinion for that of the Stewards. No error has been demonstrated in the way the Stewards went about gathering the evidence to form their opinion and no error has been demonstrated in their findings of fact.

Accordingly, the appeal against conviction is dismissed.

As to the appeal against penalty, in my opinion there has been no error demonstrated, there is no factual error to be found nor can the penalty be said to be so outside the range as to manifest error. Accordingly, the appeal against penalty is dismissed.

The fee paid on lodgement of the appeal is forfeited.

