THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR D MOSSENSON (CHAIRPERSON)

APPELLANT:	JOHN PIERRE CLAITE
APPLICATION NO:	A30/08/372
DATE OF HEARING:	29 JULY 1997
DATE OF DETERMINATION:	13 OCTOBER 1997

IN THE MATTER of an appeal by Mr JP Claite against the determination made by Western Australian Turf Club Stewards imposing a 17 day suspension under Rule 137(a) of the Australian Rules of Racing upon the rehearing of an inquiry in relation to interference which occurred in the course of the running of Race 7 at Belmont Park on the 28 May 1997.

Mr P Harris, on instructions from DG Price & Co, appeared for the appellant.

Mr J Zucal represented the Western Australian Turf Club Stewards.

Background

On the 25 June 1997 I ordered that both appeals made by Mr Claite against the determinations of the Western Australian Turf Club Stewards on the 28 May 1997 be upheld and the determinations be quashed. The Stewards had imposed a 21 day and an 18 day suspension under Rule 137(a) of the Australian Rules of Racing in relation to incidents which occurred at the 100m after the start of the race and 1800m marks respectively during the running of Race 7 at Belmont Park on that date. I directed both matters be remitted to the Stewards for further determination in accordance with my reasons. In essence the appeals succeeded as the Stewards should have proceeded on pleas of not guilty to both charges. Mr Claite should have been afforded all the usual opportunities of defending the charges before the Stewards.

Pursuant to my order the Stewards convened an inquiry at which they reheard the matter involving the incident which had occurred at the 100m mark after

the start of the race. The transcript of their further inquiry does not state the date of the rehearing. Mr Zucal chaired the rehearing having also chaired the original Stewards' inquiry. After Mr Zucal had outlined the course of events leading to the rehearing Mr Claite told the inquiry that he wished to read something out to the Stewards. Prior to being allowed to do so the Chairman of Stewards marked for the record as exhibits A and B respectively the evidence taken by the Stewards on the 28 May 1997 and my reasons for determination in relation to the appeals. Mr Claite then read out a statement in which he objected to the composition of the Stewards' panel and in particular to any of the Stewards who participated in the original inquiry from participating in the rehearing. In the statement he pointed out the fact that Mr Zucal, who represented the Stewards during the course of the appeal, had made submissions at the appeal to the effect that Mr Claite was *'clearly guilty of careless riding'*. It was alleged that by reason of the fact that the Stewards had found Mr Claite guilty at the original hearing would have prejudiced Mr Claite's case and biased the Stewards against him. The statement concluded as follows:

> *'To be fair, the inquiry should only proceed in front of the Stewards who were not a party of (sic) the original hearing, and I request that the hearing now be adjourned so that this can occur. In my opinion this request is both fair and reasonable, especially given that my solicitors have already made you aware that this objection would be made by letter dated 19 June, 1997 a copy which I have attached to this letter'.*

The letter from the solicitors foreshadowed the intention of the appellant to object to the matter proceeding before any of the Stewards who had participated in the original inquiry as:

> *'...Mr Zucal at the appeal hearing made submissions to the effect that our client was clearly guilty of the offences and he purported to make this observation on behalf of the Stewards as a whole. In our submission there is no evidence that was given at the original inquiry sufficient to convict our client of the alleged offences. In our submission, the matter should only proceed in front of Stewards that were not party to the original hearing, if at all'.*

The transcript of the rehearing reveals that Mr Zucal explained to Mr Claite that Mr Powrie, on behalf of the Stewards, responded to the solicitors' letter to the effect that the Stewards would clearly act in accordance with the determination of the Tribunal. Mr Price, the appellant's solicitor, was therefor advised:

> *'...that he may think it appropriate to approach the Registrar and the Chairman of Racing Penalties Appeals Tribunal. At the end of the day we as a Panel, would act in accordance with the Determination of the Racing Penalties Appeals Tribunal. And as I say Mr Mossenson on page eight of his Determination states "...the appropriate way to deal with the two appeals is to quash the decision and to send the matters back to the Stewards for rehearing. The Stewards should proceed on the basis that Mr Claite has pleaded not guilty on both charges and he should be afforded all the usual opportunities on defending (sic) himself..."'.*

Mr Claite was then asked by the Chairman of Stewards *'So in line with what I say, are there any comments further you wish to say?'*. Shortly after that Mr Claite was handed a copy of my determination in order to enable him to study it. The Stewards' inquiry was adjourned to enable him to do so as apparently he had not previously read it. When Mr Claite returned to the inquiry the Chairman of the inquiry explained to him that Mr Powrie, Chairman of Stewards, wrote to Mr Price in response to the letter of the 19 June 1997 stating *'Whilst I take note of your submission, the Stewards... will conduct such inquiries under such terms as directed by the Racing Penalties Appeals Tribunal in accordance with the Determination of the two Appeals. We believe any request related to the structure of such Stewards' Panel should be made to the Racing Penalties Appeals Tribunal which could be included in their Determination and orders'.*

After Mr Claite was given the explanation regarding the sending of the letter to his solicitor Mr Zucal then stated to him:

> *'The Stewards should proceed on the basis that Mr Claite has pleaded not guilty to both charges and he should be afforded all the usual opportunities of defending them..." Mr Claite I've discussed it with the Panel of Stewards, it's our decision that we should proceed on the Determination of Mr Mossenson and to*

that extent we would be looking at proceeding with this matter with the existing Panel of Stewards.'

By way of response Mr Claite said *'That's your decision Sir well that's fine'.* The Chairman of Stewards then asked him:

'Right at this stage do you request an, do you require time to reconsider, I mean to say you made a request of us basically saying that we shouldn't hear it. We've, we've discussed that matter and for the reasons that I've said we're going to go with this present Panel. Do you wish an adjournment to seek legal advice?'

Mr Claite replied *'No Sir, I think we just carry on'.*

The Stewards then proceeded to charge Mr Claite with careless riding in the following terms:

'...in the opinion of the Stewards approximately 100m after the start, you shifted inwards on ROMANTIC SMILE, crowding JUST ACT in onto VALDAZEEL causing that horse to be crowded and restrained.'

After laying the charge the Stewards proceeded on the basis that Mr Claite was pleading not guilty to the charge and invited him to make a statement or call witnesses. Mr Claite was asked if he wished to see the film of the race to refresh his memory. He declined. Mr Claite then called 2 jockeys who participated in the race in question, Messrs Harvey and King, to give evidence before the Stewards. During both Mr Harvey's and Mr King's evidence the film was shown. Both Mr Claite and the Stewards asked the witnesses a range of questions. At the end of the inquiry the Stewards deliberated and then, after having considered the matter, announced:

'We believe that the Stewards' observation and the film supports the charge of you shifting inwards, crowding JUST ACT in onto VALDAZEEL causing that horse to be crowded and restrained. This interference occurred approximately 100m after the start.'

Mr Claite was then asked if he had anything to place before the Stewards regarding penalty. Mr Claite replied:

> *'No I think I've put my situation as straight forward as I could'.*

Despite that response Mr Zucal reacted by stating:

> *'... whilst I can understand that you don't agree with the Stewards' opinion, ...the matter's moved on to the actual penalty situation and on the original inquiry you received a 21 days suspension, that's certainly, we're not bound to give you 21 days now, because the matter has been quashed and sent back to us for rehearing, so it's important that you address the Stewards on penalty. Now you should refer to your record, anything else that will influence the Stewards in making a decision in regards to penalty. That should include financial situation your circumstance.'*

After Mr Claite responded and answered some additional questions the Stewards deliberated and then announced:

> *'We have taken into account your record which doesn't read well, your record's been read before so it's no need for me to reiterate that. We've taken also into account the circumstances of this interference and as I say that it was toward the lower level, but on the other hand the Stewards believe that runners should not be interfered with in a race. We have also taken into account your financial position and we're aware that you, you were suspended whilst on a Stay of Proceedings and that situation as such that you have been in would certainly strain your financial resources. After considering all these matters Mr Claite the Stewards have decided to suspend you from riding in races for a period of 17 days from midnight the 7th to midnight the 24th of July, 1997.'*

Mr Claite now appeals against the conviction and the penalty in the following terms:

> *'A. CONVICTION*
>
> *1. The Stewards erred in failing to disqualify themselves from presiding over the rehearing despite objection that the way in which the Inquiry was constituted gave rise to a reasonable apprehension or suspicion of bias on the part of the Stewards.*

PARTICULARS

(a) *the first Inquiry by the Stewards into the incident was constituted by Mr J.A. Zucal, Mr L.A. Wagener, Mr B.W. Lewis, Mr B.W. Nalder and Mr S.J. Carvosso.*

(b) *Mr J.A. Zucal then represented the Stewards at the hearing of the appeal which followed the first inquiry and made submissions on behalf of the Stewards to the effect that the Appellant was clearly guilty of careless riding.*

(c) *the second inquiry into the incident was then heard by the same stewards (save for Mr Carvosso) with Mr Zucal presiding over the inquiry as chairman.*

(d) *at pages 2 & 3 of the transcript for the second inquiry the Appellant objected to the Stewards Inquiry proceeding as constituted.*

(e) *in response to this objection at page 6 of the transcript Mr Zucal on behalf of the Stewards states: "Mr Claite I've discussed it with the Panel of Stewards. It's our decision that we should proceed on the Determination of Mr Mossenson and to that extent we would be looking at proceeding with this matter with the existing Panel of Stewards"*

2. *The Stewards erred by placing into evidence the transcript of the first Stewards Inquiry made on the 28th May 1997 and by taking into consideration matters which were raised at the first Steward's Inquiry.*

PARTICULARS

(a) *the transcript of the first Inquiry by the Stewards was placed into evidence by Mr Zucal and marked as Exhibit A (see page 1 of the transcript).*

(b) *in so doing the Stewards failed to adhere to the orders made by the Chairman of the Racing Penalties Appeal's Tribunal in that the Appellant did not receive a "rehearing" in the true sense.*

(c) *at page 12 of the transcript Mr Zucal states: "Now what I'm saying Mr Claite you said that you started, I'll use, your terms were that you started the ball rolling".*

(d) *at page 13 of the transcript Mr Zucal states: "... Smith himself says that when I asked him on the original inquiry, he said, I said did you get forced out and he said restrained, he said I restrained because I wanted to settle my horse".*

3. *The Stewards finding that the Appellant was guilty of careless riding was against the weight of the evidence and was therefore unsafe and unsatisfactory in all the circumstances of the case.*

PARTICULARS

The Stewards failed to take into account:

(a) *the fact that no cogent evidence was led to suggest that the manner in which the Appellant rode was unsafe or placed any other rider or horse in danger.*

(b) *the contributing effect of the simultaneous movement outwards by the inside runners, this being a factor which contributed to the occurrence of the incident.*

(c) *Mr Harvey's evidence at page 9 of the transcript that "... there was movement from the inside that we, that we did observe. And I think the evidence given by the Jockeys indicated that there was movement from the inside and if that movement wasn't there this situation may not have, not have occurred".*

(d) *the Appellant's evidence at page 14 of the transcript that "...Ok, I'm not denying that I haven't shifted in Sir, ok. I have shifted in marginally, but the shift from the out, from the out, from the inside has made the whole situation a lot worse, well if it hadn't have happened, the inside hadn't have happened, the incidents would have been quite a clean slate, free situation as far as I'm concerned."*

(e) *Mr Harvey's evidence at page 15 of the transcript that "... I would say if you found the outside party guilty, you'd have to find the inside party guilty also."*

(f) *Mr King's evidence at page 18 of the transcript that "... I think if my horse hadn't came out and shifted out from the interference on the inside, I don't feel that there would have been any interference."*

(g) *Mr King's evidence at page 21 of the transcript that "... in my opinion the interference that has happened, has come from two horses not one and, and, and caused, caused compaction of those runners".*

4. *The Stewards erred in giving insufficient reasons for convicting the Appellant.*

PARTICULARS

(a) *there were facts which were in dispute at the hearing and the Stewards did not advise which of the competing versions of evidence they preferred over the other.*

(b) *the Stewards failed to enunciate what parts of the evidence they relied upon and what parts of the evidence they rejected.*

(c) *the reasons failed to give any clear summary of the evidence, an unambiguous statement of relevant factual findings or a clear cut conclusion in relation to each element of the offence.*

(d) *a person whose livelihood is being deprived by a decision of the Stewards in relation to a matter of this nature is entitled to know what the Stewards have addressed their minds to and the basis of fact upon which their ultimate conclusion has been reached.*

B. *PENALTY*

1. *The penalty imposed was excessive in all the circumstances of the case.*

PARTICULARS

(a) *the Stewards placed the offence into a category of seriousness which was beyond that warranted by the evidence.*

(b) *the Stewards failed to properly consider the contribution of the inside runners which shifted out and thereby contributed to the alleged interference.*

(c) *the Stewards erred in placing excessive weight on the Appellant's previous record.*

(d) *the Stewards erred in placing insufficient weight on the mitigating features of the case.*

(e) *the Stewards erred in failing to give sufficient weight to matters personal to the Appellant.'*

On 8 July 1997 the Acting Chairperson ordered the suspension of operation of Mr Claite's penalty pending determination of this appeal.

First Ground - Reasonable Apprehension of Bias

It is submitted by counsel for Mr Claite that there was a reasonable apprehension or suspicion of bias on the part of Mr Zucal and the other Stewards. In support it is argued that natural justice, which includes the requirement of being given a hearing by an impartial adjudicator, has been described as *'fair play in action'* (Furnell v Whangarei High School's Board [1973] AC 660 at p. 679). The requirements of natural justice (Tucker L J in Russell v Duke of Norfolk [1949] 1 All ER 109 at 113):

> *'... must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with and so forth.'*

Mr Harris argues the Stewards are empowered to act in a wide capacity in that they are entitled to frame the charges, to conduct the prosecution, examine the appellant and other witnesses and then to make an adjudication. Further:

> *'The Steward's dual role forms part of the relevant circumstances which must be considered in relation to the issue of bias and it is submitted must at least augment a reasonable suspicion of bias in a fair minded observer on the facts of this case.'*

In the High Court decision of Livesey v New South Wales Bar Association (1983) 151 CLR 288, which deals with apprehended bias, it is stated at 293-4 that:

> *'...a Judge should not sit to hear a case if in all the circumstances the parties or the public might entertain a reasonable apprehension that he [or she] might not bring an impartial and unprejudiced mind to the resolution of the question involved in it.'*

In the same case at page 300 Mason, Murphy, Brennan, Deane and Dawson JJ said that the relevant concern was that:

> *'...a fair minded observer might entertain a reasonable apprehension of bias by reason of prejudgment if a judge sits to hear a case at first instance after he has, in a previous case, expressed clear views either about a question of fact which constitutes a live and significant issue in the subsequent case or about the credit of a witness whose evidence is of significance on such a question of fact.'*

This test was adopted in Webb v R (1993-94) 181 CLR 41 at 68 where Deane J commented :

> *'...So stated, the test directly reflects its rationale, namely, that it is of fundamental importance that the parties to litigation and the general public have full confidence in the integrity, the impartiality, of those entrusted with the administration of justice.'*

An objective test is to be undertaken and the requisite standard is that of a hypothetical fair-minded and informed lay observer (Webb v R (1993-94) 181 CLR 41 at 60 per Deane J). The Greyhound Racing Control Board was held to be a body which was under a duty to observe the requirements of natural justice in the case of Stollery v The Greyhound Racing Control Board (1973) 128 CLR 509. The Board had failed to do so because the course and conduct of the proceedings were such as to raise a reasonable apprehension of bias in a fair minded observer. As Barwick CJ states at page 517:

> *'... the most important feature of the matter is the appearance which his continued presence in the board room during the time the matter was decided and the penalty was agreed must present to any reasonably minded man who knew the facts antecedent to the hearing before the Board but who was completely unaware of what had occurred in the board room. In my opinion, the reasonable inference to be drawn by the reasonable bystander in that situation was that Mr Smith was in*

a position to participate in the Board's deliberations and at least to influence the result of those deliberations adversely to the appellant. The existence of that reasonable inference, in my opinion, is sufficient warrant for concluding that, in a matter in which the Board was bound to act in a judicial manner, natural justice was denied..... We are not concerned with the appellant's guilt or innocence in that connection. What we are concerned with is the regularity of the proceedings of the Board in which he was found guilty of doing an act as charged. In my opinion it is of the utmost importance that tribunals such as the Greyhound Racing Control Board should conduct their proceedings with scrupulous adherence to the requirements of natural justice.'

Finally on this aspect the following submission for the appellant was also put:

'In this case the role played by the Stewards generally, i.e. that of prosecutor and judge together with the comments made by Mr Zucal on behalf of the Stewards at the Tribunal hearing on 17 June 1997 (where Mr Zucal adopted the role of accuser) strongly suggest that a reasonable and fair-minded race goer would conclude that Mr Zucal and the other Stewards, might be affected by the strongly expressed submissions which were put to the Tribunal by Mr Zucal on 17 June 1997.'

These arguments advanced for Mr Claite overlook some of the relevant facts of this matter, as already outlined above in the background, relating to the approach adopted by the Stewards upon being notified of the foreshadowed objection by Mr Claite. Firstly, the Stewards after receiving the advice from Mr Claite's solicitors had made it quite clear that they intended to approach the matter literally and to rehear the matter precisely as they had been directed. At the time the orders were made at the first appeal nothing was asked of me in the form of clarification or direction as to the precise basis upon which the Stewards' rehearing should occur. Clearly the appellant was put on notice by the Stewards of their intentions and attitude in relation to the matter prior to the rehearing. Those advising Mr Claite were afforded the opportunity to go back to the Tribunal in order to seek any directions in relation to the matter which they considered appropriate. I have not been appraised of any steps having been instituted to take the matter further at that level. Secondly, at the rehearing the Stewards afforded Mr Claite every reasonable opportunity to consider his position in the light of their intention to proceed with the panel as originally chaired and constituted. Indeed the appellant was expressly asked

whether, in light of the fact the Stewards intended to proceed with essentially the same panel as originally and with Mr Zucal again in the chair, Mr Claite wished to obtain an adjournment to seek legal advice. His response to this was simply *'Well that's fine'*. Clearly these aspects must be considered as part of any objective evaluation of the matter from the viewpoint of a fair minded independent person.

Further, in considering the matter from the perspective of *'a hypothetical fair minded and informed lay observer'* it must be noted that during every Stewards' inquiry that leads to a charge being laid there is a shifting of roles by the Stewards as the process moves from the initial investigation stage through the different phases to that of complainant, prosecutor and ultimately adjudicator. In that context every such Stewards' inquiry must be contrasted with, for example, legal proceedings where the judge or magistrate must remain aloof and not enter the arena. There was nothing in any way out of the ordinary in the shifting roles which were played by the Stewards during the course of the rehearing. It was clearly open to the Stewards, based on the material presented at the rehearing, to form the opinion which they did of the incident. The fact that the Stewards' panel second time around arrived at a different and lesser penalty clearly suggests that they maintained an open mind on the matter at the time of dealing with and determining the rehearing.

For these reasons I am satisfied that any apprehension or suspicion of bias is not reasonable. Accordingly, ground one fails.

Ground Two - Reliance Upon Evidence Obtained at the First Inquiry

It is argued for the appellant that the *'Appellant did not receive a rehearing in the true sense'*. It is said the Stewards were in error in placing into evidence the transcript of the original inquiry and that the result of putting the transcript into evidence was that the appellant was not afforded *'all the usual opportunities of defending'* the charge as directed. Further it is said that the evidence of Jockeys Miller, Brown and Smith went before the Stewards on the rehearing without the appellant being given the opportunity to cross-examine those witnesses. It is conceded by Counsel for the appellant that evidence given in previous proceedings between the same parties may be read or recited

at a subsequent proceedings provided the issues are the same and witnesses who gave the evidence are incapable of being called. In this matter there is no suggestion that any of the jockeys were incapable of being called. In the circumstances, placing the transcript into evidence was alleged to be unfair to the appellant.

I see nothing untoward with the action taken by the Stewards in having exhibited the transcript of the original inquiry at the beginning of the rehearing. After all the initial proceedings were clearly an important element in the history of the matter and constituted part of the overall record of the proceedings. However, it would have been totally unsatisfactory had the Stewards at the rehearing only relied upon the material which came before them at the original hearing and made their determination based solely upon that material. Clearly the Stewards did not fall into that error. Rather they acted strictly in accordance with the direction of the Tribunal. As is revealed from the transcript they did afford Mr Claite every reasonable opportunity in which to defend the charge, to give such evidence himself, call any witnesses he wished and to place fresh material before them. In so doing Mr Claite was given the proper opportunity to present his case with such supporting evidence as he could muster with a view to trying to convince the Stewards that the charge should be dismissed.

In the Reasons for Determination the wording of the orders state:

> *'The appropriate way to deal with the 2 appeals is to quash the decision and to send the matters back to the Stewards for rehearing. The Stewards should proceed on the basis that Mr Claite has pleaded not guilty to both charges and should be afforded all the usual opportunities of defending them. I order the appeals be allowed and the penalties quashed. I direct both matters be remitted to the Stewards for further determination in accordance with these reasons.'*

It is clear from these words that it was not expressly directed or even contemplated the whole proceedings which originally took place before the Stewards had to be ignored. In substance all the Stewards were required to do in *'rehearing'* and *'further determination'* of the matter was to proceed again

from the point of the laying of the charge and dealing with the matter on the basis that Mr Claite was pleading not guilty.

As I am satisfied that the rehearing was appropriately conducted this ground fails.

Ground Three - The Finding of Guilt Was Against the Weight of the Evidence

It is submitted that the evidence before the Stewards lacked the degree of cogency which would have entitled them to convict the appellant. This proposition, it is claimed, is supported not merely by the evidence of the appellant but also that of the other two riders who also gave evidence at the rehearing.

This argument must be examined in the light of the wording of the relevant offence provision Rule 137(a) which states:

> *'Any rider may be penalised if in the opinion of the Stewards:*
>
> *(a) He is guilty of careless, improper, incompetent or foul riding...'.*

As I have stated so may times in relation to other appeals the qualifying phrase which is found in a number of the offence provisions of the Rules of Racing *'... in the opinion of the Stewards ...'* makes the task of successfully appealing a conviction a very difficult one. In order to succeed at appeal level an appellant must demonstrate that the Stewards were so unreasonable in their decision that no reasonable Stewards, armed with all of the relevant facts, would have formed that opinion in all of the circumstances. It is not appropriate simply to invite the Tribunal to substitute its opinion for that of the Stewards.

I have considered but am not persuaded the Stewards failed to take into account the 7 matters which are particularised in this ground. For these reasons this ground fails.

Ground Four - Failure to Give Sufficient Reasons

Counsel for the appellant heavily relied upon the reasons enunciated in my decision in Harvey (Appeal No 353 of 1997). The particulars pleaded in support of that ground are a summary of some of the matters referred to in the course of that decision. The Harvey matter was decided on the particular facts of that case. In short the appeal succeeded because in enunciating their decision in that matter the Stewards simply failed to address the particulars of the charge. Mr Harvey's careless riding charge had related to a set of circumstances which commenced at the 150 metre mark and concluded near the 100 metre mark. The first element of the charge related to shifting in. The second element of the charge related to crowding. In arriving at their decision, however, the Stewards addressed another aspect which was raised during the course of the hearing, namely the movement of another horse outward. In giving their reasons the Stewards in essence made findings in relation to matters which were occurring during the time of the incident but they:

> *'did not go on and make findings and in their reasons explain adequately or at all, how or why Mr Harvey was 'guilty of the charge'. Mr Harvey was charged with careless riding due to, on the one hand shifting, and on the other, crowding. These two elements of the charge are not specifically referred to in the reasons and one cannot without being left with some considerable uncertainty say that the elements of the offence can be inferred from the stated reasons.'* (p5 of Harvey).

The situation involved in Mr Claite's appeal is quite a different one. The wording of the charge, namely *'approximately 100m after the start you shifted inwards on ROMANTIC SMILE crowding JUST ACT in onto VALDAZEEL causing that horse to be crowded and restrained'* is quite clear and specific. The Stewards found that:

> *'... The Stewards' observation and the film supports the charge of you shifting inwards, crowding JUST ACT in onto VALDAZEEL causing that horse to be crowed and restrained. This interference occurred approximately 100m after the start.'*

In those circumstances the reasons for convicting are sufficiently clear. It is obvious which of the competing versions of the evidence the Stewards preferred, which evidence they relied upon, which evidence they rejected and

there is a clearcut conclusion in relation to the elements of the offence. The conclusion which I reached in PJ Carbery (Appeal No 362 heard 17 June 1997) applies with equal force to this matter, namely:

> *'The Stewards' reasons could have been elaborated upon and expressed more eloquently. However, the chairman's summary is sufficiently clear to reveal that the Stewards not only have exercised their minds on the relevant considerations but also have made findings adverse to Mr Carbery which clearly do support the conviction of Mr Carbery. In the light of the evidence which was presented, the Stewards have in my opinion given a clear enough summary of the evidence and a sufficient statement of the relevant findings or conclusions on that evidence.'* (p9)

This ground of appeal also fails. The appeal as to conviction is dismissed.

The Penalty is Excessive

In relation to the severity of the penalty counsel for the appellant relies on Morrisey (Appeal No 356 of 1997) where the appellant appealed against a 28 day suspension for careless riding under Rule 137(a) of the Australian Rules of Racing. The Tribunal held (at p1) that there were three significant factors for consideration by the Stewards in assessing penalty in such a case:

> *'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.'*

In imposing the 28 day suspension the Stewards took into account Mr Morrisey's previous record which they held to be poor. On appeal the Tribunal came to the view that the penalty was excessive and reduced the suspension to 14 days only. In reaching that conclusion the Tribunal concluded (at p2):

> *'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....'

It is submitted for the appellant that in the circumstances of Mr Claite's case the 17 day suspension imposed was also excessive in that the Stewards placed excessive weight on the appellant's prior record and insufficient weight on the circumstances of the alleged careless riding. In particular, the Stewards:

(a) failed to properly consider the contribution of the inside riders which shifted out and thereby contributed to the alleged interference; and

(b) placed insufficient weight on the evidence of the appellant, Mr King and Mr Harvey.

Finally, it is claimed the Stewards also erred in failing to give sufficient weight to matters personal to the appellant.

Despite the arguments raised on behalf of Mr Claite I am not persuaded that the Stewards were in error in imposing the penalty which they did. I am satisfied that the penalty clearly falls within the range of penalties available for this type of offence. I do not consider the Stewards placed the offence into the category of seriousness which was beyond that warranted by the evidence. I am equally not persuaded that there was any failure on the part of the Stewards to properly consider the contribution of the inside runners. It has not be demonstrated that the Stewards placed excessive weight on the matters alleged or failed to give sufficient weight to matters personal to the appellant. The appeal as to penalty also fails.

The appeal is dismissed, the suspension of operation of the penalty automatically ceases and the lodgment fee is forfeited.

Dan Mosseson

Seal of the Racing Penalties Appeal Tribunal of W.A. 1995

DAN MOSSENSON, CHAIRPERSON