

THE RACING PENALTIES APPEAL TRIBUNAL

DETERMINATION OF MR D MOSSENSON (CHAIRPERSON)

APPELLANT: TROY MORRISSEY

APPLICATION NO: A30/08/373

DATE OF HEARING: 29 JULY 1997

DATE OF DETERMINATION: 4 AUGUST 1997

IN THE MATTER of an appeal by Mr Troy Morrissey against the determination of the Western Australian Turf Club Stewards on 10 July 1997 imposing a 17 day suspension for breach of Australian Rule of Racing 137(a).

Mr T Percy and Mr P Harris, instructed by DG Price & Co, solicitors, appeared for the appellant.

Mr RJ Davies QC appeared for the respondent.

For the reasons I will publish in due course this appeal is dismissed both as to conviction and penalty. The lodgment fee is forfeited.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON



THE RACING PENALTIES APPEAL TRIBUNALREASONS FOR DETERMINATION OF MR D MOSSENSON
(CHAIRPERSON)

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

Mr RJ Davies QC appeared for the respondent.

After a relatively short hearing before the Stewards of the Western Australian Turf Club on 10 July 1997 Mr Morrissey was charged with a breach of Rule 137(a) in relation to his riding of AIR CASTLE, a runner in Race 9 the Fruit 'N' Veg Handicap run over 1400m at Belmont Park on 9 July 1997. The particulars of the charge are:

"...you... have near the 300m mark when riding your mount along, shifted outwards to obtain a run and in doing so bumped with ACE OF ACTION ridden by Jockey A. Smith which has unbalanced this runner, shifted out and collided heavily with KIMBERLEY RANCHER (J. Hustwitt) causing that gelding to collide heavily with KEEP ME INFORMED ridden by P Knuckey on its outside."

Rule 137 of the Australian Rules of Racing states:

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

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

Mr Morrissey in pleading not guilty to the charge argued that *"...a couple of other horses contributed a lot to it compared to what I've done"*.

Following their deliberation the Stewards announced that they:

"...believe that it was in the manner in which you have come out for a run, which has been the sole factor in initiating this interference Apprentice Morrissey, therefore we find you guilty to the charge as read."

Following some brief comments from Mr Morrissey on the question of penalty the Stewards stated that they:

"...have taken into account the factors which you said we are, as I said before we're aware that you're vying for the Apprentices' Apprenticeship for the Leading Rider as an Apprentice and also that the Apprentices' Cup is looming which I'm sure you'd like to ride in being your last year of rides. Just assessing your penalty or your riding record I should say. On the 25th of the first, '97 you were reprimanded at Ascot and advised to allow more galloping room between yourself and other runner. On the 22nd of the second, '97 you were suspended for 19 days at Ascot for careless riding. And on the 28th, sorry on the 9th of the fourth, '97 you suspended for 28 days at Bunbury which on appeal was reduced to 14 days. Now after taking everything into account, it is now the decision of the Stewards Apprentice Morrissey to suspend you for a period of 17 days that period of suspension,... to commence midnight Saturday night the 12th of July and end midnight the 29th of July, 1997."

The appellant appeals against both the conviction and the penalty. The amended grounds of appeal are:

"A. CONVICTION

1. *The conviction was against the evidence and the weight of the evidence in that the Stewards in convicting the Appellant erred by*

failing to take into account the contributing aspects of the interference, namely:

- (a) *The physical condition of the horse ACE OF ACTION (p2 Transcript);*
 - (b) *The fact that the horse RUMVERTON was stopping and the Appellant was obliged to move out to go around it (p4);*
 - (c) *The inconsequential nature of the contact between the Appellant's mount and ACE OF ACTION,*
 - (d) *The exaggerated reaction of ACE OF ACTION to the contact between it and the Appellant's mount (p5).*
2. *The Stewards in convicting the Appellant came to a decision which was not reasonably open to them in all the circumstances of the case.*

Particulars

- (a) *The Stewards failed to or failed to adequately take into account the matters referred to in Ground 1 above.*
- (b) *The Stewards formed a view of the evidence concerning the interference that was contrary to all the evidence.*
- (c) *The Chairman improperly formed a concluded view of the evidence relating to the interference prior to any charge having been laid.*
- (d) *The Chairman erred in asking questions of the witnesses which were not questions of evidence or fact, but questions properly for the determination of the Stewards.*

B. PENALTY

3. *The Stewards erred in imposing a penalty of suspension without giving any or any adequate consideration to the factors set out in Ground 2(a) - (d) above.*
4. *The Stewards erred in imposing a penalty of suspension without:*
- (a) *coming to any or any adequate assessment of the quality of the Appellant's riding at the time in question; or*
 - (b) *coming to a finding as to where the Appellant's riding fell in terms of the scale of careless riding offences.*
5. *The penalty imposed was excessive in all the circumstances of the case having regard to:*
- (a) *The quality of the Appellant's riding.*
 - (b) *The Appellant's record, particularly having regard to the volume of rides in races by the Appellant.*
 - (c) *The tariff of penalties usually imposed for careless riding offences."*

I have had the benefit of studying the transcript, of hearing submissions from counsel for each party and of viewing the video tape of the race.

As to the first ground of appeal I am not persuaded that the conviction was against the evidence and the weight of the evidence as alleged or at all. It has not been demonstrated to me that the Stewards failed to take into account any of the so called "*contributing aspects*" of the interference. Even if all of the factors relied upon were real and relevant, which I very much doubt, I would remain unmoved in relation to this ground. It was accepted on behalf of the appellant that a case of this nature places a difficult onus on an appellant in view of the wording of the particular Rule. The Rule in question provides that the rider may be punished for the offence if the Stewards have formed the opinion that the offence has been committed. I am satisfied that the Stewards were entitled on any reasonable basis to form the opinion which they did of the incident and in particular of Mr Morrissey's role in causing it. I have come to this conclusion despite the fact that the Stewards' reasons for their findings in relation to the charge could obviously have been more comprehensively and more clearly expressed.

I am also not persuaded that the decision was not reasonably open to the Stewards. Mr Morrissey's carelessness relates to the shifting out of his mount and the bumping of the other horse. In substance there was no denial that this movement out caused the problem. Mr Morrissey was only entitled to move his horse out at the relevant time if the way was clear for him to do so without causing interference to any of the other participants in the race. I am not persuaded that the Stewards' view of the evidence was contrary to the relevant evidence relating to the interference. Nor am I persuaded that any concluded view of the evidence was improperly formed by the Chairman prior to the lodging of the charge as alleged.

Counsel for the appellant criticised the Stewards on the basis that certain leading questions were asked or factual propositions were put during the course of the inquiry. It is alleged that these were contradicted by the evidence and demonstrated that the Stewards had formed a particular view or attitude regarding the incident. I do not agree with the propositions. This argument simply highlights the special role played by Stewards in conducting inquiries of

this nature. That role clearly changes as the proceedings move from the initial stage of investigating the circumstances, through to the laying of the charge and ultimately to the undertaking of the adjudication process.

For these reasons the appeal as to the conviction fails.

As to the penalty I am satisfied that it cannot be said that the Stewards were not entitled to come to the opinion which they did. No error has been demonstrated in relation to the length of suspension. Taking into account the seriousness of the incident and the quality of the riding it has not been shown that the penalty was excessive. I reach this conclusion despite the appellant's past record and after comparing penalties usually imposed for careless riding offences. The penalty imposed on this occasion was reasonable in the circumstances. The appeal therefore fails as to penalty as well.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

