

DETERMINATION AND REASONS FOR DETERMINATION OF  
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: ALLAN TREVOR MCDONOUGH  
APPLICATION NO: A30/08/375  
PANEL: MR D MOSSENSON  
DATE OF HEARING: 29 JULY 1997  
DATE OF DETERMINATION: 29 JULY 1997

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IN THE MATTER OF an appeal by Mr A T McDonough against the determination made by Western Australian Trotting Association Stewards on 19 July 1997 imposing a 28 day suspension under Rule 440(a) of the Rules of Trotting.

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Mr A T McDonough represented himself.

Mr W E Sullivan represented the Western Australian Trotting Association Stewards.

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This is an appeal arising out of an inquiry conducted by the Stewards into an incident in Race Five, the JF Higgins Memorial qualifying heat number one at Bunbury Trotting Club on 19 July 1997.

After conducting a brief enquiry into the matter the Stewards charged Mr McDonough under the provisions of Rule 440(a) of the Rules of Trotting with causing interference through careless driving.

The particulars of the charge are:

*"... you've continued to jostle Mr Prentice racing around the turn into the back straight on the first occasion and finally Mr Prentice's horse having broken up and as a result then has locked up with Mr Eyre and Mr Prentice has been dislodged."*

Mr McDonough pleaded not guilty to the charge.

After further evidence was presented the Stewards considered the matter and convicted Mr McDonough.

Mr McDonough appeals on the basis that having been able to view the film and having two witnesses to enhance his case he feels that he was wrongly charged and the Stewards have overlooked vital evidence and have not called for sufficient evidence from other drivers. I granted leave to Mr McDonough to call Messrs Eyre and Warwick from whom I heard some further evidence in relation to the incident.

I also have had the benefit of viewing the video and of listening to the observations of both the appellant and Mr Sullivan in relation to what the video revealed of the incident.

The Rule in question is prefaced by the words "*in the opinion of the Stewards*". This means that in practical terms an appellant must convince me that no reasonable Stewards could reasonably have formed the opinion which these Stewards did of the particular incident. It is not the case that I am to substitute my own opinion for that of the Stewards. The onus is on this Appellant to demonstrate that there has been an error on the part of these Stewards in forming that opinion.

I am not persuaded by anything presented, by or on behalf of Mr McDonough, that the Stewards were in error in forming the opinion in which they did of this particular incidence. I am satisfied that the Stewards were entitled to come to the decision which they did.

Accordingly, the appeal as to the conviction is dismissed.

The Appellant has subsequent to filing his Notice of Appeal notified the Tribunal by facsimile that he is adding, as a footnote, an appeal against the four week penalty which has been imposed. As a consequence Mr McDonough has also appealed against the severity of the penalty which was imposed and the four week suspension.

After having listened to the submissions from both sides, I am not persuaded by the argument raised by Mr McDonough that the Stewards were in error in imposing a 28 day suspension for this particular incident. The Stewards clearly have taken into account Mr McDonough's driving record which they described "*as a good record*" and other relevant factors. They have imposed a penalty which is compatible with penalties for this offence for first offenders.

In those circumstances the appeal as to the penalty is also dismissed.

The lodgement fee is forfeited.

*Dan Mosse*

DAN MOSSENSON, CHAIRPERSON

