

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: JASON DOUGLAS FRY
APPLICATION NO: A30/08/379
PANEL: MR D MOSSENSON (CHAIRPERSON)
DATE OF HEARING: 20 AUGUST 1997
DATE OF DETERMINATION: 20 AUGUST 1997

IN THE MATTER OF an appeal by Mr J D Fry against the determination made by Western Australian Trotting Association Stewards on 11 August 1997 imposing a 21 day suspension under Rule 440(a) of the Rules of Trotting.

Mr T Warwick was granted leave to represent Mr Fry.

Mr W Delaney represented the Western Australian Trotting Association Stewards.

Following the running of Race 1, the Sangalli Family 2 Year Old Stakes at Pinjarra Trotting Club on 11 August 1997, the Stewards of the Western Australian Trotting Association entertained a protest made by Mr G S Robb. The protest was dismissed. The Stewards subsequently continued with their inquiries and eventually decided to charge Mr Fry with causing crossing by careless driving in breach of Rule 440(a) of the Rules of Trotting.

The specifics of the charge were:

“Racing in the front straight on the final occasion you have eased THE STATESMAN from the uprights towards the one wide line and as a result of that outward movement JET SKI Mr. Robb’s drive on your outside has been tightened for room and Mr. Robb has been obliged to check to avoid your outward movement.”

Mr Fry pleaded not guilty to the charge. The Stewards stressed the fact that the charge related only to the first part of the incident and not what happened later in the front straight. After hearing further submissions from Mr Fry and from Mr Robb, the Stewards concluded that Mr Fry was guilty of the offence. The reasons stated by the Chairman were:

“The Stewards have deliberated on this matter at length through this lengthy inquiry, we’ve heard evidence from Mr. Robb who drove the horse that’s offended against. We’ve heard a lot of evidence from yourself. We’ve heard my observation of the incident from the stand opposite the winning post. We’ve also heard evidence from witnesses Mr. Elliott and Mr.

Lewis called by yourself. In our view their evidence did not assist the Stewards in this particular incident. We accept that the horse had been racing keenly in the earlier stages of the event. It essentially comes down to you saying that the incident was caused throughout by the race manners of THE STATESMAN whereas my observation was that the incident initially was caused by an easing outward movement by yourself. The Stewards after viewing the video on a number of occasions and considering all the evidence are of the opinion that the charge should be sustained. That is we find you guilty."

After stating their finding the Stewards invited Mr Fry to address them on the question of penalty. Mr Fry made a short statement referring to the Junior Driver's race to be held in less than two weeks time. He also said: *"I think it might be a bit of both, horse and you guys say the driver, I say probably the horse, so I think there's a bit of both, it's not just a blatant case of a driver being careless."*

The Chairman of Stewards reacted to Mr Fry's further statement: *"I can appreciate that fact. But the Junior Driver race is very important to me and I'd like to be in it if I could."* by stating that: *"Just in reviewing your record, which wasn't a good one, as we're all aware earlier in your career. But since June 1996 you haven't been suspended. You had one reprimand in January of this year recorded against you. That's for causing crossing by careless driving, but apart from that there's been nothing of any consequence."*

After the Stewards deliberated they concluded that: *"We are were mindful of the fact that you've got a Junior Driver's race coming up in less than a fortnight, however, we are equally mindful of the fact that you were aware of that fact prior to the running of Race 1 this afternoon."*

The Stewards went on to state:

"We have reviewed previous instances where drivers have had commitments in arguably bigger races than the Junior Drivers Series and Stewards have consistently issued what they believed to be the appropriate minimum penalty or the appropriate penalty considering all the circumstance."

After considering all matters, including your good driving record, because we readily acknowledge in the last 12 months you do have a good driving record."

Considering all the circumstances of the case we do feel the appropriate penalty is suspension of your reinsperson's licence for a period of 21 days, that's up to and including the 1st of September '97 and you're free to drive again from the 2nd."

Mr Fry appeals against both the conviction and the penalty. In the Notice of the Appeal the grounds state:

"The horse I was driving an inexperienced 2yo choked down in running. It pulled extremely hard throughout the race and when gap came near finish I went thru but horse raced erratically inconveniencing horse on outside. In checking horse on outside driver outside him was driving tight but fair. In these circumstances I pleaded not guilty to the charge because I fully believe it was horses unbalance due to over racing and choking that highlighted incident. I am appealing against conviction and penalty. My past record has been unblemished for past 15 months driving which I had around 500 hundred race drives."

I have had the benefit of reading the transcript of the Stewards' inquiry, of viewing the video of the race several times and of hearing submissions from Mr Warwick and Mr Delaney. I pointed out to

Mr Warwick during the course of his submissions the rule in question contains the phrase "*in the opinion of the Stewards.*" In other words a person shall be deemed guilty of an offence under Rule 440(a) of the Rules of Trotting if the Stewards form the opinion that the particular offence has occurred.

Despite the cogency of the argument made by Mr Warwick in relation to all of the surrounding circumstances I am not persuaded that the Stewards were in error in forming the opinion which they did of this particular incident. It is not appropriate for me to substitute my opinion for that of the Stewards or for that matter to adopt the opinion of another person, experienced as he may, be in inviting me to interpret the incident in a particular way from viewing the video. In order for me to interfere in regard to an offence of this nature with the rule couched in the way this particular rule is I must be satisfied that no reasonable Stewards armed with all the relevant information could reasonably have come to the opinion which these particular Stewards did.

As I have not been persuaded that the Stewards were unreasonable in their opinion, the appeal as to conviction fails.

In regard to the penalty it is relevant to take into account the circumstances surrounding the incident. Mr Warwick has impressed on me a number of particular factors that are mitigating factors in relation to penalty including the age of the horse, the manner in which the horse raced, the fact that the appellant is a junior driver and other things that were occurring during the course of the race. Mr Warwick has also suggested that Mr Fry has done himself an injustice before the Stewards in the manner in which he has pleaded his cause on the question of penalty. It has also been clearly explained to me why this Junior Drivers race is of such importance to Mr Fry.

Mr Warwick has proposed that an appropriate penalty in all of the circumstances is the equivalent of 50 per cent of the wages which Mr Fry would otherwise have derived and a suspension of the period of 21 days suspension pursuant to the provisions of Rule 58.

In response Mr Delaney has submitted that, as a matter of practice, the Stewards do not impose fines for breaches of Rule 440(a). Further, that suspended sentences are not imposed in regard to a breach of that particular rule. It was put to me in effect that in the light of the Stewards' practice in the matter, the only way in which it would have been appropriate for Mr Fry to have been able to drive in the Junior Drivers' race would be to have imposed a penalty of a ten day suspension but that such a penalty, according to Mr Delaney, is inappropriate.

Having given the matter consideration I have come to the conclusion that in all of the special circumstances of this particular case that the penalty which was imposed by the Stewards was too severe. Those circumstances include all that was happening during the course of the race at the time the incident occurred, the fact that Mr Fry is a junior driver and the particular importance of him being able to drive in the Junior Drivers' race.

It seems to me that the proposition put by Mr Delaney that because it is a matter of practice not to impose fines and not to impose suspended penalties for a breach of Rule 440(a) fails to take into account properly all of the special circumstances applicable to Mr Fry's case. In my opinion, in all of those circumstances, it is appropriate to impose a fine as suggested by Mr Warwick in the sum of \$450 and to suspend, for a period not exceeding 12 months, the 21 day suspension of the licence to drive on condition that Mr Fry does not breach any rule of harness racing within that period. If Mr Fry is not guilty of any such breach in that period the penalty shall be waived. If Mr Fry commits a further breach within that period the Stewards may order Mr Fry to serve 12 days suspension being

the balance of the original 21 day period of suspension in addition to the fine which I order be imposed.

Accordingly, the appeal in relation to the penalty succeeds to that extent.

The fee paid on lodgement of the appeal is forfeited.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

