

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: MAXWELL KEITH RONEY
APPLICATION NO: A30/08/382
PANEL: MS P HOGAN (PRESIDING MEMBER)
DATE OF HEARING: 18 SEPTEMBER 1997
DATE OF DETERMINATION: 18 SEPTEMBER 1997

IN THE MATTER OF an appeal by Mr M K Roney against the determination made by Western Australian Turf Club Stewards on 6 September 1997 imposing a 12 day suspension under Rule 137(a) of the Australian Rules of Racing.

Mr T F Percy, instructed by D G Price & Co, represented the appellant.

Mr B Nalder appeared for the Western Australian Turf Club Stewards.

After an inquiry into an incident near the 250 metre mark in Race 4 being the Surpac Software International Class Six Handicap of 1400 metres held at Kalgoorlie on Saturday 6 September 1997, the Stewards of the Western Australian Turf Club charged Mr Roney under Australian Rule of Racing 137(a) as follows:

"... that near the 250m mark you Mr. M. Roney the rider of DOMINANT MAN attempted a run inside of ROYAL SUSSEX ridden by P. Hutchinson when in the opinion of the Stewards there was insufficient room. As a result you have bumped SEE WHY ridden by D. Catarino which had to be restrained and lost ground, now that's during the running of Race 4 which was the Surpac Software International Class Six of 1400m."

Australian Rule of Racing 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 ..."

Mr Roney pleaded not guilty to the charge. After considering the evidence placed before them in the inquiry, including the relevant film, the Stewards found Mr Roney guilty and suspended him from riding in races for a period of 12 days. The Stewards gave no reasons at the time of stating his guilt. However, the Chairman had earlier stated, in the form of giving his observations of the film,

"Near the 250m in my view of the film, DOMINANT MAN ridden by Jockey M. Roney attempted a run inside of ROYAL SUSSEX ridden by P. Hutchinson. In my view there was insufficient room for DOMINANT MAN and when attempting that run, you have come in contact with SEE WHY ridden by D. Catarino, this has resulted in Jockey Catarino restraining and losing ground.

In addition Mr Biggs, from his viewing of the actual incident from the Main Stewards' Tower in the home straight adjacent to the winning post had this to say:

"... Mr Roney when attempting to make a run on the inside of ROYAL SUSSEX at that stage he had SEE WHY on the fence and I believe that he's attempted to take a run at that stage when there was insufficient room to do so and when he has eventually gone through, he has made contact with SEE WHY, as a result Mr. Catarino's horse has shifted out, as a result the bump received from DOMINANT MAN ridden by Mr. Roney."

Mr Percy has submitted that for an error of judgement to be classed as careless it must have been a culpable error and he cited the decision of Hale J in *Geneff v Townshend* [1970] WAR 20 which is a decision of the Supreme Court of Western Australia.

In this case Mr Roney admitted that he had made a slight error of judgement. The Stewards accepted that there was no intent although of course intention is beside the point when determining whether the action in question amounts to carelessness. Here Mr Roney admitted:

"... there probably wasn't quite room ..."

Both the Chairman and Mr Biggs were of the opinion that there was insufficient room.

Although the Stewards have not specifically stated what test was applied in determining whether the action amounted to carelessness it has not been demonstrated to me that the Stewards could not have reasonably formed the opinion that Mr Roney's actions amounted to carelessness.

As a result the appeal as to conviction is dismissed.

It was submitted by Mr Percy, in the form of his amended grounds of appeal, that the Stewards failed to properly exercise their discretion in relation to the question of penalty and imposed a higher penalty than was warranted in the circumstances.

The particulars given are:

- (i) *The Stewards had prior to the hearing of the case arbitrarily decided that a higher tariff of penalty would be imposed during the Kalgoorlie Racing Round.*
- (ii) *The Stewards were required to assess the quality of the careless riding and impose a penalty commensurate with it.*
- (iii) *Any increment to the penalty by virtue of the fact that the offence was committed during the Kalgoorlie Racing Round was an irrelevant and improper consideration and the Stewards have thereby fallen into error.*

In imposing penalty the Stewards stated that in giving consideration to penalty they had taken into consideration:

"... the forthright manner in which you have handled yourself, your good record, the fact that riding is your sole income. Opposed to that the Stewards do still consider that the incident in itself is in the mid-range of severity with SEE WHY being bumped and losing ground. We also consider the fact that all riders, including yourself, were advised prior to the commencement of racing today, that penalties would be increased over the Kal' round and we also take into account your own admission of an error in judgement in this particular incident ..."

The Chairman imposed a suspension from riding in races for a period of 12 days and then made the comment:

"... that is the lightest we can go."

I am of the opinion that the Stewards fell into error by taking into account the fact that riders were advised that penalties would be increased over the Kalgoorlie Racing Round. An appropriate penalty was one commensurate with the quality of the actual incident of careless riding and the particular circumstances of the case.

The Stewards have cited in the course of their submissions a number of recent examples of penalties for careless riding. These are of little assistance without details of the particular circumstances of a particular case. The only particulars I was given was in relation to the matter of *Fry* where I was told that Mr Fry was suspended for 12 days on 13 September 1997 for a first offence of careless riding which involved shifting in and tightening up. However I have no other information about the rider or the incident.

In Mr Roney's case the Stewards specifically stated that:

"... that is the lightest we can go."

This was an appropriate comment given the mitigating factors applicable in Mr Roney's case.

In the Tribunal's opinion an appropriate penalty is one of seven days suspension.

The stay granted by the Chairperson on 9 September 1997 ceases immediately and there will be no refund of the lodgement fee.

Pamela Hogan

PAMELA HOGAN, PRESIDING MEMBER

