

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: JASON JUDD CRAIG
APPLICATION NO: A30/08/385
PANEL: MR D MOSSENSON (CHAIRPERSON)
DATE OF HEARING: 30 SEPTEMBER 1997
DATE OF DETERMINATION: 30 SEPTEMBER 1997

IN THE MATTER OF an appeal by Mr J J Craig against the determination made by Western Australian Trotting Association Stewards on 11 September 1997 imposing a 28 day suspension under Rule 440(a) of the Rules of Trotting.

Mr Craig represented himself.

Mr W Sullivan appeared for the Western Australian Trotting Association Stewards.

This is an appeal by Mr Craig against a determination of the Western Australian Trotting Association Stewards made on 11 September 1997 suspending Mr Craig for a period of 28 days. The appeal arises out of an incident which occurred at Golden Mile Trotting Club on 11 September 1997 in Race 1, the Kim Harris Stakes.

There was evidence presented to the inquiry by Mr Oliver, one of the Stewards, that he had viewed the race from the turn out of the back straight and that racing into the bend Mr Craig was racing on the rails, outside of him was Mr Smith driving ARMBRO EAGLE, and just in advance of him was Mr Mackellar driving PERPETUAL ADIOS. As they progressed around the bend, Mr Oliver felt that Mr Craig's horse has shifted away from the rails and tightened the ground of Mr Smith's horse. Mr Oliver felt this had caused contact and Mr Smith's horse broke gait. Other evidence was presented to the Stewards.

In the event the Stewards read out to Mr Craig Rule 440(a) of the Rules of Trotting and then stated that:

"The Stewards are charging you with careless driving under that Rule.

The charge being;

That you as the driver of VAGUE IDEA allowed your horse to shift up the track placing pressure on ARMBRO EAGLE driven by Mr. Smith, who in turn has shifted up the track and

made contact with PERPETUAL ADIOS driven by Mr. Mackellar, as a result Mr. Smith's horse has broken and lost ground."

Rule 440(a) of the Rules of Trotting states:

"Any driver who, in the opinion of the Stewards, caused or contributed to any crossing, jostling or interference by foul, careless or incompetent driving shall be deemed guilty of an offence against these Rules and may be dealt with accordingly."

Mr Craig pleaded not guilty. After receiving further submissions the Stewards found Mr Craig guilty of the charge and ultimately arrived at the penalty.

In a written letter which was attached to the Notice of Appeal, Mr Craig sets out a statement of facts, from his perspective in relation to the incident, attributing to others rather than himself the problem which occurred during the running of that particular race.

Mr Craig at the time of appealing also applied for a stay of proceedings. The stay was initially refused. Subsequently however, the Stewards took the rather unusual step of communicating to the Registrar after they had considered the transcript of evidence taken at the inquiry. The Stewards invited the Registrar to bring to the Tribunal's urgent attention the following matters:

1. The fact that the Stewards would not be making any submission in relation to the merits of the appeal brought by Mr Craig.
2. The Tribunal's earlier determination on 9 February 1993 of S H R Harney (Appeal 113).
3. The fact that the Stewards consent to Mr Craig being granted a stay of execution of penalty pending the hearing and determination of the appeal.
4. The submission that in the event of the appeal succeeding, that the proper approach is to refer the matter back to the Stewards for re-hearing pursuant to the provisions of section 17(9)(b) of the *Racing Penalties (Appeals) Act* because of the fact that the appeal would have succeeded on technical grounds and the merits of the factual issue should properly be determined by the Stewards upon the charge being properly formulated pursuant to Rule 440 of the Rules of Trotting.

At the outset of the appeal hearing Mr Sullivan on behalf of the Stewards has conceded that the charge was not formulated correctly in accordance with the Rules of Trotting. At the same time he has put the submission to me that this matter can be distinguished from Harney where the Tribunal had evidence that the incident was nothing more than "a normal race incident" and further there was evidence of equipment failure which was not refuted. In the Harney matter the Tribunal concluded that the appellant's actions in allowing the horse to shift inwards at the start was not considered to be an act of carelessness.

There is no evidence before me in relation to Mr Craig of any of these factual circumstances that were relevant to the determination of Harney. In all of these unusual circumstances I am disposed to allow Mr Craig's appeal on the basis that, for technical reasons, the charge was not properly formulated by the Stewards. As a consequence Mr Craig would not have known precisely the basis upon which he allegedly breached the Rules. In those circumstances he was denied a full and fair opportunity of defending the charge and of justifying his actions in the race.

I hasten to make it clear that in coming to that conclusion I have in no way addressed my mind to the merits or otherwise and the appropriateness or inappropriateness of the manner in which Mr Craig drove in the race at the time the incident occurred.

The appropriate result in all of the circumstances is to uphold the appeal but to do so with the direction to the Stewards that they should re-hear the matter as expeditiously as practicable. At the re-hearing the Stewards should be mindful of the Harney decision and exercise appropriate care in formulating any new charge which may be laid.

The fee paid on lodgement of the appeal is refunded.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

