

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: PETER JOHN FLETCHER
APPLICATION NO: A30/08/388
PANEL: MR D MOSSENSON (CHAIRPERSON)
DATE OF HEARING: 25 SEPTEMBER 1997
DATE OF DETERMINATION: 25 SEPTEMBER 1997

IN THE MATTER OF an appeal by Mr P J Fletcher against the determination made by Western Australian Trotting Association Stewards on 20 September 1997 imposing a 28 day suspension under Rule 440(a) of the Rules of Trotting.

Mr P J Fletcher represented himself.

Mr W J Delaney appeared for the Western Australian Trotting Association Stewards.

This is an appeal by Mr Fletcher against the determination by the Western Australian Trotting Association Stewards in relation to an incident that occurred at Narrogin Trotting Club on 20 September 1997 during Race 1. After completing a protest inquiry the Stewards continued the inquiry into an incident which occurred in the race and ultimately charged Mr Fletcher with a breach of Rule 440(a). The nature of the charge was causing interference by careless driving. The specifics being:

"That racing out of the front straight on the first occasion you've allowed SAM JATO to get down the track from the three wide line and as a result you've tightened the racing room of LADY SUNDOWN, which in turn has shifted down the track or made contact with ALKIMOS LASS racing in on its inside and both horses have broken gait."

Mr Fletcher pleaded not guilty. Some further evidence was given to the inquiry by other drivers and by Mr Fletcher. The Stewards then deliberated and concluded that the Stewards found Mr Fletcher guilty of the offence and imposed a 28 day suspension of his reinsperson's licence.

Mr Fletcher has in the grounds of appeal specified that in his opinion the guilty verdict was against the evidence shown on the video of the incident. In addition, he appealed that the penalty given was excessive in the light of his good driving record.

I have had the benefit of hearing submissions from both sides and of viewing the video of the incident. As I have said on numerous occasions in the recent past, it is difficult to succeed in relation to a Rule of this nature as the Rule is couched in the terms "in the opinion of the Stewards".

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.”

It is clear that Mr Fletcher sincerely holds the personal view or opinion that he was not the cause of the incident and that he did not offend by virtue of coming down the track in the way it has been explained by Mr Delaney on behalf of the Stewards. In effect, I am being asked to accept Mr Fletcher's opinion of the incident and to substitute that opinion for the opinion formed by the Stewards after having the benefit of observing the incident live, of receiving evidence at the inquiry and of reviewing the incident by looking at the video of the race.

In order for me to interfere with the decision of the Stewards for a breach of this particular Rule, I have to be persuaded that no reasonable Stewards armed with all the relevant information could reasonably have formed the opinion which these Stewards did of the incident. To put it another way, I have to be satisfied that the decision is so unreasonable that, in effect, it was not open to the Stewards to form that opinion.

Bearing in mind what I have been told by Mr Delaney of the relevant material in the transcript comprising firstly, the evidence which he gave from his vantage point (at page three), and secondly, the evidence of the other drivers who were asked about the circumstances in which this incident occurred, I am satisfied that it was reasonably open for the Stewards to form the opinion which they did. It has not been demonstrated by Mr Fletcher that the Stewards were in error in convicting Mr Fletcher in relation to the incident.

The appeal as to the conviction therefore fails.

In the course of addressing me on the subject of the penalty, Mr Fletcher has conceded that a 28 day suspension is the normal minimum penalty for this particular type of charge. He has also been at pains to point out his long standing involvement in the industry and his relatively good record in relation to these types of offences.

I am not persuaded that the penalty which has been imposed, taking into account all the relevant circumstances, is one that demonstrates error on the part of the Stewards.

The appeal as to penalty also fails.

The appeal is dismissed. The fee paid on lodgement of the appeal is forfeited.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

