

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: PETER DARREN KNUCKEY
APPLICATION NO: A30/08/393
PANEL: MR J PRIOR (PRESIDING MEMBER)
DATE OF HEARING: 4 DECEMBER 1997
DATE OF DETERMINATION: 4 DECEMBER 1997

IN THE MATTER OF an appeal by Mr P D Knuckey against the determination made by the Western Australian Turf Club Stewards on 10 November 1997 imposing a 6 week suspension for a breach of Rule 137(a) of the Australian Rules of Racing.

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

Mr F J Powrie appeared for the Western Australian Turf Club Stewards.

This is an appeal against conviction and penalty. The Appellant, Mr Knuckey was convicted of breaching Rule 137(a) for his riding of the horse *KIM UMA* at the 200 metre mark in the Queens Plate, Race 4 run at Ascot Racecourse on Tuesday, 4 November 1997.

Rule 137 states:

"Any rider may be punished if, in the opinion of the Stewards:

(a) He is guilty of careless, improper, incompetent or foul riding,

..."

Counsel for the Appellant, Mr Percy has made the comment that Senior Counsel who often appears for the Stewards describes appeals against breaches of this rule as almost "*mission impossible*". He concedes the task on the Appellant in such matters is high and in essence, the Appellant must show the decision of the Stewards in convicting the Appellant was effectively perverse.

I agree to succeed on such an appeal may be a mission but it is certainly not impossible. Successful appeals of this nature are rare. It is not a case of substituting an opinion of the Appellant or the Tribunal for that of the Stewards. It must be shown that the Stewards erred in a material particular when coming to their opinion and as a result of that, their subsequent findings.

In this case, the starting point in ascertaining whether there was an error is the charge. The charge against this Appellant appears at page 14 of the Transcript and is in the following terms:

“In the opinion of the Stewards, that in the Queens Plate on November the 4th, 1997 at Ascot you allowed you (sic) mount KIM UMA to shift in approaching the 200m mark causing TEREVEGA to be tightened and fall.”

Therefore, it is my view that the charge is one that the careless riding of the Appellant caused both these factors, the tightening of the horse *TEREVEGA* and the subsequent fall. That was the nature of the charge as read.

The finding of conviction appears at page 19 of the Transcript and reads as follows:

“Mr. Knuckey the Stewards have considered all the evidence related to the charge and we find you guilty as charged and in saying that the Stewards do concede that there is movement from the inside horse, but and they believe the evidence from Craig Staples who stated that his horse eased out of his position when HOGUE'S HONOUR shifted outwards, however the Stewards are of the opinion that the tightening to TEREVEGA has been initiated and continued by the movement inwards of your horse KIM UMA, this movement inwards was not stemmed at all by you in any way and indeed, you have continued to ride your mount with the whip until Mr. Barnett has effectively fallen.”

In my view, implicit in that finding is that others may have contributed to the situation that occurred at this part of the race to some extent. The evidence of the jockeys at the hearing before the Stewards and the race film is consistent with this. Even Mr Powrie, who appears for the Stewards, in his submission says that the Appellant's riding was the “predominate factor”. That in itself acknowledges that there were other factors in the incident.

In those circumstances, I am satisfied that the Stewards erred in finding the Appellant guilty as charged as the decision, in my opinion, seems inconsistent with the nature of the charge that the Appellant was the cause and the only cause of the fall. That being the case, I would allow the appeal against conviction and set aside the conviction.

As to the penalty, I would allow the appeal against penalty for the same reasons that I have allowed the appeal against conviction. The Stewards have effectively in their findings on penalty, penalised the Appellant as the sole cause of the incident in question and therefore, the author of the subsequent consequences. On that basis I am satisfied that they have fallen into error. If in fact the Stewards had charged the Appellant, for example, with careless riding by the tightening and by being a participant or a contributing factor to the fall, in those circumstances, I would have been satisfied that a penalty in the range of 7 to 21 days suspension may have been an appropriate penalty on conviction.

The decision on penalty has to be considered in light of the findings I have made on the appeal against conviction.

I would allow the appeal against penalty.

The fee paid on lodgement of the appeal will be refunded.

John Prior



JOHN PRIOR, PRESIDING MEMBER