

DETERMINATION AND REASONS FOR DETERMINATION OF  
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: PAUL JAMES HARVEY  
APPLICATION NO: A30/08/405  
PANEL: MR P HOGAN (PRESIDING MEMBER)  
DATE OF HEARING: 3 MARCH 1998  
DATE OF DETERMINATION: 3 MARCH 1998

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**IN THE MATTER OF an appeal by Mr P J Harvey against the determination made by Western Australian Turf Club Stewards on 21 February 1998 imposing a 10 day suspension under Rule 137(a) of the Australian Rules of Racing.**

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

Mr J Zucal appeared for the Western Australian Turf Club Stewards.

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This is an appeal against conviction and penalty. The appellant was the rider of SEA QUEST which ran in Race 9 over 1400 metres at Ascot on Saturday, 21 February 1998. Following the race, the Stewards opened an inquiry into the reason for GLOBAL GOSSIP, ridden by Apprentice O'Heare, restraining near the 450 metre mark.

The Stewards heard evidence from both the appellant and Apprentice O'Heare. They also heard evidence from Mr Chadwick, the Steward who saw the race from the 600 metre tower. As well, the Stewards had the film of the race.

The Deputy Chairman of Stewards, Mr Zucal, in charge of the inquiry, gave his reading of the race film to include the following:

*"... and approximately at the 450m it appears from the films that you Mr. Harvey do shift in again and caused GLOBAL GOSSIP to restrain. I think it's clear on the on-course film that GLOBAL GOSSIP does mis-stride and you Apprentice O'Heare seem to come back in the saddle and become unbalanced while that tightening was occurring."*

Rule 137(a) of the Australian Rules of Racing states:

*"Any rider maybe punished if, in the opinion of the Stewards:*

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

...”

After hearing all of the evidence the Stewards' charged Mr Harvey as follows:

*“... Now you're charged under that rule with careless riding, the careless riding being that in the opinion of the Stewards you allowed your mount SEA QUEST to shift inwards near the 450m and tighten GLOBAL GOSSIP which restrained.”*

Mr Harvey pleaded not guilty but he was convicted.

It is clear enough that in appeals of this nature, the opinion of the Stewards is of great importance. The Stewards' decision will not be interfered with unless it can be shown to be unreasonable or not in accordance with the evidence. In my view, what needs to be examined is whether the Stewards' decision in this case was in accordance with the evidence.

This was not a case of Mr Harvey crossing Apprentice O'Heare when not sufficiently clear. Crossing must be something different than what the particulars alleged against Mr Harvey were in this case, namely allowing his mount to shift in. Mr Harvey's admission at page 4 (point 5) of the transcript that he had not allowed Apprentice O'Heare enough room amounts to no more than an admission of shifting in other than crossing. Therefore, there was ample evidence of shifting in, even an admission by the appellant himself.

My viewing of the race film is that there indeed was a shifting in, however, that shifting was slight and that much was agreed by the Stewards in that they concede that the offence which they found and proved was said to be at the lower end of the scale.

It is clear however that GLOBAL GOSSIP did restrain, changed stride and lost ground. In the opinion of Mr Chadwick, it lost one length and in the opinion of Apprentice O'Heare, it lost one and a half lengths. An important question in my view is whether the result of Mr Harvey's riding, that is GLOBAL GOSSIP restraining, lends any support to or is evidence of the carelessness of his riding. In my view in this case it does lend such support. The result of Mr Harvey's riding was that Apprentice O'Heare was obliged to restrain and did lose ground.

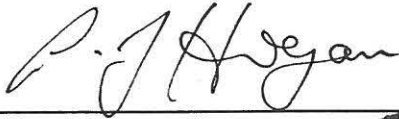
Had there been no such result, the outcome of the matter before the Stewards or before me, may have been different. In the end result, there was sufficient evidence before the Stewards to reach the conclusion which they did. The appeal against conviction is dismissed.

As to penalty, the Stewards suspended Mr Harvey for ten days starting from midnight 25 February 1998. It has been said often enough and I repeat that the imposition of a penalty is a matter of discretion. Discretion will not be interfered with unless it can be shown that some irrelevant factor has been taken into account or some relevant factor has not been taken into account or that the penalty imposed was outside the range of penalties commonly imposed.

It is apparent that ten days suspension is at the lower end of the range for offences of this type. It is urged upon me by counsel for the appellant to consider a fine or reprimand. Whilst I am not prepared to go that far, I do think the penalty in this case was excessive. Credit should have been given to the appellant for his co-operation during the inquiry. As well and more importantly, I am of the view that the riding of Mr Harvey, although careless, was not riding which would reasonably have led to any danger to other riders in the circumstances of this case. Mr Harvey is the State's leading rider and I am influenced by that fact in saying that in this case, his careless riding would not reasonably have led to any danger to the other riders. The scale of seriousness in this case could not have been much lower.

For these reasons, I would allow the appeal against penalty. I set aside the penalty of ten days suspension and substitute a penalty of three days suspension to begin from midnight tonight, 3 March 1998 and to expire at midnight Friday, 6 March 1998.

The fee paid on lodgement of the appeal is forfeited.



**PATRICK HOGAN, PRESIDING MEMBER**

