

**DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL**

APPELLANT: ANDREW LOUIS DE CAMPO

APPLICATION NO: A30/08/430

PANEL: MR J PRIOR (PRESIDING MEMBER)
MS P HOGAN (MEMBER)
MR R NASH (MEMBER)

DATE OF HEARING: 9 SEPTEMBER 1998

DATE OF DETERMINATION: 9 SEPTEMBER 1998

IN THE MATTER OF an appeal by Mr A L De Campo against the determination made by the Western Australian Trotting Association Stewards on 18 August 1998 imposing two periods of three months suspension to be served concurrently for breaches of Rule 472(d) of the Rules of Trotting.

The appellant represented himself.

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

This is an appeal by Mr De Campo against his convictions for two incidents during Race 5 at Harvey on 27 May 1998 for breaching Rule 472(d) and against the penalties of two suspensions of three months to be served concurrently.

After two inquiries before the Stewards in August 1998 the appellant was charged on the 18 August 1998 as follows:

- (i) *“That racing towards the home straight on the final occasion in Race 5, the Patrician Park Stud Stakes at Harvey on Wednesday, 27th May 1998, you have attempted to strike the pacer VERONEKE.”*
- (ii) *“That approaching the finish of Race 5 at Harvey you have again attempted to strike the pacer VERONEKE.”*

The appellant pleaded not guilty to both charges but was convicted on each charge.

The common ground in this matter is:

1. there were no eye witness accounts of these incidents;
2. the Stewards relied on their opinion of the incidents from the race videos, in particular the enhanced versions; and
3. the Stewards convicted the appellant of attempted striking in each case.

The appellant appeals against the convictions due to the delay in his prosecution and disputes the findings of fact that he attempted to hit the pacer VERONEKE on two separate occasions.

The Stewards concede that there was a significant delay in the Stewards' inquiry into these race incidents and consequently the prosecutions. In the opinion of the Tribunal, it is highly desirable that inquiries relating to race incidents are dealt with expeditiously. However, there is no time limit imposed on Stewards' inquiries under the rules and in particular, Rule 15 gives the Stewards wide powers in this respect. We are therefore not satisfied that the mere delay in commencing the inquiry is a good reason to overturn these convictions.

As to the ground that the Stewards generally erred in finding the appellant had attempted to strike the pacer VERONEKE, we note Rule 472 is prefaced *in the opinion of the Stewards*.

This Tribunal has on many occasions dealt with appeals against determinations arising out of charges of this nature. It is not the case of merely substituting personal opinions for those of the Stewards. The real question is whether we are persuaded no reasonable Stewards, armed with the relevant information they had, could have formed the opinion which these Stewards did of each of the two incidents.

Although the quality of the video was poor, we are satisfied from our viewing of them and having regard to the fact that the Stewards are experienced in viewing and assessing the conduct of drivers on video evidence, that the Stewards could reasonably have reached the opinion that on two occasions during the race, Mr De Campo did attempt to strike the horse VERONEKE with his whip.

For these reasons the appeal against conviction is dismissed.

On the question of penalty, it is been conceded by the Stewards that the facts of these matters are unique. This is the first time anyone has been convicted of striking or attempting to strike any other horse. There is therefore no tariff available to assess the relevant penalty.

The Tribunal does accept that a breach of Rule 472(d) would usually be the most serious breach of Rule 472. For that reason, we are satisfied that the minimum penalties as set out in Exhibit 1 for breaches of Rule 472 are inappropriate. In most circumstances we consider a penalty of suspension would be appropriate for breach of Rule 472(d). The question remains as to whether three months suspension is excessive in all the circumstances.

There is no challenge to the Stewards' order that each suspension be served concurrently.

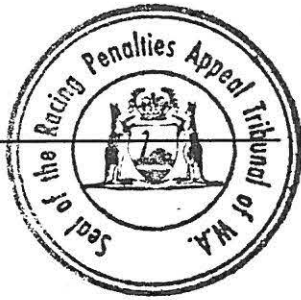
The appellant was convicted of two attempted strikes. We are satisfied that the penalty for attempting to strike should be lesser than completed acts of striking. However, the Tribunal is concerned by the fact that although the appellant was charged and convicted of attempted striking, the Stewards in assessing penalty appear to have been influenced by their belief that the pacer VERONEKE had been struck. There was no finding of fact that the pacer VERONEKE had been

struck. Further, the attempted strikes did not appear to have any affect on the pacer VERONEKE in the race.

This was a first offence of this nature for the appellant and the Stewards conceded that he had a good record. The penalty of suspension will clearly affect the appellant's livelihood.

In those circumstances, the Tribunal considers that the penalties of three months suspensions are excessive. We substitute a penalty of six weeks suspension for each conviction to be served concurrently.

John Prior



JOHN PRIOR, PRESIDING MEMBER