

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

**APPELLANT:** RYAN WARWICK  
**APPLICATION NO:** A30/08/431  
**PANEL:** MR D MOSSENSON (CHAIRPERSON)  
**DATE OF HEARING** 15 SEPTEMBER 1998  
**DATE OF DETERMINATION:** 15 SEPTEMBER 1998

---

**IN THE MATTER OF an appeal by Mr R Warwick against the determination made by the Western Australian Trotting Association Stewards on 3 September 1998 imposing 21 days suspension for breach of Rule 440(a) of the Rules of Trotting.**

---

Mr C Warwick was granted leave to appear for the appellant.

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

---

This is an appeal by Ryan Warwick in relation to an incident which occurred at the Northam Trotting Club meeting on 3 September 1998. Following the incident the Stewards convened an inquiry at which Mr Warwick, the reinsperson of PERENE DREAM attended as did Mr T Mirabella who drove REAL STYLE.

The Steward who viewed the race from the stand out of the back straight gave evidence to the inquiry at the outset stating that:

*"I viewed the race from the stand out of the back straight. When approaching my position on the final occasion Mr Warwick was travelling in the one wide line and outside him just back off him Mr Mirabella was in the three wide line. As they progressed down the straight Mr Warwick has started to shift wider on the track, at the same time Mr Mirabella has made ground to the outside of Mr Warwick and I felt that his legs were outside Mr Warwick's wheel, as Mr Warwick shifted wider and there appeared to be contact with Mr Mirabella's front legs, causing him to break gait, and pulled his horse out of the race. That's how I viewed the incident."*

After hearing evidence from Mr Warwick as well as from Mr Mirabella and after viewing the video of the race the Stewards adjourned to consider the matter. They reconvened and announced that they were issuing a charge against Mr Warwick under the provisions of Rule 440(a) of the Rules of Trotting which deals with causing crossing through careless driving, the careless driving being:

*“That racing down the back straight on the final occasion you have shifted ground outwards when not sufficiently clear of Mr Mirabella’s horse and he’s checked that horse and it broke.”*

Mr Warwick pleaded not guilty to the charge. Some further evidence was presented including evidence from Mr Williams who was called as a witness for Mr Warwick. He participated in the race as the driver of ITS MICHAEL’S DREAM.

The Stewards eventually came to the conclusion that the charge was sustained.

Before dealing with penalty they invited Mr Warwick to indicate whether he wished to say anything further on the matter. Although he declined to do so, some further questions were asked of him by the Stewards relevant to the subject of penalty including the last time he was involved in a driving offence. In the event the Stewards thought that a suspension was appropriate and stated:

*“The Stewards have considered your submissions in regard to penalty, however, we think a suspension is appropriate, at that point of the race Mr Mirabella’s horse was taken out of the race and also taking into account your good driving record. The penalties that have been handed down consistently now is a penalty of 21 days and the Stewards are imposing a suspension of 21 days ...”*

At the time of instituting the appeal, Mr Warwick sought a stay of proceedings which was granted on the same day as the appeal notice was filed. The stay was made on the basis of the penalty being suspended pending determination of the appeal or as otherwise ordered.

The grounds of appeal are:

- “1. The conviction was against the weight of the evidence. Any interference suffered was not caused by my driving. My outward movement was not abrupt and not careless.*
- 2. No penalty is applicable in what was only a normal racing incident.”*

I have had the benefit of listening to submissions made by Mr Colin Warwick on behalf of the appellant, of studying the transcript of the Stewards’ inquiry, of examining the video of the racing incident and of hearing from Mr Sullivan on behalf of the Stewards.

Rule 440 of the Rules of Trotting specifies that:

- “(a) 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.*
- (b) For the purpose of this Rule and Rule 438, “crossing” shall occur when a driver, in changing the position of his horse, compels another runner to shorten its stride or compels the driver of such other runner to pull his horse out of its stride or to take any other measure to avoid the horse or driver whose position is being so changed.”*

After giving this matter some consideration I have come to the conclusion that nothing that has been presented on behalf of Mr Warwick demonstrates an error by the Stewards. In order for me to be persuaded that the appeal should be upheld on the question of conviction I have to be satisfied that no reasonable Stewards dealing with this matter could reasonably have come to the conclusion which these Stewards did once armed with all of the relevant material and information.

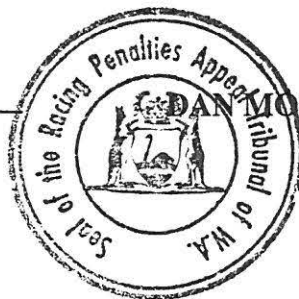
I am satisfied that it was open to these Stewards to form the opinion which they did of the incident. For this reason the appeal as to conviction is dismissed.

As to the question of the penalty I am satisfied that the Stewards have for some considerable period of time now been imposing penalties of 21 days suspension for drivers convicted of a breach of the relevant provision. When drivers have what is described as a good driving record, and sometimes an excellent record, drivers have received shorter periods of suspension than that which Mr Warwick received in relation to this matter.

I am not persuaded on all of the material before me that there was any error in imposing a 21 day suspension in this particular matter. Accordingly, the appeal as to the penalty is also dismissed.

The suspension of the operation of the penalty now automatically ceases to operate.

*D. Mossenson*



DAN MOSSONSON, CHAIRPERSON