

DETERMINATION AND REASONS FOR DETERMINATION OF  
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: TROY KEVIN TURNER  
APPLICATION NO: A30/08/437  
PANEL: MR P HOGAN (PRESIDING MEMBER)  
DATE OF HEARING 3 DECEMBER 1998  
DATE OF DETERMINATION: 3 DECEMBER 1998

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**IN THE MATTER OF** an appeal by Mr T K Turner against the determination made by the Western Australian Turf Club Stewards on 28 November 1998 imposing 16 days suspension for breach of Rule 137(a) of the Australian Rules of Racing.

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Mr T F Percy QC, assisted by Mr P Harris, instructed by D G Price and Co, represented the appellant.

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

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This is an appeal against penalty.

The appellant was the rider of MATRICULATE which ran in Race 3 at Ascot on Saturday, 28 November 1998. Following the race, the Stewards opened an inquiry into an incident involving the appellant's horse MATRICULATE and the horse MYSTERY LAD ridden by Paul King.

A number of Stewards made observations during the race. Mr Chadwick said at page 1 of the transcript:

*"... I viewed this race from the Stewards Tower near the 400m. Approaching the 400m MATRICULATE ridden by Troy Turner, shifted out resulting, appearing to result in MYSTERY LAD ridden by P. King clipping that horse's heels, blundering and almost dislodging Jockey P. King."*

The Chairman at page 2 of the transcript said:

*"... it would appear from my observations that two Patrol Films show that MATRICULATE is being ridden forward as the field approaches, passes the 450m and it appears that MATRICULATE is ridden forward and taken outwards to the extent that it crosses across the heels of BOSS HOGG. At the same time the horse ridden by Mr. King, MYSTERY LAD is on the outside initially of MATRICULATE, but then when MATRICULATE shifts out, appears to clip that filly's heels, blunder badly and partially dislodge Mr. King."*

Mr King also gave evidence. He said at page 2:

*"I was, at that stage I was tracking, trying to track BOSS HOGG forward, I thought BOSS HOGG would start moving forward at this stage, I rode my horse forward to track BOSS HOGG and then next thing I know I sort of blundered ..."*

Mr Turner gave evidence himself at the inquiry and he said at page 3:

*"Well see quite clear I've just rolled out at the of the point of the turn and caused Paul King's to blunder".*

Resulting from of all that evidence is that the appellant was charged with an offence of careless riding contrary to rule 137(a). The particulars were:

*"... that approaching the 400m in the Melvista Stakes, that you've shifted out on MATRICULATE causing MYSTERY LAD ridden by Paul King to blunder badly from that filly's heels and be severely checked and indeed partially dislodge him."*

The appellant pleaded guilty. As well as pleading guilty, the appellant continued with his explanation at page 3 of the transcript. He said:

*"Nine times out of ten you sort of do it and come out without any interference, which I didn't know Paul King was there at the time and there was not calling whatsoever, so I wasn't going out there to purposely do it or nothing ..."*

Following the plea of guilty, the appellant was of course convicted. The Stewards imposed a penalty of sixteen days suspension, which was some three days less than they normally would have imposed. The three days credit was given by way of taking into account matters in mitigation.

In the submissions before me tonight, Counsel for the appellant has focussed on what is said to be an error on behalf of the Stewards in not considering the degree of carelessness, said to be a low degree. Put another way, it is said that the Stewards gave too much weight to the severity of the interference which was the result of the careless riding, rather than the degree of carelessness itself.

True it is that the Stewards did take into account the severity of the interference as the Chairman said on a number of occasions at page 5 of the transcript in delivering the reasons for penalty. There is something to be said for the submission of Counsel for the appellant. Indeed it is correct that the degree of carelessness needs to be taken into account. But is it correct that the Stewards did not take into account the degree of carelessness? In my view they did for the reasons stated here at the appeal by Mr Powrie. It is obvious from the film what the degree of carelessness was. I am not persuaded in the circumstances that the Stewards didn't take that degree of carelessness in account. What has happened is the Stewards also took into account the result of the careless riding and in my view there is nothing wrong with that approach.

At the inquiry, the Stewards were faced with the situation where the appellant had done everything right following his careless riding. He pleaded guilty, he cooperated with the Stewards, he has a good reputation and that is known and accepted by the Stewards. It is true that in fixing the penalty, the Stewards did not focus on speaking about the degree of carelessness or in anyway berate the appellant for his careless riding. In my view that was understandable in the circumstances where he pleaded guilty, cooperated and had a good reputation with the Stewards.

In the end result, I cannot see that the Stewards have made any error in principle in the way they went about this case and for that reason, the appeal is dismissed.

A handwritten signature in cursive script, appearing to read "P. Hogan", written over a horizontal line.

**PATRICK HOGAN, PRESIDING MEMBER**