

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

APPELLANT: DAMIAN RICHARD MILLER
APPLICATION NO: A30/08/446
PANEL: MR P HOGAN (PRESIDING MEMBER)
DATE OF HEARING 24 MARCH 1999
DATE OF DETERMINATION: 24 MARCH 1999

IN THE MATTER OF an appeal by Mr D R Miller against the determination made by the Western Australian Turf Club Stewards on 8 February 1999 imposing a 23 day suspension for breach of Rule 137(a) of the Australian Rules of Racing.

Mr T F Percy QC assisted by Ms C K White, instructed by D G Price & Co, appeared for the Appellant.

Mr B Lewis appeared for the Western Australian Turf Club Stewards.

This is an appeal against conviction and penalty.

The Appellant was the rider of SUPER THRUST which ran in Race 2 the Mazin's J & D Diamond Jewellers Maiden over 1100m at Bunbury on 26 January 1999. During the race there was a fall. Two riders, namely Apprentice Warren Hughes and Jockey Peter Knuckey were dislodged.

On 8 February 1999 the Stewards held an inquiry. At the conclusion of the inquiry the Appellant was charged with careless riding.

The particulars alleged against the Appellant were:

"...near the 250m, when riding SUPER THRUST along, you allowed that gelding to shift in, resulting in STARVINKA ridden by Apprentice Hughes striking SUPER THRUST's heels and falling dislodging Apprentice Hughes. ARBITRATOR ridden by P Knuckey struck the fallen STARVINKA and blundered dislodging Jockey Knuckey. Seven other runners were severely inconvenienced as a result of this incident."

To that charge, the Appellant pleaded not guilty. Ultimately though, he was found guilty and suspended for a period of 23 days.

The grounds of appeal against conviction have now been particularised as follows:

1. *The Stewards erred in convicting the Appellant in that they failed to consider or adequately consider:*
 - (a) *the attempts made by the Appellant to prevent his horse from shifting in;*
 - (b) *the wayward and inexperienced nature of the horse itself;*
 - (c) *the obligation imposed on the Appellant under the rules to ride out his mount to the finish;*
 - (d) *the minor nature of the contact of the two horses;*
 - (e) *the nature of the riding by Apprentice Hughes.*

By way of evidence, the Chairman of Stewards saw the film at the inquiry and gave his observations at page 7 of the transcript. His observations were that the Appellant had allowed SUPER THRUST to shift inwards and as a result, STARVINKA had clipped SUPER THRUST's heels and following that, ARBITRATOR had struck the fallen STARVINKA and dislodged Jockey Knuckey.

That observation was backed up in some other evidence in the case. Mr Carvosso, another Stipendiary Steward, saw the incident from the main Steward's tower and he gave his observations at pages 3 and 4 of the transcript. His observations were that on approaching the 250m mark, SUPER THRUST ridden by Damian Miller, when being pushed out, has been allowed to roll inwards and in doing so, has crowded up STARVINKA which has fallen and as a consequence, Apprentice Hughes has been dislodged.

Apprentice Hughes on STARVINKA said that he hadn't shifted out. He said at page 8 of the transcript that he was going straight. Jockey Peter Knuckey, who was the rider of ARBITRATOR, confirmed the evidence of Apprentice Hughes. Again at page 8 of the transcript, he said to the effect that Apprentice Hughes hadn't contributed to the fall at all himself.

Against all of that, the Appellant gave evidence denying any wrongdoing. He said that he didn't allow his horse to shift in. He went on to say that STARVINKA had shifted out. The Appellant admitted that his horse had shifted in itself, but blamed that on a tendency that SUPER THRUST had to lay in. By way of evidence to support his version, the Appellant pointed to the fact that SUPER THRUST had its head pointed away at the time of contact, that is pointed out at the time of contact. The Appellant also pointed to the fact that he was riding the horse out using both hands. He gave that explanation at page 10 of the transcript.

In summary, the Appellant's defence was that he made every effort to keep his mount off STARVINKA.

The Stewards however didn't accept that defence and said that at page 21 of the transcript when finding the Appellant guilty. The Chairman of Stewards said that they believed he had only made a token effort to prevent SUPER THRUST from shifting inwards. They also said that they believed he had ample opportunity to straighten SUPER THRUST prior to the incident. The Stewards' view of the degree to which SUPER THRUST had a tendency to shift inwards was obviously a different view than that held by the Appellant. The Steward's view was that the Appellant should have made both an earlier, as well as a more positive, effort to prevent SUPER THRUST from shifting in.

In the end, the question is whether the Stewards' decision is one that no reasonable Stewards acting on all the evidence could possibly have reached.

In my view that is not the case here. There was evidence for the Stewards to reach the conclusion which they did. No error has been demonstrated in their reasoning process and in finding the Appellant guilty.

For those reasons, the appeal against conviction is dismissed.

As to the appeal against penalty, the grounds of appeal are now particularised:

- "1. *The Stewards imposed a penalty which was excessive in all the circumstances of the case having regard to:*
- (a) the degree of carelessness involved;*
 - (b) the severity of the interference;*
 - (c) the riding record of the Appellant;*
 - (d) the Stewards erred in categorising the interference as being within the upper category of seriousness;*
 - (e) the Stewards erred in confusing the degree of carelessness with the severity of interference and imposed a penalty which related more to the consequences of the interference than it did to the quality of the riding.*

The Stewards did give reasons for imposing the penalty and that is at pages 23 to 24 of the transcript. They took into account the degree of carelessness and the severity of the interference. A penalty of one month suspension was said to be appropriate and that was then reduced to 23 days because of the Appellant's reasonably good record and the Steward's opinion that he had at least made a token effort to straighten his horse.

It cannot be said that the Stewards made any error of fact in coming to their decision. Also, it was proper to take into account the result of the careless riding. It demonstrates what can happen with an offence of mid-range careless riding. In that sense, it was proper to take into account the result.

Further, it cannot be said that the penalty itself was so outside the range of penalties commonly imposed so as to demonstrate error.

For those reasons, the appeal against penalty is also dismissed.

P. J. Hogan



TRICK HOGAN, PRESIDING MEMBER