

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: CALLAN ANTHONY SUVALJKO
APPLICATION NO: A30/08/447
PANEL: MR J PRIOR (PRESIDING MEMBER)
DATE OF HEARING 23 MARCH 1999
DATE OF DETERMINATION: 23 MARCH 1999

IN THE MATTER OF an appeal by Mr C A Suvaljko against the determination made by the Western Australian Trotting Association Stewards on 23 February 1999 imposing a three month suspension for breach of Rule 469(a) of the Rules of Harness Racing.

Mr G Winston was granted leave to appear for the appellant.

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

This is an appeal against conviction and penalty.

Following the running of Race 8 at Harvey on 20 February 1999 the Stewards opened an inquiry into certain aspects of that race. At the inquiry on 23 February 1999, the Appellant, Mr C A Suvaljko was charged with a breach of Rule 469(a) in the following terms:

"The charge against you Mr Suvaljko is that your actions in the front straight on the first occasion in Race 8, the Gull WA Owned Stakes at Harvey on Saturday the 20th of February 1999, when you appeared to gesture to a driver or drivers back in the field were improper under the circumstances."

Rule 469(a) of the Rules of Harness Racing states:

"No person shall:

- (a) *either by himself or any other person do or permit or suffer any act or thing to be done during the progress of any race or prior or subsequent thereto in connection therewith, which the Stewards or Controlling Body shall deem to be fraudulent, corrupt, foul or improper, in any way, or by which other persons may suffer or otherwise be penalised."*

The Appellant pleaded not guilty. After deliberations the Chairman announced that the charge had been proved in the following terms:

"You've been unable to explain your actions. It is our opinion that you have improperly attempted to gesture to another driver, therefore find the charge sustained."

Following submissions on penalty, the Appellant was suspended from driving for a period of three months.

The stated Grounds of Appeal are as follows:

"Following my suspension I have had several experienced reinsmen view the video and they have all agreed that my action has been the act of turning my whip only and not gesturing to some other driver. As I had no idea what I was being called into Tuesday's inquiry for and did not realise I had done this arm action I had no reasonable chance to study the video until later. I believe the Stewards have made a totally incorrect decision in this case. I also wish to appeal against the severity of the penalty imposed."

The Appellant in the hearing of this matter has not pursued his appeal against penalty.

As to the Appeal against conviction it must be recognised from the outset that the onus of proof at the inquiry was on the Stewards and the standard they needed to be satisfied was on the balance of probabilities taking into account the factors recognised in Briginshaw v Briginshaw.

Here the evidence which the Stewards relied upon to convict the Appellant was the undisputed unusual right arm action of the Appellant at the relevant part of the race, which raised the "suspicions" of the Stewards, and this coupled with a lack of explanation for it by the Appellant at the inquiry gave rise to the conviction. No other evidence supported an adverse inference against the Appellant that his arm movement was carried out for an improper purpose.

At the hearing tonight we had the benefit of enhanced race footage of the incident. The Appellant through his advocate has now given an explanation for his arm movement. I am unable to find any evidence to rebut that explanation. There is undisputed evidence that immediately before the unusual arm action the Appellant had reason to turn his body due to a request by a driver behind him and to which he verbally responded.

All that is left is at best suspicion for the unusual nature of the arm movement. In those circumstances I cannot be satisfied that on the balance of probabilities recognising the Briginshaw test that the charge has been made out that such an arm movement was improper.

For these reasons I will allow the Appeal against conviction.

John Prior



JOHN PRIOR, PRESIDING MEMBER