

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION
OF MR D MOSSENSON (CHAIRPERSON)

APPELLANT: PETER BENJAMIN FARRELL
APPLICATION NO: A30/08/468
DATE OF HEARING: 29 JULY 1999
DATE OF DETERMINATION: 29 JULY 1999

IN THE MATTER of an appeal by Mr PB Farrell against the determination made by the Western Australian Turf Club Stewards on the 17 July 1999 imposing 10 days suspension for breach of Rule 137(a) of the Australian Rules of Racing.

Mr AR Taylor was granted leave to represent the appellant.

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

The appellant was the rider of BATTLE GROOM which ran in Race 6 at Kalgoorlie-Boulder Racing Club on Saturday 17 July 1999. Following the race the Stewards entertained a protest hearing at the instigation of Mr Forder, the rider of NEW PREDICTION. The protest was dismissed. Following that hearing the Stewards opened an inquiry into the incident which occurred near the 150 metre mark.

The Stewards' panel for the inquiry comprised Mr BW Lewis as Chairman, Mr J Biggs, Deputy Steward, and Mr GM Bush, Cadet Steward.

Early on in the inquiry Mr Farrell was asked to explain the incident which he did in the following terms:

'Yes, as I went, as I said before, as I went past Mr. Forder's horse, I've actually hit my horse and it, it's ducked in quite bad, but I have gone to grab it and turned, turned its head back out, but by then it was too late. I wasn't, the horse was laying in a little bit, but I wasn't expecting him to duck in as quick as he did. Like I had contact with his mouth and everything, but...

...
When he shifted in and tightened Mr. Forder's mount, he'd done it within a stride, like he was, he was if, if not one a half off and then he was on the, on the fence and by then it was too late. Like I've ridden a lot of horses that run in Sir, but that's one of the best I've ridden, like to duck in as quick as he did.'

Further discussion took place regarding the manner in which Mr Farrell rode and the actions of the horse. The film of the race was shown and was analysed. The Chairman acknowledged from viewing the film that:

'There is an effort from you to straighten BATTLE GROOM, but looking at the film, I'd say that it's, it's come too late to prevent Mr. Forder having to check.

...
There's definitely reaction on your behalf, but I would say looking at that film, it has been too late.

Mr Farrell responded:

That, that's exactly what I said before Sir, I wasn't expecting the horse to duck in, as, like he's ducked in quick. Normally a horse wouldn't, well I've never, I haven't ridden one for a long time that's, that's ducked in like that and the other thing is, on the, like watching the video again I, I can't see at any stage where Mr. Forder's stood up in the irons, like he's, he's eased out, he hasn't like reefed it's head off to, to and checked.'

In response to the Chairman's comments Mr Forder stated:

'I, I agree Sir that I was about three quarters of a length to a length behind Mr. Farrell. On the film he's given his horse, he showed the, showed his horse the stick, he's given it a slap on the shoulder and then he's gone to pull the stick. Before he'd even pulled it, but the horse has gone in, he hasn't actually, he's hit the horse once with the stick.

His horse has made a bee-line for the fence. I don't know, I can't, I couldn't honestly say that it was Mr. Farrell's fault, I think that it happened really quickly...'

Mr Forder then asserted:

'To be honest, but I do think the horse itself has made a bee-line for the fence, pretty quickly, that's about all I can say.'

Mr Biggs initially disputed Mr Forder's evidence in the following terms:

'Mr. Forder, I'd have to dispute your evidence there. He's hit the horse around the hindquarters quite vigorous, with one quite vigorous hit before the horse has shifted in. You said that he's gone, hit the horse down the, down the neck or down the shoulder...'

After further comment from both Mr Farrell and Mr Forder Mr Biggs stated:

'Sorry my mistake then, it is down the shoulder, I thought it was down the rump beforehand.'

Mr Forder stated later that it was quite a decent check to his mount but then went on to say:

'The only thing that gives me disputing... (Inaudible) especially at a crucial stage of the race, but looking at the film, I don't think that it was entirely his fault. At the time of the race I thought he was, like I said I agreed his was riding his out hard and he's just, not given a shit and has come across you know.'

*...
But looking at the film, I don't think it was entirely his fault, within a couple of strides and like I said for him to straighten or, his horse was laying in and he's keeping it straight. He's given it a hit down the shoulder, for him to straighten it before it got in on me, which I think would have been just about impossible, he would have had to throw his whip away. So I don't think there is anything he could have done really. And Mr. Brown was saying earlier on, I overheard his, I think it was his wife, talking that the horse had done it before. He said he, got to the front when he rode it last start and was on the fence and the horse had never ducked in with him, so he was probably not to know.'*

The inquiry resulted in Mr Farrell being charged with careless riding under Rule 137(a) of the Australian Rules of Racing. That Rule states:

'Any rider may be punished if, in the opinion of the Stewards:

(a) He is guilty of careless, improper, incompetent or foul riding...'

Mr Lewis stated the charge to be in the following terms:

'... that near the 150m, you have failed to make sufficient effort to prevent BATTLE GROOM from shifting inwards, causing NEW PREDICTION ridden by Mark Forder to be checked.'

The following exchange then took place between Mr Lewis and Mr Farrell:

'Chairman: Do you understand what you've been charged with today Mr. Farrell?'

Farrell: Yes Sir.

Chairman: How would you plead?'

Farrell: Not guilty Sir.

Chairman: All right Mr. Farrell, having pleaded not guilty, you may present further evidence to the Stewards or you may argue the charge in anyway you wish.

Farrell : Yes Sir, I just, I don't think I have made no attempt to not straighten my horse Sir.

Chairman: Well the charge is that you failed to make sufficient effort.

The Chairman then asked 'Is there anything else, any further questions of anyone at all?' to which Mr Farrell replied:

No Sir, only that Mr. Brown did say after that, that the horse has done it on more than one occasion, which I wasn't, wasn't aware of.'

The Chairman then asked 'All right, well is there anyone you want to call to present evidence on your behalf?' to which Mr Farrell replied 'No, not at this stage Sir'. The following exchange then occurred:

'Chairman: At what stage, because we're running out of stages?'

Farrell: So what, where do I go from there, do...

Chairman: Well we've got to decide now whether, you're not guilty of the charge or guilty of the charge, so we'd have to consider anything you say in your own defence.

Farrell: *There's not a lot else I can say Sir. Unless you want to speak to the Trainer, but I mean, I, I think I've said everything that I have to say.*

Chairman: *... Do you wish Mr. Brown to be here, well that's, that's your prerogative, he can come.*

Farrell: *But the thing is Sir I don't think I've actually, I don't think that I've made no attempt to straighten my horse, whereas I've been charged with careless riding and I don't think I was careless, I think I've, I've made an attempt, other than that, I can't really say anything Sir.'*

Mr Biggs then made the following statement:

'Mr Farrell when you say you've made an attempt, Stewards didn't say that didn't make an attempt, what they're saying is that you failed to take, make every endeavour of course as you said in your own evidence earlier when you did try to pull the horse off, it was too late.

... What we're saying is, that you should have pulled off earlier,... (Inaudible) it wasn't hanging in.'

Immediately after this statement by Mr Biggs the following was said:

Farrell: *Well I, I, can I change my plea to guilty Sir, if it's going to make things easier, I mean...*

Chairman: *Well no, I, no I'm not here today to make things any ...(inaudible) Mr. Farrell...*

Farrell: *I don't, I, I've never pleaded not guilty before, so I don't understand what my grounds are, are my grounds to Appeal or...'*

The Chairman of Stewards advised Mr Farrell that he would *'...take it as a not guilty plea.*

After the Stewards adjourned to consider the matter, the Chairman of Stewards announced their findings in the following terms:

'Mr Farrell the Stewards are satisfied that you could have made an earlier and a greater effort to keep BATTLE GROOM off Mr Forder's mount, therefore we find you guilty of the charge of careless riding.'

It is clear to me from reading the whole transcript of the Stewards' inquiry, and in particular the sections quoted above, that it was confusing as to exactly what Mr Farrell should have been defending following the statement by Mr Biggs. There was inconsistency between the charge as originally particularised and as subsequently explained by Mr Biggs. Mr Farrell was obviously labouring under some difficulties in following what was happening at the point of putting in his plea and offering his explanation. Despite this Mr Farrell did raise a proper defence which was supported by Mr Forder's comments.

It is not clear from the findings delivered by the Stewards at the time when the appellant was pronounced to be guilty, taking into account the particulars of the charge and Mr Biggs' statement, as to exactly which aspect of Mr Farrell's riding the Stewards found to be careless.

The Stewards should have called Mr Brown in view of the relevance of his evidence and the obvious inability of Mr Farrell to respond appropriately to the invitation to call him.

The protest in relation to the very same incident was dismissed. I am satisfied that the circumstances of the interference to NEW PREDICTION did not automatically lead only to the inference that the rider was the cause of the incident as the racing traits of BATTLE GROOM should also have been taken more into account by the Stewards.

In all the circumstances I am satisfied that Mr Farrell was not given a fair hearing and should not have been convicted. For these reasons the appeal was allowed and the conviction quashed.

The practice of this Tribunal for at least the last 12 months has been to refuse to refund the lodgment fee irrespective of the outcome on an appeal. Mr Taylor on behalf of Mr Farrell earnestly requested return of the appeal and stay application lodgement fees given the special unhappy personal circumstances of Mr Farrell. Mr Taylor pointed out that Mr Farrell:

- is in very poor financial circumstances and has had to travel to 'outpost' places to get rides merely to 'fill the freezer'

- is young, being only 21 years of age
- has recently become a father for a second time and that his wife and new baby have experienced medical complications which resulted in extended hospitalisation
- has on his own had to care for the other child during that period of hospitalisation and
- had recently lost his drivers' licence through an indiscretion

Mr Lewis agreed that he did have some sympathy for Mr Farrell's financial position. Further it was his personal point of view that the lodgment fee should be refunded when an appellant succeeds in having a conviction quashed.

In the light of the special circumstances applicable to this particular appellant I ordered that the lodgment fees of \$300 to be refunded. This decision to refund these lodgment fees is not to be taken as a precedent or any change by the Tribunal to its current policy regarding ordering refunds.



DAN MOSSENSON, CHAIRPERSON

