

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

**APPELLANT:** KEVIN ALLEN  
**APPLICATION NO:** A30/08/481  
**PANEL:** MR D MOSSENSON (CHAIRPERSON)  
**DATE OF HEARING:** 24 JANUARY 2000  
**DATE OF DETERMINATION:** 24 JANUARY 2000

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IN THE MATTER OF an appeal by Mr K Allen against the determination made by the Western Australian Turf Club Stewards on 7 November 1999 imposing a \$1,000 fine for breach of Rule 8(d) of the Australian Rules of Racing.

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Mr M Wolfenden was granted leave to represent the appellant.

Mr P B Criddle appeared for the Western Australian Turf Club Stewards.

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This is an appeal by Mr Kevin Allen, a licensed trainer, against the severity of a \$1,000 fine imposed by the Stewards of the Western Australian Turf Club for breach of Rule 8(d) of the Australian Rules of Racing. That Rule states:

"8. To assist in the control of racing, Stewards shall be appointed according to the Rules of the respective Principal Clubs with the following powers.

...  
(d) To regulate and control, enquire into and adjudicate upon the conduct of all Officials and licensed persons, persons attendant on or connected with a horse and all other persons attending a racecourse and to punish any such person in their opinion guilty of improper conduct or unseemly behaviour."

Following receipt of a written complaint from the curator of the Esperance Bay Turf Club alleging the use of abusive and threatening language by the appellant at the Club on 24 October 1999, the Stewards opened an inquiry on 6 November 1999. After receiving some evidence the appellant was charged by the Stewards with a breach of the Rule as follows:

*"Stewards are charging you with unseemly behaviour and the specifics of the charge are, that on Sunday the 24th of October, 1999 you used abusive, sorry you were insulting and also made threats to the Curator of the Esperance Bay Turf Club."*

As the appellant declined to enter a plea the Stewards proceeded on the basis of a not guilty plea. Further evidence was presented after which the Stewards considered the matter and found Mr Allen

guilty. They then adjourned to decide the penalty. Next day when they resumed the Chairman of the inquiry stated:

*"In considering penalty, Mr. Allen Stewards do consider this to be one of a very serious nature. The threat was against an Official of the Esperance Bay Turf Club who was carrying out his official duties as Curator. The evidence of Mr. Daniels and the evidence of Mr. Kopcheff clearly stated that Mr. Daniels felt threatened and upset at your actions. While you were upset, at the fact that your horses worked on the track with the sprinklers and no doubt, I certainly note that your concerns were there, you were aware that the sprinklers were on the track and you had every opportunity to elect not to work your horses. However, you failed to accept that opportunity and you continued to work horses on the track knowing that those obstacles were there. As a result of that, of course working horses whilst the obstacles were on the track, you've got upset and of course, you've come back and you've obviously taken your frustration's out against Mr. Daniels. We also took into consideration your, your no plea. Whilst Stewards don't believe that you should get an extra penalty for a no plea situation, however we certainly don't believe that you deserve a discount in any way in relation to that. We have also taken into account, your previous record for which you were fined \$500 back in January 1999 for a charge of similar nature. Whilst again, you have paid that penalty in relation to that particular matter, and we don't believe that because of that previous penalty, you should get an extra penalty, however once again I certainly don't believe that because of your record, you deserve any sort of a discount in relation to penalty. We also took into consideration the fact of a disqualification and or a suspension, would have a detrimental effect on you as your training establishment and effect on your Owners and Staff and as you've said you've put a lot of money in and you've had Owners that have put a lot of money into your horses and you've got a lot, lot of young horses and of course, if a suspension or a disqualification was handed down, it was (sic) have an effect on a lot of innocent people. However, taking all those matters into consideration, I believe that the appropriate penalty in relation to this matter to be a fine of \$1,000."*

Mr Wolfenden on behalf of Mr Allen in the course of his argument explained the implications of the sprinklers being on the track and why that had upset Mr Allen. He referred to the history of Mr Allen's relationship with Mr Daniels. In addition Mr Wolfenden relied on other penalties imposed by the Stewards for breaches of the same Rule to support the argument that the fine which was imposed was too large. The circumstances of all of the other offences were briefly outlined and compared with the present matter. Mr Wolfenden relied on the following list of penalties which had been provided to him by the Stewards for previous offences under the Rule in question to support his argument:

1/8/94	Trainer	K Nightingale	\$1,000 First offence
6/5/95	Trainer	M Campbell	\$500
15/4/96	Trainer	G Jordan	\$500 Appeal Dismissed
25/3/98	Jockey	J Oliver	\$300
6/2/99	Jockey	M Forder	\$400
27/10/99	Apprentice	C Harvey	\$300
10/11/99	Trainer	T Veale	\$300"

After considering these submissions in the light of Mr Criddle's response to them I am satisfied that the penalty imposed on Mr Allen is excessive in the circumstances.

The appeal is allowed. The penalty imposed, being a fine of \$1,000, is set aside and a fine of \$300 is substituted.

Mr Wolfenden sought an order, on behalf of the appellant, for the refund of the lodgement fee of \$250 and the \$80 costs to obtain the transcript of the Stewards' inquiry.

It has been the practice of the Tribunal for the past two years approximately not to refund the lodgement fee in a successful appeal unless there are special circumstances applicable to a particular appellant which justify deviating from that practice. I am not satisfied there is anything particularly out of the ordinary to justify making such an order in this case.

*D. Mossenson*

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DAN MOSSENSON, CHAIRPERSON

