

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: SHANNON JAMES SUVALJKO
APPLICATION NO: A30/08/484
PANEL: MR J PRIOR (PRESIDING MEMBER)
DATE OF HEARING: 19 JANUARY 2000
DATE OF DETERMINATION: 19 JANUARY 2000

IN THE MATTER OF an appeal by Mr S J Suvaljko against the determination made by the Western Australian Trotting Association Stewards on 10 December 1999 imposing 6 weeks suspension for breach of Rule 163(1)(a) of the Rules of Harness Racing.

Mr L A Margaretic, instructed by Margaretic Morton, appeared for the appellant.

Mr M J Skipper appeared for the Western Australian Trotting Association Stewards.

This is an appeal by Shannon James Suvaljko the driver of FINAL JUDGEMENT, which competed in Race 2 at Gloucester Park on 10 December 1999. Following the race the Stewards opened an inquiry into an incident which occurred in that race. After hearing evidence from Mr Suvaljko and other participants in the race, after viewing the video and hearing from the Chairman of Stewards as to his observations of the race, Mr Suvaljko was charged with a breach of Rule 163(1)(a) of the Rules of Harness Racing.

The particulars of the charge were:

"Mr Suvaljko there's no doubt that Mr Anderson was racing tightly to your outside, but it's our view that after considering the evidence, that it was your movement down the track initially, which caused the incident, therefore under the provisions of Rule 163(1)(a) which states:

"A driver shall not cause or contribute to any crossing, jostling, or interference."

We're issuing a charge against you that you caused interference to Mr Harper's drive LORD ADMIRAL, by allowing FINAL JUDGEMENT to race down too tightly on that horse and your sulky made contact with it."

The appellant pleaded not guilty. After hearing further evidence, the Chairman of Stewards announced their finding in the following terms:

“Mr Suvaljko the Stewards do find you guilty as charged and in considering all the evidence before us, it’s our opinion that you were reining the horse up with your right hand rein as the incident was developing when you’re claiming that the horse was contributing by its racing characters, but the film quite clearly shows that when you do eventually restrain the horse away to try and give Mr Harper sufficient room the horse does respond accordingly. As I said we are unanimous in finding you guilty as charged.”

After considering submissions from Mr Suvaljko in respect to penalty, the Chairman of Stewards stated:

“After considering all the circumstances of the incident it wouldn’t be justifiable to suspend or increase the period of suspension that you incurred the last time you offended, but we do feel that the penalty must reflect that you are a repeat offender. And in assessing all the matters in relation to penalty we feel that the appropriate penalty is a suspension of your reinsperson’s license for a period of six weeks and that’s up to and including the 21st of January.”

On 16 December 1999 the appellant applied for and was granted a stay of proceedings by this Tribunal until midnight on 14 January 2000 or as otherwise ordered. On 12 January 2000 the Tribunal extended the suspension of operation of the penalty until midnight on 19 January 2000.

Mr Suvaljko has appealed against both the conviction and the severity of the penalty.

The grounds of appeal are:

“Maintaining my innocent plea, I believe that evidence produce (sic) at the Stewards’ inquiry did not show me guilty of any charge.

I am appealing against the charge and the severity of the penalty.”

Rule 163 (1) (a) states:

“(1) A driver shall not –

(a) cause or contribute to any crossing, jostling or interference;”

Rule 163 (4) states:

“(4) A driver who, in the opinion of the stewards, fails to comply with any provision of this rule is guilty of an offence.”

The Appellant’s appeal against conviction is essentially a submission that on the totality of the evidence available the Appellant should not have been convicted as he could not have been found the sole cause of the interference and had made proper attempts to avoid the interference prior to it occurring. The interference itself is not disputed.

The Stewards charged and convicted the Appellant on the basis he was the sole cause of the interference, and his reining actions were too late as his acts which caused the interference had already occurred.

This Appeal therefore is essentially a direct conflict of opinions as to what caused the interference and what actions the Appellant was taking prior to it.

The difficulty the appellant has in this matter is rule 163 (4). As myself and a number of Tribunal members have stated in Appeals of this nature for breaches of rules of this nature is the rule is couched in language which specifies that an offence is committed if, in the opinion of the Stewards, a particular thing occurs. It is not a case therefore of substituting one's own opinion for that of the Stewards or other person's opinions. Nevertheless the Stewards must come to an opinion which is reasonable and is also in accordance with the evidence. If not, they will have erred in convicting an appellant.

Having seen the various race footages now available and having read the transcript of eye witness accounts of Stewards and drivers I am not persuaded that the opinion of the Stewards was unreasonable or not available on the evidence. I am therefore unable to find that the Stewards erred in convicting this particular Appellant.

For those reasons the Appeal against conviction is dismissed.

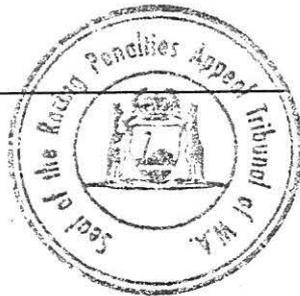
As to penalty the Appellant was convicted of the most serious breach of rule 163 (1) interference. The recent range of penalties for such breaches is suspensions of 21 days to 10 weeks. The Appellant had previous convictions for the same offence or its equivalent under the Rules of Trotting, two such convictions having occurred in 1999. In those circumstances I am not persuaded that the penalty is outside the range of penalties that was available to the Stewards in the circumstances of this matter as to be manifestly excessive. Nor am I satisfied by the submissions of the Appellant that in the sentencing of the Appellant there has been an error demonstrated by the Stewards.

For those reasons the Appeal against penalty is dismissed.

The suspension of penalty now ceases to operate.

The appellant has already served 5 days of his six week suspension, that being the time from 11 December 1999 to 15 December 1999. The appellant's period of suspension will now therefore cease at midnight on 25 February 2000.

John Prior



JOHN PRIOR, PRESIDING MEMBER