

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

APPELLANT: AIDEN ROYCE WARWICK

APPLICATION NO: A30/08/495

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR J PRIOR (MEMBER)
MR A MONISSE (MEMBER)

DATE OF HEARING 4 MAY 2000

DATE OF DETERMINATION: 4 MAY 2000

IN THE MATTER OF an appeal by Aiden Royce Warwick against the determination made by the Western Australian Trotting Association Stewards on 17 March 2000 imposing a six month suspension for breach of Rule 156(2)(a) of the Rules of Harness Racing.

Mr G P Winston was granted leave to represent the appellant.

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

This is a unanimous decision of the Tribunal.

This matter arises out of an incident which occurred in Race 7 conducted at Gloucester Park on the 17 March 2000. After the running of the race, several drivers were called in by the Stewards to investigate two incidents. This ultimately lead to Mr Hall, who drove AUSSIE ALTO, being charged and convicted of causing interference and Mr Warwick, who drove DISCREET AFFAIR, being charged under Rule 156(2)(a) of the Rules of Harness Racing.

The specifics of Mr Warwick's charge were:

"...that you did strike Mr Hall with your whip racing towards the or to the apex of the turn towards the front straight on the final occasion of Race 7."

Rule 156(2)(a) states:

"A whip shall not be used so as to obstruct, strike or endanger another driver or horse."

Mr Warwick pleaded not guilty to the charge but was convicted. The inquiry continued and the Chairman of Stewards announced the penalty in the following terms:

“Mr Warwick as I said to you. It is quite a serious charge to be leveled (sic) at a driver and we’ve checked the penalties that we’ve imposed on other persons charged with a similar offence. I would point out that with the rules repealed by these rules, we didn’t have a rule of the same wording as the one that we’ve charged you with tonight. We issued a charge of foul driving, however, we feel that the phrasing of the charge that we’ve used – or the rule that we’ve charged you with tonight is quite clear that it’s quite a serious offence. The penalty that’s been imposed consistently over the years is a six month suspension of your reinsperson’s licence and in the circumstances in this particular incident we believe that is the appropriate penalty and that’s what we impose.”

Mr Warwick appealed against the conviction on the three grounds set out in the Notice of Appeal. The final ground is:

“ 4) Severity of penalty – equivalent to loss of earnings of \$20,000 plus loss of drives makes 6 months really 12 months.”

At the outset Mr Winston on behalf of Mr Warwick announced that the appellant was no longer pursuing the appeal against conviction but only dealing with the matter on the basis of the penalty.

The Tribunal notes that this is the first occasion where the Stewards had to deal with an offence of this nature under the new rules. The Tribunal was advised that Rule 156(2)(a) is equivalent to old Rule 469(a).

Mr Winston argued that Mr Warwick was provoked and angry as a result of the driving tactics adopted by Mr Hall. The Stewards have not gone into any great detail in enunciating their reasons for imposing the six month penalty.

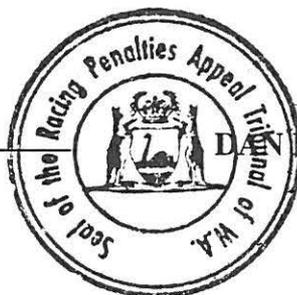
The Tribunal is satisfied that a deliberate striking with the whip to a driver is a serious infringement of the Rules. Mr Winston has acknowledged that the charge is not denied and that Mr Warwick did use his whip in the manner as described in the transcript.

It has been argued that there is similarity between this case and a number of other cases and in particular that of Mr Keys, Appeal 260. The penalty which was imposed by the Stewards on this occasion is identical with the penalty imposed on Mr Keys which was upheld by this Tribunal. In that case no extenuating circumstances had been demonstrated. It is fair to say that, generally, the offending driving of others does not justify a driver taking the law into his own hands by striking another driver with his whip. The ramifications of a driver using his whip to strike another driver potentially could be quite grave.

The Tribunal is satisfied that no error has been demonstrated in relation to the penalty imposed on Mr Warwick.

In all the circumstances we dismiss the appeal and confirm the penalty which has been imposed.

Dan Mosson



DAN MOSSENSON, CHAIRPERSON