

DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: JOHN JAMES MILLER JNR
APPLICATION NO: A30/08/542
PANEL: MR D MOSSENSON (CHAIRPERSON)
DATE OF HEARING: 29 NOVEMBER 2001
DATE OF DETERMINATION: 29 NOVEMBER 2001

IN THE MATTER OF an appeal by John James Miller Jnr against the determination made by the Stewards of the Western Australian Turf Club on 27 July 2001 imposing a \$1,000 fine for breach of Rule 175(f) of the Australian Rules of Racing.

Mr Miller appeared in person.

Mr RJ Davies QC appeared for the Stewards of the Western Australian Turf Club.

At an inquiry held on 27 July 2001 the Chairman read Australian Rule of Racing 175(f) to Mr Miller. Mr Miller, a licensed trainer, acknowledged that he understood the Rule.

Rule 175(f) is in the terms:

"175. The Committee of any Club or the Stewards may punish:

...

- (f) Any owner, nominator, lessee, member of a Syndicate, trainer, jockey, rider, apprentice, stablehand, bookmaker, bookmaker's clerk, or person having official duties in relation to racing, person attendant on or connected with a horse, or any other person who refuses or fails to attend or give evidence as required at any inquiry or appeal when requested by the Committee or Stewards to do so."*

The Chairman then advised the appellant as follows:

"Right, Stewards believe you should be charged under that Rule. The particulars of the charge being that you refused to attend the continuation of the Stewards' inquiry held on the

29th of June, 2001 regarding the charge issued against you under ARR.8(e) for breaching LR.70(b) part (i).”

Mr Miller pleaded not guilty.

After a brief exchange the Stewards retired to consider the evidence. The Chairman announced a guilty finding in these terms:

“Mr Miller, the Stewards have discussed what you’ve said to us and we accept what you say, that you were probably under a fair degree of stress at the time as a result of this inquiry and the result of what happened to you in the past with your family. We don’t see any need to call Mr Powrie to provide evidence in regard to that, as I said, we, we believe you and we take that on face value. We’ve considered all the evidence, Mr Miller, and, and the charge. We believe your actions on the 29th of June, 2001 amounted to a refusal to attend the continuation of the inquiry and as such the Stewards believe you should found (sic) guilty.”

Mr Miller declined to address the Stewards in respect of penalty.

After adjourning the Chairman announced the penalty of a fine of \$1,000 to the appellant as follows:

“Mr Miller, in considering a penalty the Stewards have this to say. The Stewards are employed to control racing. We believe the behaviour of this kind seriously erodes our ability to fulfil our responsibility within the Industry. We believe that your actions on the day hindered us in the performance of our duties. It is unacceptable that the Stewards should be put in this position as it portrays a general perception to other participants and the general public that the control of racing is being undermined. The penalty should reflect specific and general deterrents. We’ve taken into account that you had no previous convictions under this particular Rule. We’ve taken into account your apology and your general remorse for the incident. We’ve taken into account your personal circumstances and we’ve had a look at, also, other penalties under this Rule Mr Miller. The records held by the Turf Club show that there have been lengthy disqualifications varying down to smaller type fines and suspensions depending on the actual circumstances of the case. We found it somewhat difficult to come up with a comparison with what happened on the 29th of June, regard to yourself. I couldn’t recall any similar type incident with any person that I’ve had dealings with and neither could Mr Nalder or Mr Mance. Mr Miller we don’t believe that disqualification is appropriate or a suspension, we believe that a fine should be levelled at you again and that fine to be \$1,000.”

The grounds of appeal as stated on the Notice of Appeal dated 10 August 2001 are:

“I was totally disregarded by the Stewards and did not walk out of the enquiry. I also appeal against the severity of the sentence. When I receive the transcript I will be able to expand on my grounds of appeal.”

I am not persuaded that there is any merit in this appeal. Nothing has been demonstrated to manifest error on the part of the Stewards. I adopt the submission that has been made by Mr Davies QC. The appeal is dismissed both as to conviction and penalty.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

