

The particulars of the charge were set out by the Stewards at page 7 of the transcript (T7)

“What the Stewards are saying is that it was reasonable for you to shift the horse from the two wide line between the 500 and 400 metres and it was certainly permissible at that point of you to take those measures and we don't believe you have and as a result we don't believe you have given the horse full opportunity to win or obtain the best possible position in the field.”

Mr Kerr pleaded not guilty but was found guilty. That finding was announced in these terms:

“Mr Kerr after considering all the evidence and viewing the official film the film does confirm the Stewards observations that you had the opportunity to come out at the 400 and put yourself in the clear and as a result of that the Stewards do find the charge sustained.”

After hearing submissions on penalty the sentence was announced as follows:

“Mr Kerr in regards to penalty the Stewards have taken into account the (sic) your driving ability we feel that somebody of your ability shouldn't be making mistakes like this especially at the business end of a race its (sic) not as if it happened early in the race where you could make a split second decision you had plenty of time to make the decision to come away from the back of Fry getting to the 400 and we do believe that a 6 week suspension of your reinsperson licence is appropriate under the provisions of Rule 149 which was the charge...”

The Grounds of Appeal are:

“I believe that I am completely innocent of the charge laid against me & if given the opportunity can prove my innocence to the Tribunal.”

REASONS FOR DETERMINATION

In support of the appeal, a number of points were made by Mr Parr for the appellant. He pointed out through the course of the inquiry that Mr Kerr gave his own reasons as to why he didn't make the move to take the position that the Stewards expected of him. Mr Parr submitted that the Appellant had good reasons for not shifting out.

Mr Sullivan for the Stewards referred to the admissions that Mr Kerr made as to his knowledge of what was going on in the race up to the point in question. In particular, the Appellant was aware of the positions of the other horses, and how much work they had done (paragraph 23). Mr Sullivan pointed out that at paragraphs 53 and 54, Mr Kerr acknowledged that there was nothing stopping him easing out. The Appellant knew that he couldn't get around the other horses once they had come up from behind him.

Mr Kerr had his own reasons as to why he did not take the position and make the move out that the Stewards expected of him. The Stewards had their reasons for expecting him to have made the move out. In the end result, it is a matter which falls within the discretion of the Stewards. There is nothing in the Rule which is couched in the terms of “in the opinion of the Stewards”. That is not to say that the Tribunal here can substitute its own opinion for that of the Stewards. On an appeal of this type, it is for the Appellant to demonstrate that no reasonable panel of Stewards could have come to the decision which they did. The Stewards were there to observe the incident. They heard all the evidence and they were aware of the circumstances. There was nothing demonstrated to me at the hearing of the appeal to show that the Stewards were not entitled to reach their decision.

For these reasons the appeal against conviction was dismissed.

The imposition of a penalty is always a matter of discretion for the Stewards. It has not been shown that the Stewards made any error of fact or principle in coming to the conclusions which they did. The penalty of six weeks suspension is within the range of penalties that are commonly imposed for offences of this type.

For these reasons, that appeal against penalty was dismissed.

The suspension of operation of the penalty automatically ceased.



PATRICK HOGAN, PRESIDING MEMBER

