

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

**APPELLANT:** WILLIAM ARNOLD  
**APPLICATION NO:** A30/08/588  
**PANEL:** MR D MOSSENSON (CHAIRPERSON)  
**DATE OF HEARING:** 12 MARCH 2003  
**DATE OF DETERMINATION:** 12 MARCH 2003

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IN THE MATTER OF an appeal by Mr W Arnold against the determination made by the Stewards of the Western Australian Turf Club on 23 February 2003 imposing 28 days suspension for breach of Rule 137(a) of the Australian Rules of Racing.

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Mr T F Percy QC appeared for the appellant.

Mr B W Lewis appeared for the Stewards of the Western Australian Turf Club.

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This is an appeal against conviction and penalty following a Steward's inquiry into an incident near the 400 metres which occurred during the running of Race 5 over 1400 metres at Bunbury Turf Club on 23 February 2003. At the conclusion of the hearing the appeal was dismissed. These are my reasons.

Called to the inquiry were:

Jockey W Arnold	Rider of MR. KRAKAJAC
Jockey Jason Brown	Rider of PLATINUM
Apprentice M Giadresco	Ride of CORPORATE QUEST
Mr P Giadresco	Host Trainer of Apprentice M Giadresco

After all riders gave evidence and the patrol films had been viewed the Chairman of the inquiry announced a charge in these terms:

*'Mr Arnold at this stage of the Inquiry the Stewards believe that you should be charged with careless riding under Australian Rule of Racing 137(a). That rule reads "any rider may be punished if in the opinion of the Stewards he is guilty of careless, improper, incompetent or foul riding". Now the Stewards today believe that you should be charged with careless riding under that particular rule. The nature of the charge being that passing the 400 metres you allowed your mount MR. KRAKAJAC to shift out and bump the hindquarters of CORPORATE QUEST, ridden by Matthew Giadresco, with that mare becoming unbalanced and bumping PLATINUM, ridden by Jason Brown. PLATINUM then became unbalanced and shifted inwards causing CORPORATE QUEST to blunder from that gelding's hind legs and fall dislodging Apprentice Giadresco. So that's what we've charged you with today Mr Arnold. Do you understand what you've been charged with?'*

The appellant acknowledged that he understood the charge and pleaded not guilty to it. After hearing further evidence the Stewards adjourned to consider the charge. A guilty finding was subsequently pronounced as follows:

*'The Stewards have discussed this at length and we have the following to say. Prior to the fall we believe that you've allowed your mount to shift out and make substantial contact with CORPORATE QUEST. This we believe initiated the incident and caused CORPORATE QUEST to bump PLATINUM. PLATINUM was then shifted inwards slightly with CORPORATE QUEST blundering and falling. In saying that we don't believe that Jason Brown held Matthew Giadresco tight. He was giving him, we believe ample room at that time. We believe that Apprentice Giadresco's room has been taken. We attribute that to your mount shifting outwards and making that initial contact with Giadresco's horse, putting him out onto Mr Brown. We believe that is evident from the film and then there's been a slight shift due to that contact from Giadresco onto Brown which has turned Brown's horse in and resulting in Apprentice Giadresco getting onto Mr Brown's heels and we believe that has caused the blunder and his horse to fall. In regard to the calling we believe prior to the incident there was enough room for Apprentice Giadresco. It has happened quite quickly, but at the same time he's not obliged to call, the onus is on you to make sure you are fully clear, so we would say in regards to the lack of calling from other riders around you and we don't believe that STATOFIRE ridden by Sheryl Cheam has influenced your movement out, so for all those reasons we find you guilty of the charge'*

After hearing submissions from Mr Arnold in respect of penalty the Chairman announced the Stewards' decision in these terms:

*'Mr Arnold, we don't have the resources to check out your record, but we take on board what you say that you've got, you've got a good record, at least a fair record, so that's the way we'll approach it. A couple of things that we want to say to you. The consequences of this particular incident, obviously they're at the upper end of the scale. We've had a horse fall that was subsequently euthanased and we had a rider fall, luckily Matthew Giadresco apparently hasn't suffered any major injuries, he just had some bruising to his right arm, but potentially there's obviously potential for far greater injuries than what we saw today, so that, this is something that has*

*weighed heavily on our minds. Now the level of carelessness is also something that we looked at and we believe that it's probably in the low to medium range. We don't believe that you should have been angling out for a run at that stage of the race, then again it hasn't been a big movement outwards. We believe that if we saw you shift a substantial amount of ground, causing another horse to fall, we could probably impose a suspension of six weeks or greater but given that it was only a relatively small shift, but enough to be the catalyst to the incident, we believe that a penalty of 28 days suspension should be imposed. Alright, now that covers five provincial meetings, four Saturday meetings and two mid-weeks, so I suppose it's six mid-weeks, six metropolitan meetings and four provincial. So that runs effectively from midnight tonight through until the 23rd of March 2003, that's 28 days. Like I said, five, nine, eleven, eleven race meetings it is. We believe that is appropriate for what we saw today, the style of your riding and nature of your riding and the consequences to it.'*

Mr Arnold lodged a Notice of Appeal on 24 February 2003 and sought a suspension of operation of the penalty. He was granted a stay of proceedings until midnight on 12 March 2003 or as otherwise ordered.

The grounds of appeal are:

*'As to the careless riding charge I believe I am not guilty as I did not move ground and cause interference to any horse. For the penalty I believe it to be harsh as it is only a careless riding charge on the low scale. I think my record for the above is very good.'*

Senior counsel for Mr Arnold argued the Stewards did not address the correct question under the Rules, namely the issue of carelessness, and even if they did they did not consider it to the correct standard. It was submitted there must be some evidence addressing the quality of the ride demonstrating a transgression of the standard required by the Rules. Nothing in the reasons considered the quality of the ride. The fact that the horse shifted was not disputed. Rather the issue was whether the shift itself amounted to carelessness, and carelessness to the requisite standard. The Stewards only articulated the fact that the horse shifted and failed to address the quality of the ride in that set of circumstances. The shift could have been accidental or unavoidable.

Mr Percy QC relied on the reasons in *Knuckey* (Appeal 393). The charge there was somewhat different and the findings distinguishable as well. Unlike the present case in *Knuckey* the Stewards found there were other factors in the incident. *Harvey* (Appeal 332) was also relied on as well. Again the circumstances were different because the Tribunal found the Stewards in that case were uncertain as to what transpired at the relevant time in the race.

For the Stewards it was argued the only culpable thing that was the catalyst for the fall occurring was the rider's failure to prevent his horse from moving out at a time in the race when MR KRAKAJAC was not clear for him to do so. I am persuaded by the argument for the Stewards and am not satisfied there has been demonstrated any error on the Stewards' part in convicting Mr Arnold.

As to penalty senior counsel argued the consequences weighed too heavily that 28 days was close to the top of the range. The record was not checked out. It was submitted Mr Arnold should have been given the benefit of the doubt and been treated as exemplary.

The incident was a serious one. Not only did apprentice Giadresco fall but his mount had to be euthanased. Taking into account the seriousness of the incident, the circumstances of it occurring and other examples of penalties for breaches of the same Rule I am not persuaded these Stewards were in error in imposing the penalty which they did.

*Dan Mossenson*

DAN MOSSENSON, CHAIRPERSON

