

DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: KRISTIAN MICHAEL HAWKINS
APPLICATION NO: A30/08/590
PANEL: MR P HOGAN (PRESIDING MEMBER)
DATE OF HEARING: 16 APRIL 2003
DATE OF DETERMINATION: 16 APRIL 2003

IN THE MATTER OF an appeal by Kristian Michael Hawkins against the determination made by the Stewards of the Western Australian Turf Club on 5 April 2003 imposing 18 days suspension for breach of Rule 137(a) of the Australian Rules of Racing.

Mr B A Ryan was granted leave to appear for the Appellant.

Mr J A Zucal appeared for the Stewards of the Western Australian Turf Club.

INTRODUCTION

This is an appeal against both conviction and penalty.

Following the running of Race 4, The Perth Stakes over 1100 metres at Ascot on 5 April 2003 the Stewards opened an inquiry into the reason for DIFFRACTION receiving interference near the 400 metres.

Called to the inquiry were:

K Hawkins	Rider of MYSTIC FORCE
D Staeck	Rider of DIFFRACTION
K Forrester	Rider of SIESTA BAY
J Price	Trainer of MYSTIC FORCE
Dr J C Medd	Veterinary Steward

After hearing evidence from the riders and viewing the patrol films, the Chairman of the inquiry announced a charge against the Appellant in these terms:

"In relation to this incident in Race 4, at this stage of the Inquiry the Stewards have decided to charge you under Australian Rule of Racing 137(a), and I'll read that rule to you.

*Any rider may be punished if in the opinion of the Stewards
a) he is guilty of careless, improper, incompetent or foul riding.*

Now you are charged under that rule with careless riding. The careless riding being that in the opinion of the Stewards near the 400 metre mark, when riding MYSTIC FORCE in Race 4, you have shifted your mount out bumping SIESTA BAY (K. Forrester) on two occasions, with SIESTA BAY then shifting out bumping heavily with DIFFRACTION (D. Staeck) with that horse veering outwards."

Mr Hawkins pleaded not guilty.

He then requested that the trainer of MYSTIC FORCE and the course veterinarian be called to the inquiry. After the Appellant questioned both Mr Price and Dr Medd, the Stewards adjourned to consider the charge.

The Chairman in announcing a guilty finding stated:

"Mr Hawkins in relation to this matter, we've considered the charge and all that you have placed before us. We've also considered the evidence of Mr Price and Dr Medd. From that evidence it is clear to us that MYSTIC FORCE was not shin sore. Also Mr Price was satisfied with the tractability of MYSTIC FORCE and was satisfied for MYSTIC FORCE to start today. But he qualifies that statement by saying that his preference is for his horses to trial more than once. MYSTIC FORCE trialed once and was passed by the Stewards at trials. In relation to this incident we are of the opinion that you had a reasonable option of steadying MYSTIC FORCE back. In our opinion you have elected to shift your mount out initiating this interference. We believe this was careless and as such we find you guilty as charged."

The Chairman announced the penalty in these terms:

"Mr Hawkins in relation to penalty we have considered all what you've placed before us. We have taken into account your record which shows that on the thirteenth of October, 02 you received a fifteen day suspension and on the thirteenth of the sixth 02 you received a seventeen day suspension. So within the last twelve months, if I could refer to it as that, you've had two suspensions for careless riding. We've taken into account the circumstances and the degree of carelessness in this matter. And whilst this shift wasn't a great shift, it was significant in that you caused interference to two horses and severe interference to one of those horses. You have initiated the interference. Last week I did speak to all riders and put riders on notice that we were not satisfied with the standard of riding and that we would be increasing penalties. We have considered the matter of suspension and we believe you should be suspended from riding in races. We initially settled on a date, on a time of twenty days, however that would take you out for four Saturdays, four Provincials and one Country meeting. Into that takes the Oaks the Karrakatta and the Derby. We believe that would be too severe and under these circumstances a suspension of eighteen days from midnight the sixth April, until midnight the twenty fourth of April, 2003 to be appropriate. You have the right of appeal against this decision if you so desire Mr Hawkins. Thank you."

Mr Hawkins lodged his Notice of Appeal on 8 April 2003 and was granted a stay of proceedings until midnight on Wednesday, 16 April 2003 or as otherwise ordered.

REASONS FOR DECISION

I heard this appeal on 16 April 2003, and determined it at the same time. These are my reasons given at the time, with some editing for reasons of syntax and grammar.

“The Appellant here was one of the riders in Race 4 at Ascot on 5 April 2003. Stewards observed an incident and opened an inquiry.

Stewards were watching from the main Stewards' tower and noticed that Mr Staeck, who was on DIFFRACTION, appeared to receive some interference at the 400 metres and speared off. DIFFRACTION then raced extremely wide after that interference. The Stewards asked Mr Staeck about it and he said that the interference put him out of the race. They then asked Mr Forrester about it. Mr Forrester was the rider of SIESTA BAY which had bumped DIFFRACTION quite severely. Mr Forrester said he didn't know what happened but he did say that Kristian Hawkins' horse had come straight out, that's the way he put it. So working backwards, the Stewards then had reason to ask Jockey Hawkins, who is the Appellant here, as to why his horse came out. The Appellant said that his horse 'sort of changed strides' and wanted to run out onto Mr Forrester.

The Stewards then watched the films and came to a different conclusion, which they expressed at page 6 over to page 7 of the transcript. They put it to the Appellant in deciding to charge him that he had shifted his mount out. That is, he had moved MYSTIC FORCE out, rather than accepting the initial explanation that MYSTIC FORCE had changed stride and for that reason shifted out. Mr Hawkins maintained his version of events. The Stewards, in finding Mr Hawkins guilty, again came back to express that in their opinion, the Appellant had elected to shift MYSTIC FORCE out. So in that sense, they rejected the Appellant's explanation that it was a changing of stride that caused MYSTIC FORCE to shift out.

The Appellant's advocate here has taken me to the two films available of the race and put to me that the films don't support the deliberateness of the shifting out. I don't find that to be the case. In some sense they do, although it is obvious that they are not the clearest films I have ever seen. Mr Zucal has precisely and accurately taken me to the shifting out and pointed out what he says are two bumps. MYSTIC FORCE'S head is being turned outwards at the same time that he is trying to take the run, which is made available to him by SIESTA BAY shifting out and providing a gap. As Mr Zucal says, MYSTIC FORCE was entitled to try and take that gap but not to shift out to the degree that it did, resulting in the two bumps to SIESTA BAY, and the ultimate interference to DIFFRACTION. So Mr Zucal has accurately and concisely taken me to the things which he says supports the Stewards' opinion.

There is also the fact that the Stewards observed the incident. Observation shouldn't be undervalued simply because there is a video film of the race. The Stewards have been observing races for a long time, even before there were video films. Their observations count for as much as the video film itself. They are in a position to know the horses that are racing in the particular race. They know all the riders, and they know such things such as the expected times and the favoured runners. They know all of these things and those bear upon their observations. Their observations are more than what they simply see. Their observations are the interpretations of what they see arising from all their knowledge of the upcoming race. So their observations themselves aren't to be undervalued, and particularly in a case such as this where there is not the best video film available.

So it seems to me that from the Stewards' observations, and from the video film that supports them (it certainly doesn't detract from those observations), that there was evidence on which they could properly have decided that the Appellant's outwards movement was his decision, and a deliberate move on his part, rather than simply his horse changing stride.

What has been said often before is that this Tribunal will not overturn a decision of the Stewards unless it is so unreasonable that no reasonable Stewards could have come to that decision. That is certainly the case here as demonstrated by the transcript of the inquiry, the Stewards' observations as recorded in the transcript, and by the support given by the films of the incident.

For those reasons, I do not find that this is a case in which the Stewards' decision should be overturned. The appeal as to conviction is dismissed.

As to the appeal against penalty, it is a matter of discretion for the Stewards what penalty to impose. Their decision will only be overturned if there is any error of fact, or the penalty is so far outside the range as to demonstrate that there is an error. This penalty is certainly not asserted to be so far outside that range. I have looked at the matters that the Stewards have taken into account in so far as they could, and nothing has been put forward on behalf of the Appellant to demonstrate any error of fact.

For those reasons, the appeal against penalty is also dismissed.

The operation of suspension of the penalty automatically ceases."



PATRICK HOGAN, PRESIDING MEMBER

