

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

APPELLANT: CLINT KENNETH HARVEY
APPLICATION NO: A30/08/670
PANEL: MR D MOSSENSON (CHAIRPERSON)
DATE OF HEARING: 2 APRIL 2007
DATE OF DETERMINATION: 2 APRIL 2007

IN THE MATTER OF an appeal by Clint Kenneth Harvey against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 21 March 2007 imposing 23 day suspension for breach of Rule 137(a) of the Australian Rules of Racing.

Mr C Harvey appeared in person.

Mr B Lewis appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

BACKGROUND

Clint Kenneth Harvey appealed against the penalty of 23 days suspension imposed upon him by the Racing & Wagering Western Australia Stewards of Thoroughbred Racing on 21 March 2007 for a breach of Rule 137(a) of the Australian Rules of Racing. The grounds of appeal read as follows:-

"Would like the opportunity to resume riding at Kalgoorlie on Thursday, April 12, therefore reducing the penalty to 17 days. Currently, the suspension prevents me

from riding at 14 meetings (four metropolitan and 10 country) and I feel such a penalty is excessive considering where I'm at in my career. I'm only in the early stages of my comeback following a fall at York in October 2005, a setback that put me out of the saddle for 18 months and I'm disappointed that the suspension was more severe than other jockeys have received recently. Considering my desire to make a successful comeback, I am committed to riding at all provincial meetings, including Kalgoorlie, where I was the only metropolitan jockey to ride at trials leading into the opening meeting of the season. Because of that, I feel the existing ban is akin to a 33 day, not 23-day suspension."

Mr Harvey was charged with a breach of Australian Racing Rule 137(a) on the basis that he rode carelessly by allowing his mount to shift outwards approaching the 200 metre mark causing another horse to be checked and bump with a further horse. Mr Harvey pleaded guilty to the charge. Before adjourning to determine the matter the Stewards observed that: *'Last week ..., we did talk to you only last Saturday about pushing for runs where there wasn't room, so you know this is very very similar, almost identical and it's disappointing that you're back in here.'* The Stewards then have set out their findings on penalty in the following terms:

"...we see this as the mid to high level of carelessness in that you know you tried to push for a run that, that just wasn't there. You know that, coupled with the fact that the warning that you had on Saturday for exactly the same type of thing places that in that category so it's no low degree of carelessness is what we're saying. We also look at the interference that resulted from your actions and Jess Valas got quite significantly checked and made contact with Moloney to the outside, so again that's mid, mid to approaching the upper ranges of interference. So they're two factors that certainly aggravated the whole matter. Looking at that with your record you had about a hundred and eight race rides, but you have been out injured for some time and as we made you aware that we did address all riders on the tenth of February and told them because of a number of racing incidents and because of what we saw as poor riding through January and February that we were looking at increasing penalties and that fines would be imposed. Looking at that with your pleas of guilty we believe in this circumstance that a suspension of twenty three days to be appropriate."

In presenting his argument at the appeal, Mr Harvey explained that he had been out of riding for a considerable time following an accident. The ride in question took place on his second week back. Mr Harvey commented that the rail at Ascot had been moved out by 15 metres

since he had previously ridden which meant less room was available where the incident occurred.

Mr Harvey argued that in reaching the penalty and considering its consequences the Stewards failed to take into account all of the meetings which he would be missing including the country meetings. Unlike many other jockeys he was riding in all of the country races. It was further submitted that other jockeys had received less severe penalties than he and that 14 – 16 days would have been appropriate. Should a 17 day suspension been imposed and he would be able to ride on Thursday week which mean that he could participate in three meetings otherwise denied to him. I was referred to the penalties imposed for the offences committed by a range of other riders.

Mr Lewis in response submitted that due to Mr Harvey's poor riding a severe check occurred which was regarded by the Stewards to be mid to high in the range of carelessness. Two horses were affected, one having been severely checked and the other bumped causing the saddle to shift. This was not the case of a momentary lapse. Rather it was a forcible action involving taking a risk which was what the Stewards were trying to remove from the racing scene. Mr Harvey should have been aware of the tough attitude being adopted by the Stewards in the recent period. Indeed, four days before the incident occurred he had been spoken to in relation to the action of pushing for runs and told to ride more carefully. I was told, as a concession, the Stewards elected not to fine Mr Harvey. As to the range of penalties they varied considerably depending on the severity of each matter. The Stewards were fully aware of the implications to Mr Harvey of imposing the suspension for the number of days which they imposed. The penalty here was within the range of seven to ten days and up to two months with \$2,000 being an extreme case for Glenn Smith which came before the tribunal.

REASONS

Whilst I felt somewhat sympathetic to Mr Harvey in view of his absence from racing and his dedication since resuming by attending country meetings in addition to city commitments, I was not persuaded that the Stewards had fallen into any error in reaching the penalty which they did. After weighing both arguments I was not persuaded that this was a case where it was appropriate to interfere with the penalty. In reaching that conclusion I was particularly conscious of the following factors:

1. The seriousness of the offence, bearing in mind the quality of the ride and its consequences on others.

2. The way in which the Stewards went about assessing the evidence and drawing their conclusions.
3. The desire of the Stewards to bring about an improvement in the standards of riding and to minimise the risk to jockeys and their charges and the fact that Mr Harvey had been warned to note more carefully less than a week before the incident.
4. The range of penalties previously imposed.

I was satisfied the Stewards had quite properly exercised their discretion in the matter and had not fallen into any error.



A handwritten signature in cursive script, appearing to read "Dan Mossenson".

DAN MOSSENSON, CHAIRPERSON