

REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: Vance Anton Stampalia

APPLICATION NO: A30/08/677

PANEL: MR D MOSSENSON
(CHAIRPERSON)

DATE OF HEARING: 15 November 2007

DATE OF DETERMINATION: 15 November 2007

IN THE MATTER OF an appeal by Vance Anton Stampalia against the determination made by the Racing and Wagering Western Australia Stewards of Harness Racing on 31 October 2007, imposing a 28 day suspension for breach of Rule 168(1) of Racing and Wagering Western Australia Rules of Harness Racing.

Mr V A Stampalia represented himself.

Mr C J Coady appeared for Racing and Wagering Western Australia Stewards of Harness Racing.

BACKGROUND

Mr V A Stampalia, driver of KENMOR RIVER, appealed against the penalty of a 28 day suspension imposed on him for breach of Racing & Wagering Western Australia (RWVA) Rule 168(1) of Harness Racing for careless driving in Race 4 at Gloucester Park on 27 October 2007. Mr Stampalia dropped his rear side rein in the home straight on the final occasion. This caused him to shift down the track in the run to the finish and most probably cost him the race.

The Stewards, having received a plea of guilty from Mr Stampalia following a very short hearing into the matter, refrained from continuing the proceedings and deciding the question of penalty. Rather, as the Chairman of the inquiry stated, the Stewards resolved:

'...to adjourn the matter and have a think about it over the next few days. It is uncharted waters as they say and we want to come up with

a penalty if we do in deed (sic) come up with a penalty that we think is fair but also in the best interests of harness Racing cause I guess it could be said that maybe it did cost you the race and maybe you're lucky the horse didn't do a left hand turn and knock over half the field. I mean there's a lot of ifs and buts, but these are all things we've got to take into account and come up with what we thinks the appropriate penalty...'

At the resumption of the proceedings four days later Mr Stampalia briefly argued he had been charged under the wrong rule. Mr Stampalia told the Stewards he should have been charged with the lesser offence of breaching RWWA Rule 162(1)(q), namely, having lost or dropped part of his '*... attire, gear or equipment during a race.*' He argued a rein is classified as part of his driving gear.

As the hearing unfolded the Stewards informed Mr Stampalia that some 15 years before, Ross Buswell, who was charged with a similar offence as Mr Stampalia was suspended for 2 metropolitan racing meetings, the equivalent of 14 days. The Stewards also advised that contact had been made with Stewards in other states regarding penalty '*... and their opinions were everything from \$500 to 6 weeks suspension.*' After hearing further comments from Mr Stampalia the Stewards retired to discuss the matter. When they reconvened they advised Mr Stampalia the outcome on penalty in these terms:

'... the Stewards have had a good hard long think about this as we've established it is uncharted waters if you like, but the Stewards feel the appropriate penalty on this occasion is to suspend your licence for a period of 28 days ...'

THE APPEAL

Mr Stampalia appealed against the penalty. The grounds of appeal are as follows:

'...the penalty is overly harsh in that it fails to take into account:

- 1 *the weather conditions on the night;*
- 2 *that I have been driving for approximately 15 years, and in that time, I have only been suspended on about 6 occasions;*
- 3 *that 28 days is a considerable period of time considering the trivial nature of the offence and the circumstances leading to the offence;*
- 4 *whether any horse or driver was placed at risk;*
- 5 *the fact that I average around 30 to 40 drives a month; and*
- 6 *the fact that the owners for whom I drive will be inconvenienced.'*

Mr Stampalia represented himself at the appeal hearing. In support of his case he filed an affidavit and also presented written submissions at the hearing of the appeal. In the course of arguing the matter Mr Stampalia again addressed the issue which he had raised at the Stewards'

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As the hearing unfolded the Stewards informed Mr Stampalia that some 15 years before, Ross Buswell, who was charged with a similar offence as Mr Stampalia was suspended for 2 metropolitan racing meetings, the equivalent of 14 days. The Stewards also advised that contact had been made with Stewards in other states regarding penalty '*... and their opinions were everything from \$500 to 6 weeks suspension.*' After hearing further comments from Mr Stampalia the Stewards retired to discuss the matter. When they reconvened they advised Mr Stampalia the outcome on penalty in these terms:

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inquiry that the wrong rule had been invoked. I was satisfied that even if RWWA Rule 162(1)(q) potentially could be said to apply to the incident, which seemed unlikely but I did not have to decide the issue, the Stewards were entitled to charge Mr Stampalia for a breach of RWWA Rule 168(1) as they did. The charge under Rule 168(1) was properly laid. Mr Stampalia had pleaded guilty to that charge. The Stewards were then required to determine what penalty should apply to the offence in question. In those circumstances the line of argument that the wrong rule was invoked had no relevance to Mr Stampalia's appeal against the severity of sentence for the breach of Rule 168(1).

As has already been made clear, the Stewards were not under time constraints or any pressure to reach a conclusion. Their proceedings were not required to be dealt with and finalised in a hurry during the course of a race meeting. On this occasion the Stewards had plenty of time to consider the matter and formulate their reasons. They adjourned for some days rather than deliver the decision following completion of the inquiry hearing into the matter. Despite that, in handing down their sentence the Stewards failed to give Mr Stampalia any explanation or reasons for imposing the penalty which they arrived at other than simply to assert it was thought the 28 day suspension was appropriate. The six factors raised by the appellant in the appeal are all relevant considerations to penalty and potentially could have been mitigating factors. The Stewards, in imposing the penalty, made no reference in their pronouncement to any of those factors. However, despite this shortcoming it is important to record that in the course of his reply to the Stewards' submissions at the appeal hearing, Mr Stampalia did acknowledge in a response to a question from me, that the Stewards were *'well aware and would be conscious of all of the relevant factors. The issue from the appellant's perspective was the failure to state that the various mitigating circumstances were taken into account.'* It is apparent from this answer the appellant had not argued the 6 factors had been ignored.

The RWWA Rules of Harness Racing do not oblige Stewards to go into any particular detail in giving their reasons and indeed do not specify any reasons must be given. However, an industry participant's livelihood is usually at stake when a trainer or jockey is called on to respond to a charge laid by the Stewards. There is a right of appeal from a decision of the Stewards both as to the conviction and penalty (s13 Racing Penalties (Appeals) Act). Rule 256 which deals with penalties gives the Stewards a very wide discretion. As a consequence of these various factors, as has been stated in numerous previous appeals, it is important that the thinking process or line of reasoning of the decision maker be explained. The giving of reasons allows the affected party to comprehend the basis for the decision and to then be in a position to evaluate the appropriateness of pursuing a challenge by way of appeal to the Tribunal. Normally, by enunciating reasons it helps assist the Tribunal to evaluate the decision. This case, however, is somewhat unusual in that regard. The fact that the Stewards gave no reasons, largely becomes irrelevant in light of Mr Stampalia's concession that the Stewards not only knew of all of the factual considerations which the appellant had relied on in the appeal but also would have been conscious of them. In other words in this appeal it could not be said the Stewards erred because relevant facts had been ignored.

Based on what I viewed of the incident from the racing film and bearing in mind all of the other evidence of the incident, it was quiet clear that Mr Stampalia's careless riding could readily be held to be a serious breach of Rules which potentially affected the outcome of the race and could have had disastrous consequences for other participants. An appropriate punishment by way of a suspension was called for. How long a penalty should have been imposed was a matter to be determined at the discretion of the Stewards. Nothing of substance was said in the course of the appeal which suggested the Stewards were in error in arriving at the 28 day suspension. Indeed

from the limited experience of this type of offence and information sourced from other jurisdictions I was satisfied the penalty was within the range. No error was demonstrated to have been made by the Stewards despite the lack of reasons. The decision could not be said to be unreasonable or plainly unjust. I did not infer there had been a failure to properly exercise the discretion. Whether I would have reached the same result or taken a different course had I been deciding the matter at first instance was a consideration which, without more, would have clearly been insufficient for me to alter the decision. (*House v The King* (1036) 55 CLR 499 at 504-5).

For these reasons I dismissed the appeal.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

