

**THE RACING PENALTIES APPEAL TRIBUNAL**

**REASONS FOR DETERMINATION**

<b><u>APPELLANT:</u></b>	<b>ANDREW STEVEN HEFFERNAN</b>
<b><u>APPLICATION NO:</u></b>	<b>A30/08/745</b>
<b><u>PANEL:</u></b>	<b>MR J PRIOR</b>
<b><u>DATE OF HEARING:</u></b>	<b>31 MAY 2012</b>
<b><u>DATE OF DETERMINATION:</u></b>	<b>13 JUNE 2012</b>

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**IN THE MATTER OF** an appeal by Mr Andrew Steven HEFFERNAN against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 16 May 2012 imposing 6 weeks suspension for breach of Rule 83(a) of the Australian Rules of Thoroughbred Racing.

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Mr A S Heffernan represented himself.

Mr D Borovica represented the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

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**BACKGROUND**

This is an appeal against the severity of the penalty imposed by the Stewards of RWWA in relation to an incident that occurred in the Jockeys' Room following the running of Race 6 at the Kalgoorlie-Boulder Racing Club on 13 May 2012. A Stewards' Inquiry took place after the meeting on 13 May 2012 as Riding Master Mr Millington had advised the Stewards that there had been an altercation in the Jockeys' Room between the appellant, a licensed jockey and an apprentice jockey, Ned Coldbeck.

A number of apprentice jockeys and jockeys gave evidence at the Inquiry on 13 May 2012 as to what they saw or heard in relation to the alleged altercation in the Jockeys' Room.

The appellant did not dispute that he was involved in an altercation with Apprentice Coldbeck, but denied that he threw a punch at Apprentice Coldbeck.

The Stewards' Inquiry was not completed on 13 May 2012 and the inquiry was re-convened on 16 May 2012 at the Stewards' Rooms at Ascot Racecourse and the appellant participated from Sydney by telephone link up. The appellant, at that Stewards' Inquiry, maintained his position in his evidence that he had not thrown a punch at Apprentice Coldbeck.

At the Stewards' Inquiry on 16 May 2012, the Stewards read Rule 83(a) of the Rules of Thoroughbred Racing to the appellant and charged him in the following terms:

*"At Kalgoorlie on the Sunday, 13 May after Race 6 you misconducted yourself in the Jockeys' Room by pushing and then punching the apprentice Coldbeck in the face".*

The appellant advised, after the charge was read by the Chairman of the Stewards, that he denied punching Apprentice Coldbeck and as a result, he was pleading not guilty to the charge.

The Stewards briefly adjourned the Inquiry to consider all the evidence they had heard in the matter and upon resumption found the appellant guilty as charged.

The Stewards then heard some submissions from the appellant about his personal circumstances in mitigation of the penalty.

The Stewards briefly adjourned the Inquiry and upon resumption the Chairman gave the following reasons for imposing the penalty:

*"When considering penalty and we have considered the penalty and when considering penalty, we believe a licensed person and a senior jockey as yourself ...*

*... should not, senior jockey as yourself, should not engage in fighting anywhere on a racecourse ...*

*... and should show leadership to their junior counterparts and this incident although not in view of the public the industry became aware of it and no doubt damaged by it. Now this offence, in cases similar, has attracted suspensions, and this is quite a serious offence under the rules. We have taken into account, you were invariably provoked.*

*... by apprentice Coldbeck, we also take into account it was your first offence. You haven't been dealt with under, in, under this rule or you haven't been dealt with, with this type of thing before, in your riding. We understand your financial position, however we believe a correct penalty to be*

*six weeks suspension from race riding which would start midnight on 16 May 2012 and finish on 27 June 2012”.*

## **THE APPEAL**

Notwithstanding the grounds of the appeal, as stated on the Appeal Notice filed by the appellant on 13 May 2012, which were consistent with the appellant appealing his conviction, the appellant, at the hearing of this appeal before me, advised that he was only appealing against the penalty he received. The appellant advised he was also not appealing the type of penalty imposed by the Stewards, only the length of the suspension.

The appellant submitted that he considered in the factual circumstances of his case a 3 week suspension was an appropriate penalty, with a further 3 week suspension being suspended for 12 or 24 months for good behaviour, or in the alternative, a \$1,000.00 fine in lieu of any further suspended suspension period.

The appellant had applied for a stay of his penalty and the application for the stay was refused by the Chairman of this Tribunal on 17 May 2012.

Given the submissions made by the appellant at the hearing, referred to above, the only issues at large in this appeal were the following:

- (i) Did the Stewards make any error in imposing a penalty of 6 weeks suspension?
- (ii) Was the Stewards' penalty of 6 weeks suspension manifestly excessive in the circumstances of the appellant's case? (See Harvey Appeal 733 at ground 5 as to the concept of manifestly excessive penalties).

As to the first issue, a perusal of the transcript of the two Inquiries and in particular the remarks made by the Chairman of the Stewards when imposing penalty, indicates that all the matters that the appellant raised at the hearing of the appeal, in particular his previous good record, his financial situation and the fact that he would receive no income whilst suspended were all matters raised by the appellant before the Stewards at the Inquiry on 16 May 2012 and were clearly taken into account by the Stewards in imposing the penalty of a 6 week suspension.

I am therefore unable to find any error by the Stewards in the process they followed and the matters they took into account in imposing the penalty.

I note that the Stewards did take into account that the appellant was provoked by the apprentice Coldbeck. This was a factor which could reduce the ultimate penalty imposed.

The Stewards could not reduce the penalty for the appellant's plea of guilty, as the appellant entered a plea of not guilty and maintained that he was innocent of the offence throughout both Stewards' Inquiries.

In relation to the issue as to whether the 6 week length of the suspension was manifestly excessive in the circumstances, I am mindful of the benefit the Stewards had in this matter of hearing the evidence from all the witnesses and in particular, the appellant at first instance.

It is difficult to establish a clear range of penalties that exist for breach of this rule and in particular where the misconduct involves assaults between licensed persons. Often, the factual circumstances of these type of cases vary significantly, both with respect to the facts of the assault offence and the personal circumstances of the offender.

At the hearing before me, both the appellant and the representative of the Stewards referred to Staeck (Appeal 555). There are some similarities in facts between Staeck and this matter. Mr Staeck received a penalty of 8 weeks suspension for breach of the same rule from the stewards but this penalty was halved following a successful appeal to this Tribunal. Mr Staeck pleaded guilty at the Stewards Inquiry. This is a significant distinguishing factor from the appellant's case. In those circumstances, when considering that appeal in isolation I am unable to find that the penalty of a 6 week suspension imposed by the Stewards on the appellant was so far outside any established range for offences of this nature to be manifestly excessive.

In all of the above circumstances, I am satisfied the Stewards did not err in imposing a penalty of 6 weeks suspension in length, nor am I satisfied that the length of the 6 weeks suspension was manifestly excessive in the circumstances of the appellant's case.

For the above reasons, I would dismiss the appeal.

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**JOHN PRIOR, MEMBER**

