

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

**APPLICANT:**                      **STEPHEN SHEEHY**

**APPLICATION NO:**               **A30/08/686**

**PANEL:**                              **MR D MOSSENSON (CHAIRPERSON)**

**DATE OF HEARING:**              **10 JUNE 2008**

**DATE OF DETERMINATION:** **10 JUNE 2008**

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**IN THE MATTER OF** an application for leave to appeal by Stephen Sheehy against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 20 April 2008, imposing a fine of \$150 for breach of Rule 137(c) of the Australian Rules of Harness Racing.

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Mr T Percy QC appeared for Mr S Sheehy.

Mr R J Davies QC appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

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**BACKGROUND**

Application was made for leave to appeal against the determination of the Stewards arising out of an inquiry held at Narrogin Race Course on 20 April 2008 regarding an incident which occurred at Albany Racing Club on 15 April 2008 in Race 6. Just short of the winning post during the race Stephen Sheehy, who was riding SAINTSTREET, made a celebratory gesture using his whip. The explanation offered by Mr Sheehy to the Stewards at the inquiry for having brandished his whip was that his action was taken to acknowledge

the Albany Racecourse race caller who was making his last call after some 20 years of service at the course.

The whip gesturing was not the only aspect of Mr Sheehy's ride that needed to be considered in dealing with the application. Another riding incident had occurred earlier in the same race. As a consequence of the earlier incident Mr Sheehy had been called to a Steward's inquiry following the running of the race. The purpose of this post race inquiry was to investigate Mr Sheehy having moved his mount outwards when insufficiently clear of another horse causing that other horse to be checked and bump a third horse. This initial inquiry was conducted before Chief Steward Brad Lewis, Stipendiary Steward D Borovica and Assistant to Stewards R Perry together with an observer present. No reference was made by the Stewards to the whip incident in the post race inquiry. At the conclusion of their deliberations, after having found Mr Sheehy guilty of careless riding and having imposed a suspension and a fine, Mr Sheehy was told by the Chairman of the post race inquiry '*.. that is the end of the inquiry.*' On 18 April 2008 Mr Sheehy appealed to the Tribunal (Appeal 684) against the riding charge. The appeal was heard on 20 May 2008 at the conclusion of which I reduced both the length of the suspension and the amount of the fine which the Stewards had imposed.

The period for lodging an appeal is 14 days from the date of a determination (s13(1) of the *Racing Penalties (Appeals) Act 1990*). Because the appeal against the whip brandishing was lodged out of time it was necessary to apply for leave to appeal.

As senior counsel's summary of argument in support of the application explains, following formal termination of the Albany inquiry on 15 April 2008 the appellant had sought legal advice and then lodged his appeal against the outcome of the careless riding. Subsequent to that again the Stewards on 20 April 2008 at Narrogin dealt with the whip transgression. Senior counsel acting for Mr Sheehy had assumed the further penalty would be appealable under the appeal notice which had already been lodged on 18 April 2008. However, the Tribunal registry did not accept the original appeal as having covered both matters and required a separate lodgement fee to be paid. As senior counsel for the Mr Sheehy summarised matters:

*"Time expired on the 5<sup>th</sup> May 2008. There was a long weekend in between and four non-week days. For part of that time the appellant's legal advisor was interstate. At worst the appeal is 9 days out of time or four working days; having been lodged on the 15<sup>th</sup> May 2008. Application for leave was lodged on the 19<sup>th</sup> May 2008 after previous oral advice that it wasn't required."*

It was argued that any error or inadvertence on the part of a legal advisor should not prejudice Mr Sheehy. Further, that the matters for determination on the prospective appeal were said to be serious issues, namely:

- (a) *Were the Stewards functus officio?*
- (b) *Was the different panel that dealt with the matter on the 20<sup>th</sup> April 2008 properly constituted?*
- (c) *Was the second hearing, being after the lodgement of the first appeal an abuse of process?*

- (d) *What was the effect of the failure to take into account the Appellant's financial circumstances and the circumstances of the race?*
- (e) *Would a reprimand have been appropriate in all the circumstances of the case?*

After hearing argument from both counsel and accepting some further evidence from both sides including testimony from Mr Lewis as to the circumstances surrounding the manner in which the Stewards proceeded with the appeal hearing in Albany, I was not persuaded to grant leave. I refused the application and undertook to publish reasons later, which I now do.

## **REASONS**

I was not satisfied that the appellant had demonstrated that there was any merit in the argument that the Stewards were *functus officio*. There is nothing in the Rules of Racing to prevent a differently constituted panel of Stewards, properly convened, from conducting a further inquiry subsequent to an original inquiry to investigate and adjudicate on something which has occurred in a race which is a separate and distinct issue from what has already been properly dealt with. Were it otherwise, it would seriously inhibit the overall exercise of the wide powers given to the Stewards under the Rules of Racing. It would not be in the best interests of the orderly administration and control of racing including the conduct of race meetings to curtail inquiries and restrict the composition of Stewards' panels. The Rules do not require the same panel of Stewards to deal with two separate inquiries relating to the same race.

It is easy to state now, with the benefit of hindsight, that it would have been preferable had the Stewards, during the first inquiry following the race, communicated the fact to Mr Sheehy that he potentially faced a further inquiry into the separate incident relating to his misuse of the whip. Had Mr Sheehy been so advised then the situation may well have been diffused. Any uncertainty as to how matters were likely to proceed thereafter may well have been removed. I readily accepted the explanation given that the Stewards were under time constraints to leave Albany Race Club in order to head to the airport to catch their return flight to Perth. They were in no position to carry out further investigations of additional malpractice in the race.

I repeat the Rules do not require the same panel to deal with each separate matter arising out of the same race. For a Steward to be eligible to participate in an inquiry that Steward need not necessarily have been present at the course to view the race in question live. Ideally such attendance in most circumstances would be preferable. However, I see no difficulty in any Steward inquiring into and dealing with a race incident, particularly of the nature of the one in question, who was not an officiating Steward at the actual meeting in question. The Stewards normally do have the opportunity and benefit of studying the video film of each race, as was the case here.

Stewards are men of considerable racing and equine experience who should be capable of evaluating the quality of a rider's performance in a race both live or from a film of the race after hearing from the participants. In any event in this case there can be and indeed was no argument that Mr Sheehy remonstrated with his whip as was alleged in the charge. Such blatant riding misbehaviour can hardly require live observation in order for it to be appropriately investigated and adjudicated upon. There was not said to be and cannot be any prejudice to Mr Sheehy as a consequence of a different panel having investigated this

subsequent, quite separate and distinct incident which occurred in the same race from the matter previously adjudicated upon. The issues involved in the two offences were clearly unrelated. They called for a separate investigation, charge, evidence, evaluation, plea by the accused, deliberation, conviction and consequent penalty.

I see no merit in the argument that the second hearing, merely because it occurred after lodgement of the first appeal, could in any way be construed as an abuse of process. The different panel for the 20 April inquiry was properly constituted. The fact that a lodgement fee had been paid is irrelevant to the veracity of the appellant's position. In any event a second lodgement fee was due and payable in relation to the whip incident (refer to Regulation 4(1) and (2) of the *Racing Penalties Appeals Regulations 1991*).

The failure to take into account the appellant's financial circumstances was a relevant fact which led me to uphold the appeal relating to the first riding incident. In relation to the second incident, being the one the subject of the leave application, I was told that the standard city tariff was \$200 to \$250 fine for a whip incident at a standard city meeting. Consequently, I was not persuaded that the fine which was imposed of \$150 could be said to be so high as to demonstrate an error on the part of the Stewards. The Stewards had acknowledged that they were treating the fine differently from the usual city tariff by stating that the fine was *'... on the very low end of the scale of what we normally fine ...'*

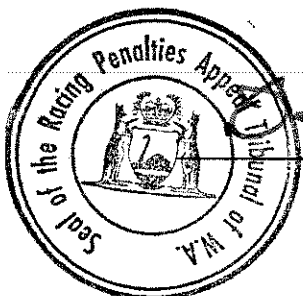
In all the circumstances of this deliberate flaunting of the Rules I was also not persuaded that this was the type of case where a reprimand was an appropriate penalty. Whilst Mr Sheehy advanced a plausible subjective reason or motivation for his whip flourish this explanation could not mitigate to the point of justifying merely a reprimand. The rule in question AR.137 states :

*"Any rider may be punished if, in the opinion of the Stewards,...*

*(c) He makes any celebratory gesture prior to his mount passing the winning post..."*

The Stewards could only have concluded Mr Sheehy did make a celebratory gesture prior to the winning post. This meant they were required to convict and to exercise their discretion as to the penalty to be imposed. I was satisfied there would be no merit in an argument asserting an inappropriate exercise of discretion as the penalty was reasonable in all the circumstances.

The actions taken by the Stewards in Narrogin at the April meeting in conducting an inquiry, convicting and fining Mr Sheehy for this second offence in Race 6 at Albany was entirely appropriate in all the circumstances.



*Dan Mossenson*

**DAN MOSSENSON, CHAIRPERSON**