

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

**APPELLANT:** William Andrew PIKE

**APPLICATION NO:** A30/08/690

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

**DATE OF HEARING:** 4 July 2008

**DATE OF DETERMINATION:** 4 July 2008

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**IN THE MATTER OF an appeal by William Andrew Pike against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 18 June 2008, imposing an 18 day suspension for breach of Rule 137 (a) of the Australian Rules of Thoroughbred Racing.**

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Mr M Millington represented Mr Pike.

Mr RJ Davies QC represented the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

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**BACKGROUND**

Mr W A Pike, who was on the short priced favourite, was called to a Stewards' inquiry following his ride at Belmont on 18 June 2008. At the outset of the inquiry the Chairman of the Stewards' panel explained to both Mr Pike and the other rider who was called, Mr J Brown, the inquiry related to an incident that occurred shortly after straightening until about the 150m mark. The Chairman told Mr Pike it looked as though Mr Pike was:

*"... trying to improve ... position and shift Mr Brown wider on the track, you made contact to his horse on a number of occasions. It seemed that Mr Brown's horse was unbalanced as a result of that. It seemed to me that you were persevering for a run that in my view wasn't quite there, Mr Brown has ridden hard to hold you there which I believe he is entitled to do and you weren't able to shift Mr Brown..."*

After showing the video the Chairman expressed his concern that the film reflected the fact that Mr Pike continued to ride out and make contact with Mr Brown on numerous occasions and seemed to unbalance him. The Chairman went on to state:

*"... you persevered for too long Mr Pike when you've put yourself into a position that wasn't quite there and you've maintained and tried to keep pushing him out that's caused Mr Brown to become unbalanced and be bumped which he shouldn't have to be".*

Later in the inquiry when asked whether he was getting bumped because of pressure from Mr Pike, Mr Brown answered in the affirmative. Mr Brown gave evidence that he was bumped three or four times from the 400 to the 200. As a consequence Mr Pike was charged with careless riding under Australian Racing Rule 137 (a). That Rule specifies that:

*"any rider may be punished if in the opinion of the Stewards he is guilty of careless... riding".*

The particulars of the charge were stated to be:

*"that being from on straightening till the 200m when riding EGYPTIAN SONG you allowed that mare to shift outwards and make contact with OBSTRUCTIVE ridden by Jason Brown on several occasions, causing the mare to be unbalanced through that section of the race".*

Mr Pike pleaded not guilty and asserted it was not a careless action. The inquiry continued for a short while at the end of which the Chairman of Stewards asked Mr Pike if there was anything else before the charge was considered. Although Mr Pike answered no, he proceeded to claim that his competitiveness was good for racing with the publicity generated in view of the fact Mr Harvey was hot on his heels at that stage in the leading rider stakes.

The Stewards found Mr Pike guilty in the following terms:

*"you've persevered for too long and were not in a position to shift outwards without bumping Mr Brown's mount and Mr Brown was holding his position as he was entitled to under these circumstances. We do not believe Mr Brown did anything to contribute to the incident.....The first contact and 14.10.36 is caused when you endeavour to shift out when there was not sufficient room to do so when improving or trying to improve to the outside of Bradley Pamham's mount. Mr Pike in all the circumstances we believe your actions were careless..."*

The Stewards then heard briefly some further evidence relating to penalty after they had clarified that the degree of interference was at the lower end of the scale. They also explained they were dealing only with the bumping and persevering and pushing for a run for too long which did not amount to upper level carelessness.

In considering Mr Pike's record the Stewards acknowledged he had received suspensions in July and September 2007. He had participated in 420 races since and was reprimanded in February 2008 at York. The conclusion reached on penalty was expressed in these terms:

*"In regard to a penalty Mr Pike, we've looked at the degree of carelessness and we see that it's the low to mid scale, your intent was in all of the circumstances out of line because we were seeing that you were trying to improve into a position where we say there wasn't sufficient room and that's caused contact to one other runner, the degree of interference we see on the lower side, its only bumping, unbalancing and forced one horse off its line. Your record shows suspensions in September 07 and before that July 07, you've had about four hundred and twenty race rides since your last suspension, you were reprimanded in February at York and Mr Criddle's aware of that incident and that was for pushing ... for a run where there wasn't, wasn't enough room, so that's something obviously similar to what we're dealing with here, so your records only fair...."*

*Mr Pike, you've had two previous suspensions, you do ride a lot we're aware of that, but you have had two previous suspensions and that reprimand in recent time. Your personal circumstances we've weighed that into the penalty, you're vying for the leading rider with Mr Harvey and we did consider a fine Mr Pike, but we don't believe it to be appropriate in these circumstances, as is a reprimand. We believe a suspension should result as we can't condone the style of riding Mr Pike. In all the circumstances we thought eighteen days to be appropriate, so take your rides through until Saturday, so that's midnight 21<sup>st</sup> June to midnight 9<sup>th</sup> July, so in that period there is two Saturdays, two mid weeks, two Provincials, so although its eighteen days, it's a relatively small number of race meetings involved and you then have six race meetings left at the end of the season."*

## **THE APPEAL**

Mr Pike was given leave to substitute the following grounds of appeal:

### **"Conviction**

*1. The Stewards erred in convicting the Appellant, the conviction not being reasonably open to them on the evidence.*

### **Particulars**

- (a) The Stewards failed to consider or adequately consider the contribution that the riding of Jockey J Brown on Obtrusive had on the incident.*
- (b) The Stewards failed to consider or adequately consider the contribution made by the horse Clarecastle to the incident.*
- (c) The Stewards failed to consider all relevant evidence by not calling Jockey B Pamham to the enquiry.*

*The combination of factors (a) to (c) above made the opinion of the Stewards that the Appellant rode carelessly in all the circumstances of the case unreasonable.*

### **Penalty**

*2. The penalty imposed by the Stewards was manifestly excessive in all the circumstances of the case.*

### **Particulars**

(1) *The factors set out in ground one of the appeal against conviction were strong mitigating factors which were not or not adequately taken into account in the Stewards Assessment of Penalty.*

(2) (a) *The Stewards erred in not fixing a starting point for the period of suspension.*

(b) *The Stewards erred by not providing reasons of how the 18 day period was calculated.*

(3) *The Stewards erred in failing to take into account that the period of suspension would include a number of listed races.*

(4) *The penalty was excessive compared to penalties received by other riders for similar offences and records.*

(5) *The Stewards erred in not imposing;*

(a) *A fine; or*

(b) *Reprimand*

*As sufficient disposition of the case."*

### **REASONS**

Mr Millington carefully went through the transcript of the proceedings to support his argument in relation to the amended grounds. Despite submissions from counsel, I was not persuaded that there was any error on the part of the Stewards in reaching their decision to convict. The panel was a most experienced one comprising the Chief Steward, two Stipendiary Stewards and two Deputy Stewards. The panel formed the view Mr Pike rode carelessly. To quote from the Rule, "in their opinion," Mr Pike had offended. It is not appropriate for the Tribunal to substitute its opinion. The Stewards are the experts when it comes to evaluating the quality of rides. They had the benefit of watching the race live. They studied the video. At the inquiry they interviewed the riders involved in the incident. The Stewards had the opportunity of evaluating the quality and credibility of the riders' evidence. The Stewards were obviously satisfied that the quality of the ride was so lacking as to amount to carelessness in all of the circumstances. On the evidence before them they were clearly entitled to reach that conclusion. Nothing was presented to convince me that there was any failure or omission of the Stewards' part in the manner alleged in particulars (a) to (c) inclusive of ground one which should lead to the conclusion that the Steward's decision was unreasonable. I dismissed ground one for those reasons.

As to the appeal against the excessive penalty I was not persuaded that the factors in question identified in ground one amounted to strong mitigation which had been either not been taken into account at all or not adequately considered in the assessment of penalty. The reasons advanced by the Stewards (quoted above) for imposing the penalty clearly enunciate the factors which the Stewards did take into account. Those factors were :

- 1        The degree of carelessness;
- 2        Mr Pike's intent;
- 3        The degree of interference;

- 4 Mr Pike's record;
- 5 Mr Pike's personal circumstances; and
- 6 The appropriateness of a fine or reprimand.

The Stewards went on to acknowledge that they could not condone the style of riding which Mr Pike had engaged in. Clearly it is the Stewards who are the persons best charged with that evaluation. The Stewards must weigh up the obligation on a rider to give the horse best prospects in a race, on the one hand, against what is best in the interest of the safety of competitors combined with other factors such as the interests of the industry and the betting public generally, on the other.

I saw nothing wrong with the way the Stewards arrived at the penalty, despite them not having fixed a starting point. The Stewards did take into account the number of races involved. In my assessment the reasons sufficiently explain how or why the 18 day period was arrived at.

The table which was presented of the various penalties imposed on riders by the Stewards for breaches of this Rule since the 1 August 2008 is some three pages in length. The table shows a range of penalties between 12 days and 28 days suspension. I was satisfied the penalty imposed on Mr Pike fell appropriately and comfortably within the range, bearing in mind the quality of the ride in question. For these reasons I was not disposed to interfere with the penalty.



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**DAN MOSSENSON, CHAIRPERSON**