

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

**APPELLANT:** CLINT KENNETH HARVEY

**APPLICATION NO:** A30/08/696

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

**DATE OF HEARING:** 3 October 2008

**DATE OF DETERMINATION:** 3 October 2008

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**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 24 September 2008, imposing a 21 day suspension for breach of Rule 137(a) of the Australian Rules of Thoroughbred Racing.

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Mr J Davies represented Mr C K Harvey.

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

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**BACKGROUND**

Mr Clint Harvey, who rode in Race 7 at Belmont Park on 24 September 2008, was called to a Stewards' inquiry following the running of the race. The Stewards investigated an incident which occurred on or close to the finishing line where another jockey's mount was tightened and brushed the rail.

After a brief exchange with the two riders involved the Chairman of Stewards made the following statement to Mr Harvey :

*'Mr Harvey after considering evidence put to us thus far, we do believe that you have a charge to answer to and it's under AR.137(a) which reads,*

*Any rider may be punished if in the opinion of the Stewards (a) he is guilty of careless, reckless, improper, incompetent or foul riding.*

*And the charge against you is careless riding and the careless riding being that over the concluding stages you've allowed your mount to shift inwards when riding along with the whip and just passing the winning post you tightened LOMONSIDE LASS, Mr Ikenusha's mount, which caused that mare to be restrained and strike the running rail. Do you understand the charge'.*

Mr Harvey responded by stating:

*'Yes sir I do but I don't know if it's come to your attention but is the Vet still on course like ...'*

The inquiry proceeded with discussion regarding the condition of the horse. The film of the race was shown. The Stewards heard some evidence from the veterinary surgeon who was at the course. Mr Harvey was eventually found guilty of the offence although the Stewards, in the course of the hearing, failed to ask him how he pleaded after the charge was laid. The Stewards then addressed penalty. They concluded that both the carelessness and amount of interference were mid-range. Mr Harvey had three suspensions in the past 12 months. The last suspension was for 21 days on 19 July 2008 together with a fine of \$500. The Stewards described the record as not being a 'good' one.

## **THE APPEAL**

The following amended grounds of appeal were argued:

*'The Stewards erred by:*

- 1 *Failing to lay a charge against Mr Harvey.*
- 2 *Failing to particularise the charge or the relevant provision.*
- 3 *Failing to take a plea.*
- 4 *Failing to invite or entertain submissions on the question of penalty.*
- 5 *Failing to consider the defence proffered by Mr Harvey at the hearing.*
- 6 *Failing to give any adequate reasons.*
- 7 *Imposing a penalty that was unreasonable in the circumstances.'*

At the conclusion of the appeal hearing after entertaining submissions from counsel I dismissed the appeal both as to conviction and penalty. I now set out my reasons.

## **REASONS**

It is clear from the passage quoted earlier the Stewards did lay a charge. I was satisfied the charge was properly laid. It contained adequate particulars and was clearly accompanied by

the reading out of the relevant Rule. Further, Mr Harvey acknowledged he understood the charge when asked by the Chairman of the inquiry. Nothing more needs to be said about grounds one and two which had no merit.

It is rare if not unique from my experience for the Stewards in the course of an inquiry, after laying a charge, to fail to invite a plea to the charge. However, it is clear from the transcript of the inquiry that the Stewards did proceed on the basis that Mr Harvey was defending the charge. In the course of allowing him to do so the Stewards gave Mr Harvey a reasonable opportunity in which to respond. I was not satisfied that it was demonstrated that Mr Harvey's rights were compromised as a consequence of not having formally pleaded. Mr Harvey was not prejudiced by the oversight. In any event, as senior counsel for the Stewards submitted, inquiries conducted by Stewards are clearly not the same as court proceedings. Whilst Stewards are skilled or schooled in matters equine they cannot be expected to conduct their inquiries with the same technical precision as legal proceedings. As with all domestic tribunals the Stewards when conducting inquiries into possible breaches of the Rules are not obliged either by the Rules that govern their conduct or the general law to necessarily call for and record a plea. This is subject to the proviso they proceed on the basis of treating all parties appearing before them as innocent until it has been proven otherwise in a fair hearing. I was satisfied that overall the proceedings were fair and did not jeopardise Mr Harvey's rights. There was no failure to invite or entertain submissions from the appellant on the question of conviction. After Mr Harvey specifically acknowledged that he understood the charge he immediately went into a defensive mode and addressed the question of the injury encountered by the horse. This approach led to the veterinary surgeon being called and to considerable inquiring into the injury to the horse. Had Mr Harvey not stoutly defended the matter but pleaded guilty instead a concern may then have been the fact such a plea potentially amounted to a mitigating factor when considering the penalty. Such a scenario plainly did not apply to this case. Accordingly there was no merit to ground three.

As to ground four there was also no basis to find for the appellant. After the charge was laid and the conviction recorded Mr Harvey was specifically asked by the Chairman of the inquiry *'Is there anything you wish to put to us on penalty.'* Mr Harvey then advanced some propositions and answered some further queries.

There was no failure to consider the primary defence proffered by the appellant at the hearing. Ground five lacked merit.

As to ground six I was satisfied the reasons given by the Stewards were entirely satisfactory, despite being particularly brief. Those reasons were prefaced by a summary of the matters which the Stewards considered accompanied by the following statement :

*'.. we believe you were careless by continuing to ride your mount and not straighten when ZEDRAGEOUS started to shift inwards and in saying that we do find you guilty as charged. Is there anything you wish to put to us on penalty now.'*

Sufficient information by way of explanation is contained in the reasons for Mr Harvey to glean why the conclusion was reached and what the fault was. Although short on detail the reasons enunciate sufficiently to enable one to evaluate them. Whilst it could be argued it may have been helpful had the Stewards gone into a little more detail in referring to the relevant facts and why the decision was made in a particular way it is apparent on the face of the reasons why the decision makers arrived at their conclusions.

I was not persuaded that the penalty which was imposed was outside the range of penalties which usually applies to this type of offence bearing in mind the degree of seriousness of the incident. The Stewards through senior counsel tendered a table which very helpfully set out since 12 June 2008 the penalties which have been imposed for breaches of the same rule. The table contained more information than what the Tribunal has traditionally been provided with. Brief details of the riders, the track, the date of the offence and of the last suspension, the plea, the record, a brief description of the offence and the level of carelessness/interference were all included. The table as a consequence proved most helpful in dealing with ground seven. When one examines the table it is clear that the penalty imposed on Mr Harvey does not fall outside the range which was at the discretion of the Stewards.

The Rule under which Mr Harvey was charged is couched in terms of being '*in the opinion of the Stewards*'. In all of the circumstances I was entirely satisfied that it was reasonably open for the Stewards to reach the decision which they did on the evidence which was properly before them. There had been no miscarriage or breach of natural justice in any way to justify overturning the outcome arrived at.

  
DAN MOSSENSON, CHAIRPERSON