

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT : COLIN COUSINS
APPLICATION NO. : A30/08/189
PANEL : MR P HOGAN (PRESIDING MEMBER)
MR J PRIOR (MEMBER)
MR T MULLIGAN (MEMBER)
DATE OF HEARING : 11 APRIL 1994

IN THE MATTER OF an appeal by Mr Colin Cousins against the determination of the Western Australian Turf Club Stewards on 18 March 1994, imposing a disqualification of 6 months for a breach of Rule 8(d).

Mr C Cousins in person

Mr B Lewis for the Stewards

Rule 8 states:

"To assist in the control of racing, Stewards shall be appointed according to the Rules of the respective Principal Clubs with the following powers:

- (d) To regulate and control, enquire into and adjudicate upon the conduct of all officials and licensed persons, persons attending on or connected with a horse and all other persons attending a racecourse and to punish any person in their opinion guilty of improper conduct or unseemly behaviour."

At a hearing before the Stewards on the 19 March 1994, the Appellant was charged under Rule 8(d) as follows:

"... with improper conduct in that you are connected with the horse UNICORN BOY, and you were attendant on a racecourse, and you have conducted yourself improperly after the running of Race 5, the Northampton Football Club Handicap Class Three over 1400 metres, at Geraldton on Monday the 7th of March, 1994."

This is the unanimous decision of the Tribunal.

The Appellant was charged under Rule 8(d) with improper conduct. It was said that he behaved in a certain way on the track after the running of Race 5, at Geraldton on 7 March 1994. At that time and place there was an altercation between the Appellant and Jockey Usher.

The Stewards conducted an inquiry and heard evidence to the effect that Mr Usher rode a horse owned by Mr Cousins and rode it in a way not to the satisfaction of the Appellant. Further, the horse broke down badly. These two things together combined to give the Appellant a sense of grievance. With this sense of grievance the Appellant came face to face with Mr Usher on the track. Mr Lewis, for the Stewards, today said Mr Cousins was determined to create a volatile situation. On the evidence the Stewards were entitled to come to that view and the Tribunal does not disagree.

Following that, Mr Usher and independent witnesses gave evidence that Mr Cousins abused Mr Usher. Despite Mr Cousins' denials today that he used abusive language, the Stewards were entitled to accept the evidence of witnesses. Those include Mr Usher, mentioned at page 20 of the transcript who gave evidence to the effect that Mr Cousins used words such as "what the fucking hell do you think you were doing" and also the evidence of Mr Lauritson on page 10 of the transcript where Mr Lauritson gave evidence to the effect that Mr Cousins gave Mr Usher a blast and again Mr Lauritson at page 2 of the Transcript gave evidence to the effect that Mr Cousins used a bit of language.

We would pause here to mention that in itself in the presence of Mr Lauritson, the female strapper mentioned in the evidence and the vet Williams may have been sufficient in itself to ground a charge of improper conduct. But it went further and it can only be said that Mr Cousins, thereafter, was the author of his own misfortune. There was an altercation that was constituted at least in the beginning by Mr Usher confronting Mr Cousins and Mr Cousins pushing Mr Usher.

The Stewards were entitled to find that the abuse and the pushing together amounted to improper conduct. The Tribunal can find no reason to upset the determination of the Stewards and accordingly the appeal is dismissed and the fee paid on lodgement will be forfeited.

Decision re Penalty:

This is the unanimous decision of the Tribunal.

Firstly we formally give leave to the appellant to amend his notice of appeal so as to include a ground that the penalty imposed was in all the circumstances excessive.

The appellant has been convicted of an offence contrary to Rule 8(d) in that he was guilty of improper conduct. The proven facts were, and the Tribunal finds they are, that the appellant was the instigator of an altercation between himself and Jockey Usher on the track at the conclusion of the running of Race 5, at Geraldton on 7 March 1994. He was disqualified for six months.

It appears that at the Stewards' inquiry the Appellant declined the opportunity given to him to present full material in mitigation of the penalty. Today, though, he has spoken in mitigation in support of his appeal against penalty. He has told the Tribunal that he and his family have been embarrassed as a result of his conviction, he has reaffirmed financial hardship that he will suffer as a result of his disqualification. He has significantly, today expressed remorse in a fashion by saying he wished the incident had never happened and we take that to be remorse rather than hope that he wouldn't be punished and, significantly as well, he confirms he has never been convicted of any offence during all the years of his involvement with racing. This is confirmed by the Stewards although it does appear from the transcript that he has at least perhaps been warned in the past by Stewards or cautioned in some fashion.

In all the circumstances the Tribunal is of the view that the penalty imposed was excessive. This is so particularly because we have now been informed of some penalties handed down in previous cases for similar type offences. The concept of tariff, elusive though it is, ought to be applied where ever possible. The Tribunal is conscious of the fact that in past cases disqualification of six months in one case has been imposed and fines in another case. Bearing in mind particularly because this appellant is a first offender after all of these years in racing, the Tribunal is of the view that the penalty ought to be reduced to one of three months disqualification and to that extent this appeal against penalty is allowed.



PAT HOGAN, PRESIDING MEMBER