

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

**APPELLANT :** MARK MILLER  
**APPLICATION NO. :** A30/08/249  
**PANEL :** MR D MOSSENSON (CHAIRPERSON)  
**DATE OF HEARING :** 30 MARCH 1995

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**IN THE MATTER OF an appeal to the Tribunal by Mr M Miller against the decision of the Western Australian Turf Club Stewards on 16 March 1995 imposing a suspension of 14 days under Australian Rule of Racing 137(a).**

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Rule 137 states:

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

(a) He is guilty of careless, improper, incompetent or foul riding ..."

At the Stewards' inquiry, the appellant was charged as follows:

"... that you as rider of MALANDA in race 7, permitted your mount to shift inwards near the 270m and in doing so, tightened and caused Night Rain ridden by G. Lambie to be checked and shortly after this, continued inwards and caused Spear the Keg, ridden by Apprentice T. Turner, to check. ..."

On the 16 March 1995, following a Stewards' inquiry into an interference which occurred at approximately the 270 metre mark in Race 7, the J & D Diamonds Class One Handicap at Bunbury Racecourse, Mr Miller was charged and subsequently convicted of careless riding under Australian Rule of Racing 137(a).

The specifics of the charge are that, "He permitted his mount to shift near the 270m and in doing so, tightened and caused Night Rain ridden by G. Lambie to be checked and shortly after this, continued inwards and caused Spear the Keg, ridden by Apprentice T. Turner, to check." Mr Ryan, the representative for Mr Miller, persuasively argued that Mr Miller was not careless but rather that the incident occurred due to a fault of the horse and not due to any omission on Mr Miller's part.

In the course of the Stewards' inquiry, evidence was presented that revealed:

1. that Mr Miller had not previously ridden MALANDA, which was the horse in question;
2. that Mr Miller was asked by Angela Johnson, the trainer, at no notice just prior to the race to mount the horse;
3. the trainer only had time to tell Mr Miller, "it's an easy horse to ride";
4. that after the race two jockeys and the trainer used the following description of the horse "lays in real bad when it hits the front";
5. that two of the jockeys in the race stated, as a fact, that it was the horse that "shifted in" and "just ducked in" at the relevant moment in the race;
6. Mr Miller admitted that he tightened the other two horses in question; and
7. Mr Miller explained how this occurred, which was on the same basis as the explanation which the two jockeys had given, and in so doing Mr Miller's explanation was consistent with their description of the relevant circumstances.

I have had the opportunity of observing the video and hearing from the two opposing spokespersons, the two different versions of the incident. On the one hand, Mr Bennier, on behalf of the Stewards, would have me believe that Mr Miller did not take sufficient or positive action to ensure that MALANDA held its ground for some distance prior to the incident.

On the other hand, Mr Ryan invites me to conclude that Mr Miller was riding his mount with its head turned out in an attempt to relieve the pressure. Not only did the horse fail to respond but it irrationally ducked in. Mr Ryan argues that this was not through any fault or omission on Mr Miller's part but rather due to the peculiar propensity of this horse at that point in a race.

Mr Ryan did introduce into evidence two supporting letters from jockeys Turner and Dyson which supported the argument that MILANDA is a hard horse to ride and that it has a tendency to change directions with little warning. The undisputed evidence is that Mr Miller was not only unaware of these facts but that he had been led to believe by the trainer, as he was about to race, that he was in for an easy ride on the horse.

The relevant offence provision is couched in language which authorises a rider to be punished if, "in the opinion of the Stewards" the rule is breached. In order for this appeal to succeed I must be satisfied that no reasonable Stewards, fully apprised of all of the relevant facts and circumstances, could reasonably have come to the conclusion which these Stewards did on this occasion.

The task of deciding this question is made all the more difficult in circumstances where these Stewards have failed to give any reasons or explanation when announcing their verdict as to the basis for finding Mr Miller guilty of the charge. I am satisfied, on balance, that the Stewards have fallen into error in convicting Mr Miller. I am of the opinion that reasonable Stewards considering this matter would have been sufficiently influenced by the facts, which I have previously identified and numbered 1 to 7 inclusive, in order to come to a conclusion that Mr Miller did not permit MALANDA to shift inwards near the 270 metre mark.

Unlike many racing incidents which I am asked to adjudicate, on this occasion the video replay was very clear and helpful in allowing me to evaluate the conflicting submissions and to form the conclusions which I do. As no reasons are given it is not possible to know whether the Stewards failed to take into account the relevant exculpatory facts and circumstances or simply gave them too little weight or inadequate attention.

I am satisfied that Mr Miller did not commit the breach of the Rules of Racing and that the charge against him should have been dismissed in the light of all of the relevant circumstances. I therefore allow the appeal and quash the conviction.

The fee paid on lodgement of the appeal is to be refunded.



DAN MOSSENSON, CHAIRPERSON

2 / 6 / 1995

