

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

APPELLANT: **DAVID HARDING**

APPLICATION NO: **A30/08/283**

PANEL: **MR J PRIOR (PRESIDING MEMBER)**
 MR F ROBINS (MEMBER)
 MR L ROBBINS (MEMBER)

DATE OF HEARING: **28 NOVEMBER 1995**

IN THE MATTER OF an appeal by Mr D Harding against the determination made by Western Australian Trotting Association Stewards on 7 November 1995 imposing 3 months suspension under Rule 450(a).

Mr R Olivieri was granted leave to represent the appellant.

Mr M J Skipper represented the WA Trotting Association Stewards.

Rule 450(a) states:

“The driver of each horse shall take all reasonable and permissible measures throughout a race to ensure that the horse driven by him is given the best opportunity to win or obtain the best possible place in the field. A driver who does not take such measures may be fined, suspended or disqualified”

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

“...that in failing to attempt to drive your horse to the front when it was reasonable to believe that you would achieve that position, you have failed to take all reasonable and permissible measures to ensure that you drove your horse to give the best opportunity to win or to obtain the best possible place in the field. ...”

This is an appeal against conviction and penalty for a breach of Rule 450. The appellant was suspended for three months.

The Tribunal has listened to submissions made on behalf of the appellant and has carefully reviewed the transcript of the various proceedings before the Stewards. The Tribunal has also taken the opportunity to view various race films several times.

The question before the Tribunal is whether the Stewards fell into error in convicting the appellant on a charge brought pursuant to Rule 450(a) on the material available to them. Central to that question that the Stewards had to determine under Rule 450(a) was the question of whether or not the appellant had room enough to safely move his horse across in front of MEDORO KARAMEA driven by Mr Hardie to a position on the rails.

In the course of submissions made on behalf of the appellant it was properly conceded in our view that " he had one instance where he could have crossed him and only just ". It was further conceded that " maybe he could have got across." The Tribunal believes there was no error in the Stewards concluding such crossing could have been made. In the circumstances the appeal against conviction is dismissed.

In relation to the appeal against penalty and for the reasons set out in Appeal 281 (R Warwick v WATA), the Tribunal is of the view that the penalty was not excessive in the circumstances. The Tribunal is satisfied the penalty imposed did not reflect the finding of malpractice but did include a finding that the drive was not truly competitive. The appeal against penalty is also dismissed.

The fee paid on lodgement of the appeal is forfeited.

John Prior

JOHN PRIOR, PRESIDING MEMBER

15/12/95

