

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: DAMIAN RICHARD MILLER

APPLICATION NO: A30/08/313

PANEL: MR D MOSENSON (CHAIRPERSON)

DATE OF HEARING: 26 JULY 1996

O IN THE MATTER OF an appeal by Mr D R Miller against the determination made by Western Australian Turf Club Stewards on 20 July 1996 imposing an 18 day suspension under Australian Rules of Racing Rule 137(a).

Mr B Ryan was granted leave to represent the appellant.

Mr S J Carvoosso represented the WA Turf Club Stewards.

This is an appeal by Mr Damian Richard Miller against the determination of the Western Australian Turf Club Stewards in relation to an incident which occurred near the 1100 metre mark in Race 5, The Kalgoorlie Fuel Company Class 2 over 1300 metres at Kalgoorlie on Saturday, 20 July 1996.

O At the inquiry, which took place before Stewards Carvoosso and Biggs, a number of apprentice riders gave evidence as to the incident and other matters that occurred during the course of the running of the race. Also present at the inquiry was Mr A P Gordon who was described in the transcript of the proceedings as Assistant Steward. However, I was told that Mr Gordon acted only in the capacity of an assistant to the Stewards and that he only observed and took no useful part during the course of the inquiry.

The charge that was laid against Mr Miller was that he was guilty of careless riding in breach of Rule 137(a) of the Australian Rules of Racing. The particulars of the charge were:

"...near the 1100m you the rider of SUNSEEKER have allowed your mount to shift inwards when insufficiently clear of BIG WET ridden by Joshua McLeod, bumping that horse and that horse being taken in onto Apprentice O'Heare on HIGH TACKLE which has then gone onto Apprentice Winkley riding DULZURA who then was taken in and checked off the heels of ONE DAY STORY."

Mr Miller pleaded not guilty but was convicted. A period of 18 days suspension was imposed.

I did allow Mr Gordon to give some evidence in the proceedings, although the main thrust of that evidence simply was to confirm the fact that was already conceded by the Stewards that Mr Gordon did not observe any interference even though he was positioned in the head on Stewards' tower at the time.

The wording of the relevant rule is as follows:

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

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

This particular provision makes it clear that for the purposes of a successful appeal the Tribunal must be satisfied that no reasonable Stewards dealing with the particular matter and armed with all of the relevant information and material which these particular Stewards had, could reasonably have formed the opinion that Mr Miller was guilty of this particular offence. That means that the task of an appellant in the circumstances of this type of provision is a very difficult one and it is not simply the case that the appellant should endeavour to persuade me that I should form a different opinion to that of the Stewards. I have to be persuaded that the Stewards could not have reasonably come to the opinion which they did.

Mr Ryan, on behalf of Mr Miller, sought to persuade me that there was no incident during the relevant part of the race which could have incurred an infringement of the rules.

As part of the argument put forward on behalf of Mr Miller, Mr Ryan endeavoured with some persuasion to convince me that there was some conflict between the words spoken by the witnesses, in the course of the inquiry, as to what they observed and what actually happened in the course of the race, and that which is revealed by the official video or film of the race itself. I have some difficulty in accepting that line of reasoning. I do readily appreciate that the participants in a race, who give evidence in the course of a Stewards' inquiry that occurred some little while after the race may not have been in a position to have objectively described a particular incident or a particular series of events that occurred during the course of the running of the race as objectively and as clearly as may be depicted in the film of that same race or as clearly as they might having had the benefit of seeing the video of the incident after the event.

I am satisfied from my own observation of the race and based upon the submissions that have been put to me by Mr Carvosso, that these Stewards were entitled to come to the conclusions which they did and to form the opinion that near the 1100 metre mark Mr Miller was guilty of this particular offence. It seems to me to be of no great relevance or significance that the person who was present in one of the towers, simply in some assisting capacity, did not happen to observe any interference. The evidence from Mr Gordon was not to the effect that in his opinion there was no interference but simply he did not observe any interference. In those circumstances I am not persuaded that the Stewards were in error. Accordingly, the appeal as to the conviction fails.

In relation to the severity of the penalty, nothing has been said or presented that persuades me that in the particular circumstances of this incident, bearing in mind Mr Miller's past record and the other penalties that have been imposed on him for breach of the same rule, that the imposition of this particular penalty is outside the appropriate range of penalties or can be said to amount to an error on the part of Stewards. I am not persuaded that the likelihood of riding in the prestigious Apprentice's Cup a circumstance which demonstrates that there was any error on the Stewards' behalf in having arrived at the particular penalty. This is especially so as Mr Miller did not draw the possibility to the Stewards' attention. The opportunity to ride in this particular event, does not in my

opinion, in the circumstances justify tinkering with the penalty. That being the case, the appeal as to the severity of the penalty also fails.

The fee paid on lodgement of the appeal is forfeited. The suspension of operation of the penalty now automatically ceases.

**DAN MOSENSON, CHAIRPERSON**

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