

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR D MOSSENSON  
(CHAIRPERSON)

APPELLANT: JOHN PIERRE CLAITE  
APPLICATION NOS: A30/08/363 AND A30/08/364  
DATE OF HEARING: 17 JUNE 1997  
DATE OF DETERMINATION: 25 JUNE 1997

---

IN THE MATTER of an appeal made by Mr JP Claite against the determinations made by the Western Australian Turf Club Stewards on 28 May 1997 imposing both a 21 day and an 18 day suspension under Rule 137(a) of the Australian Rules of Racing

---

Mr TF Percy, assisted by Mr P Harris, instructed by DG Price & Co solicitors, appeared for the appellant

Mr J Zucal represented the Western Australian Turf Club Stewards.

---

This is an appeal against both the convictions and the sentences imposed on Mr Claite arising out of 2 separate incidents which occurred during the running of Race 7 Pink Poly Handicap over 2100m at Belmont Park on 28 May 1997. The first incident occurred 100m approximately after the start of the race. The second incident occurred at approximately the 1800m mark. Mr Claite was the rider of ROMANTIC SMILE.

The Stewards conducted a relatively short inquiry into the incidents. In relation to the first the Stewards stated that they:

*"decided to charge you with careless riding under Australian Rule of Racing 137(a) and that rule reads: "Any rider may be punished if in the opinion of the Stewards (a) he is guilty of careless, improper, incompetent or foul riding". Now you're*

*charged under that rule with careless riding, the careless riding being that in the opinion of the Stewards, approximately 100m after the start you shifted inwards on ROMANTIC SMILE crowding JUST ACT in onto VALDAZEEL causing that horse to be crowded and restrained."*

When asked how he pleaded to that charge Mr Claite stated "I don't know what to plea". He was offered 5 minutes to think about it and was also given the alternatives of not pleading, pleading guilty or pleading not guilty. In response Mr Claite stated again that he did not know what to plead and stated that it was "a shock" to him.

The Chairman of Stewards then told Mr Claite that they would not proceed:

*"...at this stage with that charge because we also, the Stewards at this stage of the inquiry in relation to 1800m incident have decided to charge you with careless riding under the same rule. And that is under Australian Rule 137(a) with careless riding and the charge is that in the opinion of the Stewards near the 1800m mark, you shifted inwards on JUST, you shifted inwards on ROMANTIC SMILE carrying JUST ACT inwards which in turn bumped with DASHING ZEM, in this incident JUST ACT restrained."*

When asked whether he wished to enter a plea in regard to the second charge Mr Claite sought and was granted permission to say something. Mr Claite dealt with both incidents and explained the position of the other riders in the race and what was happening at the time of the incidents. In effect, I interpret from the transcript that what he said was that he was not aware of the position of JUST ACT, which was the horse ridden by Mr Harvey.

The Chairman of Stewards then offered Mr Claite time to gather his thoughts before entering his plea to the 2 charges. In response Mr Claite said "I'll just plead not guilty". When asked whether he was pleading not guilty to both he stated "Sorry guilty". The Chairman of Stewards then offered Mr Claite some time to go outside to consider his position. After further discussion Mr Claite declined a short break and stated he did wish to plead guilty to both charges. On that basis the Stewards then proceeded to deal with the appropriate penalties to be imposed.

In relation to the first incident a 21 day suspension was imposed. In relation to the second incident an 18 day suspension was imposed.

At the hearing of the appeal Mr Claite's counsel was granted leave to substitute amended grounds of appeal as follows:

A. *CONVICTION - FIRST INCIDENT*

1. *The Stewards erred in not requiring the Appellant to plead to each charge individually. Acceptance of a combined plea was unsafe and unsatisfactory in all the circumstances of the case.*

PARTICULARS

*The Stewards failed to:*

- (a) *put the charge to the Appellant separately, and*
  - (b) *in so doing failed to ensure that the inquiry proceeded in accord with principles of procedural fairness and natural justice.*
2. *The Stewards erred in accepting the Appellant's plea of guilty.*

PARTICULARS

- (i) *The evidence of the Appellant was unequivocally that he was not guilty:*
    - (a) *the Appellant's statement at page 4 of the first transcript that "I didn't think I shifted in...";*
    - (b) *the Appellant's statement at page 9 of the first transcript that "No. I don't know what to plea";*
    - (c) *the Appellant's statement at page 9 of the first transcript that "...I said I didn't know what to plea that's all, its a shock that's all";*
    - (d) *the Appellant's statement at page 10 of the first transcript that "I haven't got eyes in the back of my head...";*
    - (e) *the Appellant's statement at page 11 of the first transcript that "I'll just plead not guilty";*
    - (f) *after entry of the guilty plea, the Appellant's statement at page 12 of the first transcript that "Well I don't consider myself a careless rider. I'm by far not a careless rider. I always have the, pretty I consider to have a pretty good record, but carelessness isn't part of my faults...".*
  - (ii) *To accept a plea of guilty was an error in the circumstances of the case.*
3. *A finding that the Appellant was guilty of the charge would have been against the weight of the evidence.*

PARTICULARS

- (a) *the Appellant repeats the particulars following paragraph 2(i) hereof;*

- (b) *Mr Brown's evidence at page 6 of the first transcript that "...the interference was coming from both sides"; and*
  - (c) *Mr King's evidence at page 7 of the first transcript that "...if Mr Barnett's horse hadn't come out I think the interference would have been minimal".*
4. *The Stewards erred in that they:*
- (a) *failed to consider or determine the contributing effect of the interference by CARNEGIE HALL; and*
  - (b) *came to a conclusion of guilt without resolving the specific factual issues in dispute.*
5. *To allow the conviction to stand would, in all the circumstances, amount to an injustice.*

PARTICULARS

- (a) *the Appellant appears to have been under a misapprehension at the time of pleading guilty as to the nature and particulars of the charge;*
- (b) *the Appellant was unaware of his entitlement to plead separately to each charge;*
- (c) *the Appellant was unrepresented at the Stewards Inquiry and was unable to seek legal advice in relation to the charge or his plea;*
- (d) *the Appellant had a good and valid defence to the charge and could not properly have been convicted of the offence charged;*
- (e) *the Stewards erred in dealing with the submissions of the Appellant as matters going to mitigation rather than as a denial of culpability.*

**B. CONVICTION - SECOND INCIDENT**

1. *The Stewards erred in not requiring the Appellant to plead to each charge individually. Acceptance of a combined plea was unsafe and unsatisfactory in all the circumstances of the case.*

PARTICULARS

*The Stewards failed to:*

- (a) *put the charge to the Appellant separately; and*
  - (b) *in so doing failed to ensure that the inquiry proceeded in accord with principles of procedural fairness and natural justice.*
2. *The Stewards erred in accepting the Appellant's plea of guilty.*

PARTICULARS

- (i) *The evidence of the Appellant was unequivocally that he was not guilty:*
  - (a) *the Appellant's statement at page 3 of the second transcript that "I was sort of like always looking after you and giving you plenty of room, and just that one stride start, caused, caused that problem";*
  - (b) *the Appellant's statement at page 10 of the first transcript that "I haven't got eyes in the back of my head...";*

- (c) *the Appellant's statement at page 11 of the first transcript that "I'll just plead not guilty";*
  - (d) *after entry of the guilty plea, the Appellant's statement at page 12 of the first transcript that "Well I don't consider myself a careless rider . I'm by far not a careless rider. I always have the, pretty I consider to have a pretty good record, but carelessness isn't part of my faults..."*
  - (ii) *To accept a plea of guilty was an error in the circumstances of the case.*
3. *A finding that the Appellant was guilty of the charge would have been against the weight of the evidence.*

PARTICULARS

- (a) *the Appellant repeats the particulars following paragraph 2(i) hereof;*
  - (b) *Mr Farrell's evidence at page 1 of the second transcript that "...it didn't cost me no ground Sir..."; and*
  - (c) *Mr Harvey's evidence at page 3 of the second transcript that "...didn't bother me too much... its all very minimal I would have thought, the interference"*
4. *The Stewards erred in that they came to a conclusion of guilt without resolving the specific factual issues in dispute.*
5. *To allow the conviction to stand would, in all the circumstances, amount to an injustice.*

PARTICULARS

- (a) *the Appellant appears to have been under a misapprehension at the time of pleading guilty as to the nature and particulars of the charge;*
- (b) *the Appellant was unaware of his entitlement to plead separately to each charge;*
- (c) *the Appellant was unrepresented at the Stewards Inquiry and was unable to seek legal advice in relation to the charge or his plea;*
- (d) *the Appellant had an arguable defence to the charge;*
- (e) *the Stewards erred in dealing with the submissions of the Appellant as matters going to mitigation rather than as a denial of culpability.*

**C. PENALTY - FIRST INCIDENT**

1. *The penalty imposed was excessive in all the circumstances of the case.*

PARTICULARS

- (a) *the Stewards placed the offence into a category of seriousness which was beyond that warranted by the evidence;*
- (b) *the Stewards failed to properly consider the contribution of CARNEGIE HALL which shifted out and thereby contributed to the alleged interference;*
- (c) *the Stewards erred in placing insufficient weight on the mitigating features of the case, in particular:*

- (i) *the Appellant's evidence at page 5 of the first transcript that he was not aware that JUST ACT "was that far up";*
- (ii) *Mr Broton's evidence at page 6 of the first transcript that "...the interference was coming from both sides";*
- (iii) *Mr King's evidence at page 7 of the first transcript that "...if Mr Barnett's horse hadn't come out I think the interference would have been minimal".*
- (d) *the Stewards erred in placing excessive weight on the Appellant's previous record;*
- (e) *the Stewards erred in placing insufficient weight on the Appellant's plea of guilty to the charge;*
- (f) *the Stewards erred in failing to give sufficient weight to matters personal to the Appellant.*

**D. PENALTY - SECOND INCIDENT**

1. *The penalty imposed was excessive in all the circumstances of the case.*

PARTICULARS

- (a) *the Stewards placed the offence into a category of seriousness which was beyond that warranted by the evidence;*
- (b) *the Stewards erred in placing insufficient weight on the mitigating features of the case, in particular:*
  - (i) *the Appellant's evidence at page 2 of the second transcript that "...before that I, I realise I, I was getting a bit close that's why I pulled off and Paul pulled off also there".*
  - (ii) *the Appellant's evidence at page 2 of the second transcript that he was "...always looking after (Paul Harvey) and giving (Paul Harvey) plenty of room, and just that one stride start, caused that problem".*
  - (iii) *The evidence of Mr Farrell at page 1 of the second transcript that "...it didn't cost me no ground Sir...".*
  - (iv) *The evidence of Mr Harvey at page 3 of the second transcript that "...didn't bother me too much... its all very minimal I would have thought, the interference".*
- (c) *the Stewards erred in placing excessive weight on the Appellant's previous record;*
- (d) *the Stewards erred in placing insufficient weight on the Appellant's plea of guilty to the charge;*
- (e) *the Stewards erred in failing to give sufficient weight to matters personal to the Appellant."*

As to ground 1 whilst it would have been desirable to have sought to obtain separate pleas to each charge I am not persuaded that there was any procedural unfairness and breach of natural justice.

I am persuaded by the submissions made by Mr Percy on behalf of the appellant that the Stewards did err in accepting the appellant's plea of guilty in the light of the special circumstances of this case. It is clear from the transcript that Mr Claite did argue the matter before the Stewards on the basis that he was not guilty. He put forward an explanation in support of his position which clearly was directed to demonstrate his innocence. His reactions revealed that he was not capitulating and that he considered that he had an explanation in that he was not aware of the position of the other rider and that he did not consider that he had been careless.

The Stewards were more than reasonable in offering Mr Claite the opportunity to adjourn in order to consider his position. Further they initially offered him the possibility of not entering a plea at all, of pleading guilty or pleading not guilty. Bearing in mind the way the matter did ultimately proceed the Stewards in substance were dealing with a participant at an inquiry who clearly disputed the charges that were made and had already put forward some credible explanation in relation to both incidents. The explanation was inconsistent with the ultimate plea of guilty. Despite the fact that Mr Claite is an experienced rider and a person who has been before the Stewards a reasonable number of occasions previously the Stewards should not have accepted the pleas of guilty which ultimately were entered. Rather they should have entered pleas of not guilty to both matters. The Stewards should then have proceeded to determine the matters but only after affording Mr Claite further opportunity to put his defence, to call evidence or in some other way to attempt to exonerate himself.

An appeal against conviction may be entertained after a plea of guilty in exceptional circumstances including a case where the party did not intend to admit guilt (Udy & Another v Police 1964 NZLR 235). It is clear that in order for justice to be done judicial officers and Stewards alike must be careful to ensure that a plea of guilty is fully and freely made and only accepted where the accused party intended to plead guilty. This was not the case here. Accordingly, I do uphold ground 2 in relation to both convictions.

I am not persuaded in relation to the other matters raised in the appeal grounds as to the question of the convictions. It is not necessary for me to consider the question of the penalties.

The appropriate way to deal with the two appeals is to quash the decisions and to send the matters back to the Stewards for rehearing. The Stewards should proceed on the basis that Mr Claite has pleaded not guilty to both charges and he should be afforded all the usual opportunities of defending them.

I order the appeals be allowed and the penalties be quashed. I direct both matters be remitted to the Stewards for further determination in accordance with these reasons.

The lodgement fees will be refunded to the appellant.

*Dan Mossenson*

DAN MOSSENSON, CHAIRPERSON

