

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: MATTHEW JOHN SAW
APPLICATION NO: A30/08/396
PANEL: MR J PRIOR (PRESIDING MEMBER)
DATE OF HEARING: 3 DECEMBER 1997
DATE OF DETERMINATION: 3 DECEMBER 1997

IN THE MATTER OF an appeal by Mr M J Saw against the determination made by the Western Australian Trotting Association Stewards on 21 November 1997 imposing a 28 day suspension for a breach of Rule 440(a) of the Rules of Trotting.

Mr Saw represented himself.

Mr R J Oliver appeared for the Western Australian Trotting Association Stewards.

This is an appeal by Mr Saw against the determination by the Western Australian Trotting Association Stewards in relation to an incident that occurred at the Golden Mile Trotting Club on 21 November 1997 during Race 6.

The Stewards inquired into an incident which occurred in the race and ultimately charged Mr Saw with a breach of Rule 440(a). The nature of the charge was causing interference by careless driving. The specifics of the charge being:

"... Mr. Saw that you as driver of PRINCE OF STONE in the Johnny Farmer Chris Russell Jimmy Scott Troy Ross Stakes, 2,100 metre mobile, conducted at the Golden Mile Trotting Club on Friday, 21st of November 1997, when racing into the back straight on the final occasion you've allowed your horse to move up the track making contact with STAR RAIDAWS hind legs, as a result that horse has broken gait, checking INFALLIBLE driven by Mr. Scott. "

Mr Saw pleaded not guilty. The evidence that was received at the inquiry was by other drivers in the race, the appellant Mr Saw, the Stewards who viewed the race and the video footage of the race. The Stewards then deliberated and concluded that they found Mr Saw guilty of the offence as charged and imposed a 28 day suspension of his reinsperson's licence.

Mr Saw has in his grounds of appeal specified that in his opinion the guilty verdict was against the evidence of the incident. In addition he has appealed the penalty given submitting that it was excessive in the circumstances.

I have had the benefit of hearing submissions from both sides and viewing the video of the incident. The Stewards submitted that they relied primarily on the evidence of eye witnesses and not so much on the race video. The Appellant made the following specific submissions in his appeal :

1. The Stewards had a limited view or did not have any view of a direct nature of the incident.

I am satisfied on reading the transcript, viewing the video and having been identified as to where the Steward, Mr Biggs was at the time in question that he did have a view of the incident and his view was as he described at page 1 of the Transcript. This view of the incident seems consistent with what is confirmed by the driver Mr Scott in his evidence to the Stewards.

2. The Appellant submitted that he was not shown the complete video of the race at the inquiry.

The Stewards have said that the race video had limited value to them in coming to their decision on the charge, and that they relied primarily on the evidence of the eye witnesses.

3. The Appellant has also mentioned that the rule under which he was charged was not read.

I note that immediately before he was charged the Appellant was referred to the specific rule that he was being charged under. When the Chairman proceeded to read him the rule the Appellant told the Chairman to not to worry about reading it. In any event, it seems clear that the rule under which the Appellant was charged was a rule under which he had been previously been charged. In those circumstances the Appellant would have been well aware of what the rule stated.

4. The Appellant submitted that the Chairman never explained to him why he had been found guilty.

To some extent that is correct because the finding on the conviction of the breach of the rule was specifically "*guilty as charged*". But against that the Appellant was there when he was charged. He was given the specifics of the charge against him and was there throughout the Stewards' inquiry when relevant evidence was given by eye witnesses and the video of the race was played. In those circumstances, I am satisfied that he could be under no misunderstanding on the basis on which he was found guilty.

The substance of the appeal relates to the Appellant's submission generally, that on the evidence available, the Stewards erred in finding him guilty of the breach of this specific rule. As I have said on numerous occasions, as have the Chairperson and a number of other Members of this Tribunal, it is difficult to succeed in relation to an appeal against a breach of this rule as this rule is couched in the terms "*in the opinion of the Stewards*" in its wording. The Tribunal has had to on many an occasion deal with similar charges of this nature. The most recent one is Appeal No 388, in the matter of Fletcher, in which the Chairperson, Mr Mossenson dealt with an appeal against breach of this rule.

Rule 440(a) of the Rules of Trotting states:

“(a) Any driver who, in the opinion of the Stewards, caused or contributed to any crossing, jostling or interference by foul, careless or incompetent driving shall be deemed guilty of an offence against these Rules and may be dealt with accordingly.”

It is clear that Mr Saw, the Appellant, sincerely holds the personal view or opinion that he was not the cause of the incident and that he did not offend against the rule. In effect in this appeal, I am being asked to accept Mr Saw's opinion of the incident and to substitute that opinion for the opinion formed by the Stewards. The Stewards had the benefit of observing the incident live, viewing the video tape of the race and hearing the evidence at the inquiry of what the drivers in the race saw. In order for me to interfere with the decision of the Stewards for a breach of this particular rule I have to be persuaded that no reasonable Stewards, armed with all the relevant information they had, could reasonably have formed the opinion which these Stewards did of the incident. Put another way, I have to be satisfied that the decision is so unreasonable that in effect it was not open to the Stewards to form the opinion they did.

As I have said, the Stewards submitted that they relied firstly on the evidence of the Steward, Mr Biggs' view of the incident and secondly, the evidence of other drivers who were asked about the circumstances of the incident which occurred. In particular, as I have said, the Stewards relied on the evidence of Mr Scott who seemed to confirm the view of Mr Biggs of the incident.

I am satisfied that it was reasonably open for the Stewards to form the opinion which they did. It has not been demonstrated by the Appellant that the Stewards were in error in convicting him in relation to this incident.

For those reasons, the appeal against the conviction therefore fails.

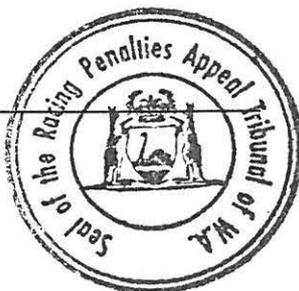
The Appellant also appealed against his penalty of 28 days suspension. The Stewards in dealing with the penalty submitted that 28 days suspension is the normal penalty for this particular type of charge. I note that Mr Saw has been previously been convicted of breaching this rule on a number of occasions and has received lesser suspensions and other penalties.

I am not persuaded that the penalty which has been imposed, taking into account all the relevant circumstances, is one that demonstrates error on the part of the Stewards or was manifestly excessive in the circumstances. There has been no suggestion that the penalty is outside any recognisable tariff for the breach of this rule.

For those reasons, the appeal as to penalty also fails.

The appeal is dismissed. The fee paid on lodgement of the appeal is forfeited.

John Prior



JOHN PRIOR, PRESIDING MEMBER