APPEAL 402

DETERMINATION AND REASONS FOR DETERMINATION OF

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT:	**ALLAN CHRISTOPHER LEWIS**
APPLICATION NO:	**A30/08/402**
PANEL:	**MR J PRIOR (PRESIDING MEMBER)**
DATE OF HEARING:	**5 FEBRUARY 1998**
DATE OF DETERMINATION:	**9 FEBRUARY 1998**

IN THE MATTER OF an appeal by Mr A C Lewis against the determination made by Western Australian Stewards Trotting Association on 30 January 1998 imposing a 28 day suspension under Rule 440(a) of Rules of Trotting.

Mr A C Lewis represented himself.

Mr M Skipper represented the Western Australian Trotting Association Stewards.

This is an appeal by Mr Lewis against the conviction and penalty imposed by the Western Australian Trotting Association Stewards in relation to his driving tactics adopted on IMA ADMIRAL in Race 9, the Graham Mabury Handicap, run at Gloucester Park on 30 January 1998.

After an inquiry before the Stewards on the night of the race, Mr Lewis was charged with a breach of Rule 440(a). The specifics of the charge were as follows:

> "*That in run to the finish you have been careless in allowing IMA ADMIRAL to move up the track to such an extent that you have made contact with Mr. Marriott's drive CURLYS PRIDE and caused that horse to break gait.*"

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

> "*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.*"

Mr Lewis pleaded not guilty.

The evidence that was before the Stewards at the inquiry was of Mr Lewis and Mr G P Marriott, who was the driver of the horse CURLYS PRIDE that made contact with Mr Lewis. In addition to this, the three Stewards who presided at the inquiry had the opportunity to view the incident from different angles and also had all the various race video footage to view.

The Stewards deliberated and then concluded that Mr Lewis was guilty of the offence and imposed a 28 day suspension of his reinspersons licence.

Mr Lewis, in his submissions in support of his appeal against his conviction for a breach of the Rule, specified that in his opinion, the guilty verdict was against the evidence, because he was of the opinion that the interference was caused by the driving of CURLYS PRIDE by Mr Marriott and not by Mr Lewis' driving. Mr Marriott, in his evidence, before the Stewards, disputed Mr Lewis' interpretation and was of the opinion that the interference was caused by Mr Lewis' driving in front of him.

It has been said by this Tribunal on numerous occasions, it is difficult to succeed in relation to a Rule of this nature, as the Rule is couched in the terms "in the opinion of the Stewards". (See Appeal 381, Harper v WATA)

Mr Lewis sincerely holds the personal opinion that he was, in the circumstances, not the cause of the interference in the race. There is no dispute that interference between the two relevant participants in the race, did occur. Mr Lewis has given a competent and detailed argument to support his opinion.

In essence, I am being asked to accept Mr Lewis' opinion of the incident and to substitute that opinion for the opinion formed by the Stewards, who as I have stated, had the benefit of observing the race incident live, hearing the evidence from the two drivers at the inquiry and reviewing the incident by viewing the videos of the race.

In order for me to interfere with the decision of the Stewards for breach of this particular Rule, I would have to be persuaded that no reasonable Stewards, armed with all the relevant information, could reasonably have formed the opinion which the Stewards did of the incident. To put it 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 that opinion, or the opinion was not in accordance with the evidence. (See Appeal 328, Hargadon v WATA)

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

I dismiss the appeal against conviction.

In relation to the question of appeal against penalty, Mr Lewis submits that this was his first offence of this nature for some time and this should also be considered in light of the numerous amount of drives he undertakes during the year. Mr Lewis further submitted that a suspension would effect him significantly, as he has the opportunity to engage in drives at the time he would be suspended and where there is a significant amount of stake money available.

Mr Lewis therefore does not focus on the facts of the particular incident, but focuses on his previous good record and the effect the suspension will have on him as significant mitigating factors.

The Chief Steward representing the Stewards at this hearing, submitted that breaches of Rule 440(a) are now dealt with, as a matter of policy, always by suspension and the minimum suspension is a period of 28 days. The Stewards submitted that Mr Lewis therefore received the minimum penalty which has been handed down in recent times. In support of this submission, the Stewards tendered

details of the penalties handed down for breach of this Rule and in particular, breach of the Rule where there has been interference by careless driving, for the last seven months.

The Stewards have conceded that the record of Mr Lewis was good and in fact exemplary when considering the amount of drives that he undertakes during a year.

In considering the appeal against penalty, I need to consider firstly whether the Stewards erred in imposing a penalty of suspension and secondly, even if they did nor err in imposing a penalty of suspension, whether the suspension of 28 days was such that the Stewards fell into error in the circumstances of the case.

The Rules state clearly that there is no minimum penalty for breach of this Rule, nor do they state that the only available penalty is one of suspension. Nevertheless, as I have stated, the Stewards said that the policy of recent times has been suspension for a period of 28 days and upwards.

Although I have no problem with the general policy being imposed by the Stewards on penalties, I consider that in dealing with this specific matter, the Stewards have fallen into error. As the Rules do not restrict the penalty which can be imposed for breach of this Rule, the Stewards fell into error in coming to the view that 28 days suspension was appropriate, as this was the minimum penalty. Each offence has to be considered on the facts of each particular offence and offender. An inflexible adoption of the policy should not be used to circumvent the wide range of sentencing discretion made available by the Rules. This would include considering the circumstances of the specific incident, the antecedents of the offender, the offender's previous record (if any) and the effect the suspension may have on the offender.

I am satisfied that the Stewards erred in finding that the minimum penalty that they could have imposed was only 28 days suspension, but I am satisfied that the appropriate type of penalty, in the circumstances, is a suspension. I make this finding on the basis that I accept the Stewards' submissions that causing interference by careless driving is a more serious offence that where careless driving involves crossing or jostling.

In those circumstances having considered the appellant's previous good record, I am of the view that the appropriate penalty is 14 days suspension. I therefore allow the appeal against penalty and substitute a penalty of 14 days suspension of the appellant's reinspersons licence.

The fee paid on lodgement of the appeal is forfeited.

John Prior

JOHN PRIOR, PRESIDING MEMBER