

DETERMINATION AND REASONS FOR DETERMINATION OF  
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: JON GAVIN  
APPLICATION NO: A30/08/410  
PANEL: MR P HOGAN (PRESIDING MEMBER)  
DATE OF HEARING: 26 MARCH 1998  
DATE OF DETERMINATION: 26 MARCH 1998

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IN THE MATTER OF an appeal by Mr J Gavin against the determination made by Western Australian Trotting Association Stewards on 19 March 1998 imposing eight weeks suspension for breach of Rule 443(d) of the Rules of Trotting.

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Mr W Gavin represented himself.

Mr M Skipper appeared for the Western Australian Trotting Association Stewards.

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This is an appeal against conviction and penalty. The appellant was the driver of DAYMOORE which ran in Race 3 at Gloucester Park on 13 February 1998.

Following the race, the Stewards opened an inquiry into the appellant's driving tactics. Ultimately, the inquiry was adjourned to 19 March 1998. At the resumption of the inquiry, the appellant was present and gave evidence. The race film was played.

The Stewards charged the appellant with an offence under Rule 443(d). The charge was follows:

*"The specifics of the charge are that your action in pulling DAYMOORE into the path of HAYTON KNIGHT as you've entered the front straight on the final occasion of race 3 at Gloucester Park on Friday the 13th of February 1998 prevented that horse from passing on your outside when there was sufficient room for it to do so without interfering with other runners."*

Rule 443(d) of the Rules of Trotting states:

*"No driver shall at the start or during any race or the run up of a standing or moving start:*

- (d) do anything to interfere with or prevent another horse passing on the inside of him or anywhere when there is sufficient room for such horse to do so without interference to others"*

Mr Gavin pleaded not guilty to the charge and its specifics. He was invited to produce evidence in his defence. In response to that, he spoke but did not call witnesses.

Before me today, Mr Gavin has tendered a statutory declaration in evidence, from another driver namely, Mr Nolan. Mr Nolan was the driver of HAYTON KNIGHT. In that statutory declaration, Mr Nolan gives an account of watching and being aware of Mr Gavin's driving of DAYMOORE. That explanation, if accepted, could be relevant to Mr Gavin's conviction or otherwise.

It is clear in my mind that Mr Nolan's evidence is relevant. He is not here to give it or be cross-examined on it. He was not before the Stewards to give the evidence or be cross-examined on it. Mr Gavin explains to me today that he was inexperienced before the Stewards, and perhaps that is a reason why he did not call Mr Nolan or indeed other witnesses. Mr Nolan has relevant evidence to give. For whatever reason, the evidence has not been given and is has not been subject to scrutiny. It should be given, and it should be given before the Stewards rather than me.

In my view, according to the principles of equity and good conscience, and the substantial merits of the case, this appeal should be upheld.

I hasten to make it clear that in coming to that conclusion, I have in no way addressed my mind to the merits or otherwise and the appropriateness or inappropriateness of the manner in which Mr Gavin drove in this race at the time the incident occurred.

The appropriate result in all of the circumstances is to uphold the appeal and I do so. I direct that the Stewards should rehear the matter, and I trust as expeditiously as practicable.

The fee paid on lodgement of the appeal will be refunded.



PATRICK HOGAN, PRESIDING MEMBER

