THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR D MOSSENSON (CHAIRPERSON)

APPELLANT:	**STEPHEN JAMES MILLER**
APPLICATION NO:	**A30/08/413**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)** **MR J PRIOR (MEMBER)** **MS K FARLEY (MEMBER)**
DATE OF HEARING:	**13 MAY 1998**
DATE OF DETERMINATION:	**7 July 1998**

IN THE MATTER of an appeal by Stephen James Miller against the determination of the Western Australian Turf Club Stewards on 30 March 1998 imposing a three month suspension under Rule 135(b) of the Australian Rules of Racing.

Mr TF Percy QC assisted by Mr M Strohmier, instructed by DG Price & Co, represented the appellant.

Mr RJ Davies QC represented the Western Australian Turf Club Stewards.

BACKGROUND

This is an appeal by Mr Miller against the conviction and penalty imposed by the Western Australian Turf Club Stewards in relation to Mr Miller's ride and handling of DOCTOR'S ORDERS in Race 7, Mandurah Toyota Handicap 1500m at Pinjarra Park on 26 March 1998. The Stewards conducted an inquiry into the matter on 30 March 1998 at the W.A.T.C. offices. Present at the inquiry were Mr Miller the jockey, Mr C Willis the trainer, and Mr Del Basso the managing

owner of DOCTOR'S ORDERS. Two of the Stewards participating in the inquiry, including Mr BW Lewis the Chairman of the inquiry, are Stewards of long standing.

At the beginning of the inquiry the Steward chairing the inquiry warned those present that as a result of evidence arising from the inquiry charges may be laid. Mr Willis was mainly asked to explain the riding instructions which he gave to Mr Miller. Both Mr Willis and Mr Del Basso were questioned regarding DOCTOR'S ORDERS' performances and history. Most of the evidence at the inquiry was presented by Mr Miller. The film of the race was shown. Early on in the inquiry the Chairing Steward commented on the fact that Mr Miller, who usually is *'a vigorous rider and one that is very experienced and pulls the whip very well'*, on this occasion did not exhibit *'...any of your usual attributes as that rider.'* Towards the end of the inquiry the Chairman of the inquiry stated:

> *'Mr Miller, Mr Willis, in the adjournment the Stewards discussed between ourselves what you've said. We've also had a look at the side-on film again. Mr Miller, there's some issues that need clarifying. Firstly, we see little movement from your heels, riding this horse out, you say hands and heels, and we believe your style is quiet hands and heels, so we wish again for you to explain why you would ride it out like that, and we put to you why couldn't you keep this horse balanced and ride it with the whip. We don't expect you to hit the horse every stride, but why wouldn't you ride this horse out far more vigorously, in the straight?'.*
>
> .....
>
> *"We must be satisfied that this horse was put under enough pressure to be given full opportunity to win or to run a place or to finish in a position better than it did.'*

The Stewards eventually decided to charge Mr Miller under clauses (b) and (c) of Rule 135 of the Australian Rules of Racing. Rule 135 reads:

> *'(a) Every horse shall be run on its merits.*
>
> *(b) The rider of every horse shall take all reasonable and permissible measures throughout the race to ensure that his horse is given full opportunity to win or to obtain the best possible place in the field.*

(c) *Any person who in the opinion of the Stewards has breached, or was a party to breaching, any portion of this Rule may be punished, and the horse concerned may be disqualified.'*

The particulars of the charge are that *'...through your lack of vigour and purpose in the straight you failed to take all reasonable and permissible measures throughout the race to ensure that DOCTOR'S ORDERS was given full opportunity to win or obtain the best possible place in the field'.*

Mr Miller emphatically pleaded not guilty to the charge. The transcript of the inquiry reveals Mr Miller was given the opportunity of addressing the Stewards in relation to the charge. However, it appears that Mr Miller had become exasperated by then and took the view that he could say nothing further to the Stewards that would help his cause. He responded by saying *'No, I'll just wait for the appeal'.* The Stewards then proceeded to consider the matter after which the Chairman of the inquiry announced that:

> *'Mr Miller, we believe that your ride on DOCTOR'S ORDERS does not demonstrate a level of vigour which would prove to the Stewards that the gelding was fully tested in the straight in this particular race. We therefore find you guilty of the charge, Mr Miller, it now remains with the Stewards to impose a penalty on yourself. Do you wish to address the Stewards on a penalty?'*

After the Stewards received some brief evidence regarding Mr Miller's personal circumstances they then assessed the penalty in the following terms:

> *'...the Stewards have taken into account a number of matters, the first being that this is a very serious charge, it affects the integrity of racing. We've taken into account your personal circumstances, we've also taken into account your record in Western Australia only. We have also reviewed the previous penalties under this rule, they do range from a period of one month suspension from riding in races to a period of three months suspension from riding in races. It is the decision of the Stewards Mr Miller to suspend you from riding in races for a period of three months.'*

Mr Miller appealed against both the conviction and the penalty. The amended and supplemented grounds of appeal read:

'A. CONVICTION

1. *The Stewards erred in convicting the Appellant in that they reversed the onus of proof in relation to the charge preferred against the Appellant.*

2. *The Stewards erred in convicting the Appellant in that they failed to apply the proper test required to ground a conviction under SRR (sic) rule 135(b).*

Particulars

(i) The charge as laid and particularised required the Stewards to find that the horse did not obtain its best possible placing and that this occurred by virtue of the Appellant's manner of riding.

(b) A finding that insufficient vigour and purpose was used is insufficient to constitute an offence under the relevant rule.

(iii) The Stewards failed to consider whether the alleged lack of vigour resulted in the horse obtaining the best possible place in the field.

3. *The conviction was against the evidence and the weight of the evidence.*

3A. *The Stewards failed to give any or any adequate reasons for their decision to convict the Appellant.*

B.. PENALTY

4. *The Stewards erred in imposing a period of three months suspension in that they:*

(i) failed to take into account the fact that the Appellant had no previous convictions under this rule;

(ii) failed to adequately consider the quality of the riding in question, in particular the extent to which the result of the race may have been affected;

(iii) failed to assess where the riding fell in the scale of offences under the rule;

(iv) incorrectly placed the offence into a category of offences which affected or reflected upon the "integrity of racing".

4A. The Stewards failed to give or any adequate reasons for imposing a penalty of three months suspension.'

On the 2 April I granted Mr Miller an order suspending the operation of the penalty until determination of the appeal. After hearing the appeal the Tribunal reserved its decision. This matter involves some slightly different questions to those previously addressed by the Tribunal.

GROUND 1 : ONUS OF PROOF

Senior counsel for the appellant argued that despite the fact that the onus of proof remains with the Stewards *'from start to finish'* and the appellant does not bear the onus to prove that he did not breach the rule in question, the Stewards reversed the onus of proof. It is therefore submitted they fell into serious error thus miscarrying the proceedings and justifying the conviction being set aside. Support for these propositions partly is by reference to the following passages in the transcript where the Chairman of the inquiry stated:

> *'There comes a time when you've got to satisfy the Stewards, you've got to satisfy the public, everyone has to be satisfied that DOCTOR'S ORDERS was ridden out.'* (p26),
>
> *'We must be satisfied that this horse was put under enough pressure to be given full opportunity to win or to run a place or to finish in a position better than it did.'* (p32), and
>
> *'We believe that your ride on DOCTOR'S ORDERS does not demonstrate a level of vigour which would prove to the Stewards that the gelding was fully tested in the straight in this particular race.'* (pp 38 and 39).

Early in the Stewards' inquiry the film of the race was shown to those present. The film was referred to and commented on during much of the inquiry. The inquiry Chairman described his observations in relation to the film in these terms:

> *'...it would be my reading of that film that DOCTOR'S ORDERS commenced quite well and then raced about 5th position in the very early stages, DOCTOR'S ORDERS was then allowed to move forward in three-wide position, and Mr Miller, near about the 950m you appeared to have a sustained look to your*

inside. Approaching the corner, that's the turn into the straight, you're in about 4th position about a length to a length and a half behind HAKIM LAD and racing in advance of the eventual winner which was RICH BOUNTY. At this time Mr Miller, looking at that camera particularly from the side on, it does not show you making, or it only shows you making some, a little effort to ride forward and prevent RICH BOUNTY from improving on your inside. In the straight you do not pull the whip on DOCTOR'S ORDERS and only tap the horse along with the whip on the shoulder.'

In questioning Mr Miller regarding the ride the Stewards asked him to explain:

'...why couldn't you put pressure on your horse, to prevent that horse getting up on your inside?', and

'...why aren't you riding forward -'

I am satisfied from studying the transcript as a whole and in particular after considering the context in which these and other statements are made and the questions are asked of Mr Miller that the Stewards have not in fact reversed the onus of proof as alleged. Onus of proof is not relevant during the inquiry stages of proceedings before Stewards. Only from the time that a charge is formulated and laid does the guilt or innocence of the party who has been charged with the breach of the Rules arise. From then onwards the burden of proving guilt or innocence becomes relevant. The wording of the Rule in question determines whether the burden of proof is on the Stewards or on the person charged. Rule 135(b) clearly places the burden on the Stewards. I am satisfied that during the inquiry stage of their proceedings the Stewards have done nothing more than to put Mr Miller on notice of their general interpretation and application of the relevant Rule. By indicating their attitude to the quality of the riding prior to actually charging Mr Miller the Stewards in fact have afforded Mr Miller every opportunity of reacting and responding during the inquiry stage of the proceedings. The Stewards, in adopting this approach, have ensured Mr Miller was not taken by surprise or otherwise put at a disadvantage. Proper and relevant questions were put to Mr Miller which assisted the Stewards in arriving at their initial conclusion that Mr Miller should be charged and their ultimate conclusion that he should be convicted of the breach of rules. For these reasons this ground fails.

GROUND 2 : PROPER TEST TO CONVICT UNDER AAR153(b)

Mr Percy QC for the appellant argued:

> *'... that not every horse has to be thrashed to within a inch of its life to give its best, and that in this case there was a horse who was ridden very quietly in a race.'*

It was said by senior counsel for Mr Miller that this type of ride was not a one off circumstance. *'This was an extremely slow horse. Its record was abysmal and anything had to be tried, and riding it quietly seemed to have worked'.* The Tribunal was given details of all of DOCTOR'S ORDERS' runs in this State. A considerable amount of time was devoted to the horse's record as well as the style of riding by the jockeys in each of its races both before and after the race in question. All that needs to be recorded in regard to those matters is the fact that this horse has had a chequered career with many poor performances but at the same time it has enjoyed some wins and places.

In regard to the race in question senior counsel for the appellant provided the following commentary of the ride whilst the race film was being shown to the Tribunal:

> *'This is the offensive race. Again, he jumps out in front, this time being ridden by the appellant. Jumped from a wide barrier; he's caught a bid (sic) wide there so you can imagine that he's probably not going to be expected to make a lot of ground at the end, given that these two horses in front have set a frantic pace. Hakim Lad and Zabanella. And these, in fact, in the run home are the only two horses that he does manage to pass to run into fourth place. They have gone berserk in front, taking each other on. He's got a reasonable run in behind them there. He's distinctive by the heavily bandaged front legs. These two horses are still adopting cut-throat tactics in front. Neither of these can win and they obviously will run closer to last than first adopting that tactic. But he's finding the going a bit tough on the turn, dropping back. The other horses have gone very fast and he's been wide, so you might expect that he's not going to do a lot in the straight. Now, here Miller's still slapping him down, trying to get the best out of him in the designated manner, exactly the same as his brother did last start. Now, the only two horses he's going to pass are those two on the rails that have gone neck and neck the whole way. He's never going to beat these ones and he in fact does run on into fourth place.*

Can we just watch that down from the straight again? From the top of the straight. Okay. Let's go. See, the suggestion is that with a more vigorous ride he may well have finished in a better place, but I ask that this be the subject of examination. He's trying hard, flicking him down the wrist, again keeping the left hand poised, using that to shake him up, sool him along, just the same as his brother did on instructions the same way. The other horses are beaten, he runs on into fourth place but was never going to beat those other two, I think as Miller said at the inquiry, if he was fired out of a gun.

Just watching the head-on, you'll see that he was in fact not blessed with a lot of room between the 300 and the 100. He gets a bit of room at about the 100 but, of course, the race has been run and won at that stage. Look for the horse with the bandages. He's not entirely prominent there. You can see his head with that cap just through there. Left hand steering the horse. The horse does have a tendency to lug in a bit. You can see how he gets his head on the side. There's mention of that in the inquiry. And he flicks the rein at him, sools him along, exactly - - almost a carbon copy of the previous race start for Danny Miller. And that was the offensive ride.'

In order to better understand what was submitted in support of this ground on behalf of the appellant and how it is alleged one should interpret Rule 135 it is worth quoting the following passages from the Tribunal's hearing transcript:

'It's not requirement (sic) that you fully test the horse. Sometimes you can imagine cases, country race meeting, where a horse is not going to beat the one in front of it, and the ones behind it are not going to beat him. Does he have to fully test the horse? Some of us here - some of the stewards no doubt - have been to remote tracks where you have two or three horses in the race. The winner's 10 lengths in front and the third horse is 20 lengths behind it. Is there an obligation to fully test that second horse? If there's no prospect of improving its place, then what we say is that the test must be conjunctive. You've got to take all permissible means. You can't do anything illegal and you've got to do all things that are reasonable. That is, you can't do anything untoward or anything less than might be required of you to obtain the best possible position in the race.

Now, if the stewards simply say, "you've got to use more vigour for the sake of using more vigour, "or "You've got to test the horse just to see how close he might have got, that's not the test. The test is, and the stewards framed the charge correctly .. they said, "You failed to take all reasonable and permissible measures to ensure that your horse was given the full opportunity to win or obtain the best possible place," but the stewards in their reasons, and again because they don't

write judgments we can only rely on what they say, and what they say does cause one a great degree of disquiet. (p22)

We would say the stewards in this case have erroneously concluded that perhaps there was a prima facie case of lack of adequate vigour in their view, and that that constituted an offence. And this matter was looked at in Knuckey's case that many of the cases where a jockey has been guilty of what, in the stewards' opinion, constitutes a lack of vigour does not result in even a charge. I would cite the cases of Barnett, 6th of August, warned for not exhibiting sufficient vigour; Staples was warned for it; Brown, Gladwin, Robertson, Berry, Miller. These have been tendered before and we did make reference to them in the Knuckey case. I simply tender those stewards' reports for the record.' (p26)

Further it is argued that whilst there may have been a prima facie case at best as to a failure of vigour there was never sufficient evidence to suggest that the outcome of the race was affected and that no reasonable stewards would come to that conclusion.

In response Mr Davies QC submitted that it clearly is not the case that all errors of judgment attract action by the Stewards. It really becomes a question of whether or not the error falls within permissible limits associated with normal standards of riding competence or outside those limits so as to be unjustified. (Mr Justice Perrignon in *D Lindon* New South Wales Harness Racing Appeals Tribunal 27/7/90)

In *W Honan(* New South Wales Harness Racing Appeals Tribunal 26/10/83), dealing with Rule 223(b) being the equivalent rule in harness racing, Judge Goran laid down the following guidelines:

'In the first place the Rule does not permit mere substitution of the stewards' view as to how a particular horse should be driven for the view of the driver. Secondly the rule does not seek to punish the mere error of judgment during a race on the part of the driver.'...

The question, therefore, should be asked "What does the rule seek to prevent?" The rule attempts to ensure not merely that the horse has a winning chance in a race but that, given its inability to win, it will still do the best it can in the circumstances. Looking at the matter another way, the rule

places an obligation on every driver to make his horse compete in the race at all times, and never to stop competing.

As a mere example of a typical breach of the rule which occurs frequently and sometimes goes unpunished, one sees a horse which has drawn badly in a mobile barrier event, for example No. 6 on a narrow track, where the driver sees what position he can obtain immediately after the start and realises that this is not his night to win soon after because his chances are marred by other horse taking up the favourable positions. His efforts thereafter are token efforts only with a vigorous drive to the post to see how well his horse can come home so that he can learn something about it for the next occasions when it starts.

Another example is that of the driver who takes advantage of the interference rules by staying on the rails at all times and refusing to take an opportunity presented to him to come out with a trail. This, of course, is probably an example of dishonesty, because the driver obviously does not want to win in the first place, and he should be dealt with for not allowing his horse to run its merits. But there may well not be enough evidence to prove that charge although there is ample evidence to sustain the present charge.

The rule demands that the measures of the driver must be 'reasonable and permissible'. Obviously it is not expected that a driver would be permitted to interfere with another horse in order to win with his own horse, but his failure to take a permissible measure to win or to secure the best possible place in the field must be a reasonable failure. It is for this reason that I have said that a mere error of judgment is not a breach of the rule because a mere error of judgment may be reasonable in the circumstances.

It is expected that drivers will at times make errors of judgment although, like Judges, it is expected that they will not make them too often. But an error of judgment which cannot be explained as such ... that is which is completely unreasonable ... is caught by the rule. Thus, a driver who tries for a furlong or more to challenge for the lead, causing the leader's and his own defeat, tearing away from the rest of the field, will find such an error of judgment most difficult to explain. A driver who sits outside the leader and does not attempt seriously to get to the front but sprints alongside the leader, stirring him up, will find that also difficult to explain and, indeed, may well be disqualified for failing to allow his own horse to race on its merits if the stewards find his reason is merely designed to bring about the defeat of the leader.

There are an infinite number of possibilities when this present rule will apply, and the list here is not by any means intended, therefore, to exhaust these instances by illustration but merely to demonstrate the application of the rule. In short, however,

the unreasonableness of the driver's tactic must be culpable - that is, blameworthy. He carries with him the weight of public money and also the reputation of the sport, and the stewards must be zealous to see that both of these are guarded. It is true that the standards expected of one driver may differ from those expected from another. For example, it may well be that in a particular case a tactic that would be judged to be unreasonable in a leading driver would not be considered so unreasonable in a new or restricted driver. Each case will turn upon its own merits, but overall if in taking into account all the circumstances the actions of the driver are unreasonable then he may be considered in breach of this particular rule.'

Even although both Mr Justice Perrignon and Judge Goran in those appeals were dealing with the equivalent provisions in the trotting rules their pronouncements are directly on point and assist with the interpretation and application of ARR135. This Rule of Racing begins with the brief statement which in effect requires that all horses be raced according to their just desserts. The second part of the Rule obliges all jockeys to employ all suitable actions that are both 'reasonable' and at the same time 'permissible'. This obligation applies to all stages of a race. The underlying purpose is to guarantee that every mount being ridden in a race will be given 'full opportunity either to win' or to gain 'the best possible place' in the race. It is clear the Stewards formed the view that Mr Miller, with his level of experience in this particular race, did not fully extend DOCTOR'S ORDERS at all stages in the race so as to demonstrate what the horse was fully capable of achieving in the race. By referring to "<u>full</u> opportunity" it is clear that the Rule requires jockeys to give their mounts complete and uninhibited prospects but subject to their actions remaining within the bounds of what is considered appropriate and is otherwise sanctioned by the rules.

The third part of the Rule gives the Stewards a discretion to punish someone should they form the opinion that the Rule has been breached. As Mr Davies QC argues this opinion is very hard to dislodge. The Rule having been so framed in effect results in the duly appointed and experienced racing experts, namely the Stewards, having to come to the relevant opinion, not the jockey, the trainer, the owner or this Tribunal.

I am satisfied from the evidence before the Stewards that they were perfectly entitled to reach the conclusion which they did as to Mr Miller's culpability in view of his lethargic ride in the race in question. The Stewards did not err in applying the test which they did. In substance the Stewards were entitled to reach their conclusion of Mr Miller's actions on the balance of probabilities. Such was the error of judgment on Mr Miller's behalf that it was outside normal limits of riding competence. Even although the conclusion of the Stewards is only encapsulated in one sentence, despite there having been a fairly comprehensive inquiry which preceded their reaching that conclusion and in which many factual points were ventilated, the appellant has not made out the second ground of appeal. The finding as pronounced must be read together with the charge and does not amount to a mistake by the Stewards as alleged in ground 2 and its particulars. I interpret that the Stewards have found that Mr Miller's approach in the way he rode DOCTOR'S ORDERS in the straight meant that the horse was not given adequate opportunity to run a better place in the field. The Stewards in so concluding clearly were not saying that Mr Miller should have thrashed his mount. Had more appropriate riding tactics been adopted the horse would have performed better and its place in the race may well have been enhanced. Whilst the lack of competitiveness of the ride did not amount to dishonesty it was an error of judgement by this experienced jockey which fell outside the permissible limit so as to be unjustified. In deciding to punish Mr Miller for this conduct the Stewards have properly *'...guarded..' '...the weight of public money and also the reputation of the sport...'* (*Honan*, supra)

GROUND 3 : CONVICTION AGAINST THE EVIDENCE AND THE WEIGHT OF THE EVIDENCE

I am satisfied that there is no basis for the propositions which were put on Mr Miller's behalf in regard to this ground. It was clearly open to the Stewards on the material that was before them to reach the conclusion which they did of the matter as to Mr Miller's guilt. As the experts charged with the duty of deciding the matter and forming an opinion the Stewards duly and properly discharged that responsibility on the basis of the material before them.

GROUND 3A : FAILURE TO GIVE ANY OR ADEQUATE REASONS

I am satisfied that despite the brevity of their pronouncement, the Stewards have clearly identified some reasons for their decision. As quoted above the Stewards referred to both the lack of vigour and the failure to fully test the horse in the straight. Further they expressly found Mr Miller *'guilty of the charge'* which was previously particularised, albeit also briefly. The particulars address the quality of the riding technique adopted, the time when this occurred and its consequences in the context of the rule in question.

Stewards are not required to perform to the same level as courts in enunciating the bases for their determinations. As a domestic tribunal comprised of laymen who are dealing with persons in contractual relationships there is strictly speaking no formal obligation on Stewards to give reasons for their decisions. This situation, for example, is to be contrasted with the statutory obligation placed on this Tribunal as s21 of the *Racing Penalties (Appeals) Act* 1990 specifies:

> *'Where, within 14 days after the Tribunal has given notice of its determination in relation to that appeal to that party, a party to an appeal before the Tribunal requests the Registrar to furnish reasons in writing for the determination the Tribunal shall comply with the request of that party and set out in writing the reasons for the determination.'*

Senior counsel for the appellant in addressing whether there is a specific requirement for Stewards to give reasons stated:

> *'Well, the current state of the art in this Tribunal at least is that the stewards aren't really required to give any substantive reasons." But what I would be saying is that I would be asking this Tribunal to make a ruling in that regard in this case. Are the stewards required to give reasons, because the law is changing all the time. The law is developing apace in this area, in areas concerning magistrates and other domestic tribunals, and we would say that where a lay tribunal such as the stewards have the very severe powers such as we see in this case, to take someone's livelihood away from them, and there exists an appeal to another body, he's entitled to say, "Why did I get convicted? What did you find? Is this reasonable, and how can I have it reviewed?" It doesn't have to be particularly good. It*

doesn't have to be particularly expansive, but he needs to be able to say, "Aha. That's why you convicted me. I want to know that, and I want to know the process by which you reached that conclusion."

I just want to take the members to a decision which was cited recently by Owen J in the Supreme Court, a matter which dealt with sentencing in Magistrates Courts.'

The case in question is *Haysdale Nominees Pty Ltd v Tanya Gai Shepherd* (unreported decision of the Supreme Court of Western Australia LIB No 980177) where his Honour stated:

'The importance of reasons for decision has been the subject of comment in numerous cases. It has been accepted in this Court that an appellant on conviction is entitled to know the essential findings of fact upon which the decision is based: LAM v Beesley [1992] WAR 88. In Newmann v R (1989) 43 A Crim R 347 at 349 Malcolm CJ noted that there is a positive duty on a sentencing Judge to provide reasons for decision:

'The decision what sentence to impose involves the exercise of a discretion based upon the relevant facts as found by the sentencing judge. Consequently the process of reasoning needs to be revealed. In my opinion a sentencing judge no less than a trial judge has a duty to reveal his reasons.'

The requirement to provide sufficient reasons is in order to facilitate the defendant's proper consideration of its potential right of appeal: Lloyd v Farrone [1989] WAR 154. In Gould v Reid (1990) 4 WAR 249, Wallwork J said at 254 that the question of "depriving a litigant of the opportunity he may have had on appeal" extends beyond a complete absence of reasons and includes a situation where there is uncertainty as to the reasons upon which a finding is based.

It is not necessary for the appellant to show a total absence of reasons. The question is whether the reasons given are insufficient or inadequate for the purpose of considering a right of appeal. (pp 4 and 5)

....

I believe that it is necessary for a judicial officer when handing down a decision to provide to the defendant reasons pointing to the factors that in the judicial officer's opinion make the particular offence more or less serious than another. That is not to say a detailed judgment is required. A brief oral statement will suffice so long as such a statement is capable of providing the defendant with sufficient information to enable the defendant to know what has been found against it and to assess its potential rights of appeal.' (p7)

This decision clearly applies to a criminal case and casts no duty on racing stewards who operate in completely different circumstance to judges and magistrates. Stewards are not expected to have legal training. The general nature of their proceedings is that of a civil domestic inquiry. On many occasions during the course of race meetings Stewards must deliberate under intense pressures from a time perspective. In such circumstances, at best it would be unreasonable and impractical to expect anything but the briefest of reasons. On other occasions when circumstances permit more mature deliberations, such as in this case, and particularly where issues of fact and conflict of evidence call for reflection and evaluation, it would obviously be helpful to the persons directly affected and those who may potentially revisit the decision later with a view to using it as some guide to subsequent determinations if the Stewards were to clarify the basis for arriving at their conclusions. In the present case the Stewards have enunciated sufficient to make it clear to Mr Miller why they found him guilty of the charge. Whilst not strictly obliged to do so the Stewards in dealing with this matter have given reasons for their decision. These reasons are adequate in the circumstances. The ground of appeal clearly fails.

GROUND 4 : PENALTY

A wide ranging argument was presented in support of the proposition that the Stewards erred in imposing a 3 month suspension including:

- that the penalty was too severe,
- the fact the horse was not ridden contrary to the instructions or to the dissatisfaction of the owner or the trainer,
- there was never any palpable allegation of dishonesty or chicanery levelled at Mr Miller,
- the offence was not at the highest scale, but rather at the lowest end of the range for this type of offence, being at worst categorised as an error of judgment on the part of the rider whose opinion had been supplanted by the stewards as to how best the horse might be ridden,
- the stewards failed to take into account the extremely poor record of the horse,

- the reason for the riding tactic was that of experimenting with an alternative style of riding,
- the applicant's previous good record,
- riders are regularly reprimanded over a lack of vigour,
- this was an extremely slow horse ridden very quietly but that it ran its best ever performance in Western Australia to that point,
- it was ridden in the same manner in the next 3 starts but this did not result in any adverse reactions from the Stewards.

As Mr Davies QC pointed out DOCTOR'S ORDERS in fact did win in April and in May of this year when it was ridden vigorously. However, I am not too much influenced by all of the material which was presented regarding the horse's performances. It is very difficult to draw any meaningful relevant conclusions regarding the matter in question based upon the history and results of DOCTOR'S ORDERS extending over a period of time with different jockeys and trainers, in different circumstances and with the horse being at varying levels of fitness and condition. Further, I agree with the remark that the appellant is *'... hardly likely to go out and demonstrate remarkable vigour on the horse at the next start'.*

As was recently stated by Presiding Member Prior in *Knuckey* 's appeal to this Tribunal (Appeal 407 heard 1 April 1998 determined 20 April 1998):

> *'In relation to their question of the Appeal against penalty the range of penalty which has been imposed in this State for offences of this nature vary from suspensions of 1 to 3 months. I note that some of the penalties of 3 months have been imposed on jockeys who are second offenders for breach of this Rule. The Chairman of Stewards in imposing the penalty on the Appellant said the following:*
>
> > *"Mr. Knuckey the Stewards see any change* (sic) *under this Rule as being serious and that as seen from the betting analysis that OLD COBBER carried a fair weight of public monies, your record does not reflect any previous charges in relation to this particular Rule, however an appraisal of previous penalties under this particular Rule and charge in W.A. over the past seven years show that a spread of Stewards' penalties range from one month's suspension from riding in races to a three month suspension from riding in races period. As such in assessing a penalty which the Stewards have*

taken into consideration the evidence placed before us and indeed what I just said, the Stewards believe that a penalty of three months suspension from riding in races to be appropriate, ..."

The Stewards when imposing the penalty gave no reasons for imposing on a first offender, against this rule, what they described as the maximum penalty that has been imposed to date for offences of this nature. The evidence reveals that there was no serious aggravating factors. The connections of the horse had all suffered as a result of the failure of the horse to run a place. There was no evidence of lack of betting support for the horse. There was evidence in support of the Appellant from the horse's connections that irrespective of the riding of the horse in this particular race that they were satisfied with the general handling by the Appellant of this horse in the race in question and in other races where he has ridden the horse.

In circumstances I am satisfied that the Stewards have erred in imposing a penalty of 3 months suspension. The mitigating factors I have described above, in particular the fact that this Appellant was a first offender for a breach of this rule, had not been given adequate weight by the Stewards and in those circumstances I am satisfied that the appropriate penalty should have been 6 weeks suspension for this offence. I give weight to the fact that this was not a plea of guilty in imposing a period of 6 weeks suspension.'

This decision was heard and determined by the Tribunal subsequent to Mr Miller having been dealt with by the Stewards. As Mr Knuckey was charged with a breach of the same Rule and was said to have *'...failed to show sufficient vigour and purpose in riding out of that horse'* the determination of the *Knuckey* appeal by the Tribunal must affect the outcome of this appeal. This latter fact was not disputed on behalf of the Stewards.

GROUND 4A : FAILURE TO GIVE REASONS FOR PENALTY

As quoted in the background, the Stewards did set out a number of reasons for the imposition of a 3 month suspension. For the reasons previously given in relation to Ground 3A this ground fails.

CONCLUSION

The appeal as to conviction fails. In view of the *Knuckey* decision it is now clear that the Tribunal (albeit differently constituted) recently considered that the range of penalties for this type of offence is a suspension of between 1 to 3

months. For a first offender with no aggravating factors a suspension in the order of half as long as that actually imposed on Mr Miller is appropriate. Because of the similarities to the Knuckey offence I consider that the appropriate penalty is for Mr Miller to serve a further 6 weeks suspension from the date of this determination.

DAN MOSSENSON, CHAIRPERSON

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MS K FARLEY (MEMBER)

APPELLANT:	**STEPHEN JAMES MILLER**
APPLICATION NO:	**A30/08/413**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)** **MR J PRIOR (MEMBER)** **MS K FARLEY (MEMBER)**
DATE OF HEARING:	**13 MAY 1998**
DATE OF DETERMINATION:	**7 JULY 1998**

IN THE MATTER OF an appeal by Stephen James Miller against the determination of the Western Australian Turf Club Stewards on 30 March 1998 imposing a three month suspension under Rule 135(b) of the Australian Rules of Racing.

Mr TF Percy QC assisted by Mr M Strohmier, instructed by DG Price & Co, represented the appellant.

Mr RJ Davies QC represented the Western Australian Turf Club Stewards.

I have read the draft reasons of Mr D Mossenson, Chairperson. I agree with the reasons and have nothing to add.

Kae Farley

Seal of the Racing Penalties Appeal Tribunal of WA

KAREN FARLEY, MEMBER

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR J PRIOR (MEMBER)

APPELLANT:	**STEPHEN JAMES MILLER**
APPLICATION NO:	**A30/08/413**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)** **MR J PRIOR (MEMBER)** **MS K FARLEY (MEMBER)**
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Mr RJ Davies QC represented the Western Australian Turf Club Stewards.

I have read the draft reasons of Mr D Mossenson, Chairperson. I agree with the reasons and have nothing to add.

John Prior

Seal of the Racing Penalties Appeal Tribunal of WA

JOHN PRIOR, MEMBER

APPEAL 413

DETERMINATION OF

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT:	**STEPHEN JAMES MILLER**
APPLICATION NO:	**A30/08/413**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)** **MR J PRIOR (MEMBER)** **MS K FARLEY (MEMBER)**
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Mr RJ Davies QC represented the Western Australian Turf Club Stewards.

For the reasons published the appeal against conviction is dismissed and the appeal against penalty is allowed. The Tribunal sets aside the 3 month suspension and substitutes a further period of suspension to be served of 6 weeks to commence from the date of this determination.

The suspension of operation of the penalty automatically ceases.

Seal of the Racing Penalties Appeal Tribunal of WA

DAN MOSSENSON, CHAIRPERSON