

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPLICANTS: R E RONEY NOMINEES PTY LTD
SYNDICATE, PEGGY FOWLES &
RAYMOND FREDERICK GREEN

APPLICATION NO: A30/08/416

PANEL: MR P HOGAN (PRESIDING MEMBER)

DATE OF HEARING: 14 JULY 1998

DATE OF DETERMINATION: 21 JULY 1998

IN THE MATTER OF an application for leave to appeal by R E Roney Nominees Pty Ltd Syndicate, Ms P Fowles and Mr R F Green against the determination made by the Western Australian Turf Club Stewards on 28 March 1998 in relation to a protest following the running of Race 3 at Ascot on that date.

Mr T F Percy QC, instructed by D G Price & Co, represented the applicants.

Mr R J Davies QC represented the Western Australian Turf Club Stewards.

INTRODUCTION

The applicants are the owners of the horse CENTANI. The horse ran in the Trigg Island Handicap, over 2200 metres at Ascot on 28 March 1998.

CENTANI was 1st past the post, MASTER TOUCH was 2nd, BLACK SPEED 3rd and DIGGER 'N' DEALER 4th. Following the race, the riders of the minor placegetters objected as follows:

2nd against 1st
3rd against 1st
3rd against 2nd
4th against 2nd

After the protest (objection) hearing, the Stewards upheld the protest 2nd against 1st. The placings were reversed. MASTER TOUCH was awarded the race, and CENTANI was placed second. All other objections were dismissed.

The applicants now seek leave to appeal against the Stewards' decision, upholding the objection 2nd against 1st. The applicants submit that it is in the public interest that the matter should go to appeal, and that there are special circumstances.

The proposed grounds of appeal, should leave be granted, are:

- “1. *The Stewards failed to afford the applicants natural justice in the determination of the protest.*

Particulars

- (i) *The Stewards failed to adequately consider the issues involved in the determination of the protests generally and the protest by the second horse against the winner specifically.*
 - (ii) *The Stewards failed to take any reasonable or proper care in considering all the issues before them in regard to the protests generally and specifically in regard to the protest by the second horse against the winner.*
 - (iii) *The Stewards failed to give any reasons for their decision in relation to the protests.*
2. *The decision of the Stewards was perverse and contrary to any of the evidence before them.*

Particulars

- (i) *There was no interference caused by the horse Centani to the second horse.*
 - (ii) *No Steward acting reasonably on the evidence could have come to the conclusion reached by the Stewards in the present case.*
3. *Each of the errors specified in grounds 1 and 2 requires that the decision of the Stewards should be set aside. Alternatively, the combination of errors specified in grounds 1 and 2 requires that the decision of the Stewards should be set aside.*
4. *Leave to Appeal should be granted as being in the Public Interest*

Particulars

- (i) *It is manifestly in the public interest that the Stewards be seen to afford all parties to a protest hearing natural justice.*
- (ii) *It is manifestly in the public interest that the Stewards be seen to determine protests carefully and in accordance with the evidence brought before them.*
- (iii) *It is manifestly in the public interest that the Stewards be required to furnish some reasons for their determination of the protests.*
- (iv) *The Stewards decision in relation to the protest has attracted significant media interest and public controversy throughout the State.*

FACTS

The first piece of evidence which the Stewards heard concerned the protest 3rd against 1st. Mr Noske, the rider 3rd placed BLACK SPEED gave his evidence in answer to a question from the Chairman, at T2:

"CHAIRMAN Right, so you've lodged your objection on the final 100m, would you state your grounds, Mr. Noske please.

NOSKE Yes Sir, at the time my horse was running second at the time, I had Mr. Sestich on the outside of me and Mr. Turner on the outside of him. Mr Turner's horse, his mount has come across, put pressure on Mr. Sestich's horse which in turn put pressure on my horse. If CENTANI had gone straight my horse was, kept kicking Sir. Every time a horse came to my horse he kept sticking his head until he got unbalanced, I got forced to change stride and get unbalanced."

In answer to that, the rider of CENTANI, Mr Turner, said at T2:

"TURNER Yeah, I come round the turn I think three wide Sir, and I may have rolled in one horse, maybe two at the top of the straight, and from the top of the straight about 300 to the furlong I thought I kept a pretty much straight line – I didn't think I put pressure on the ones inside me."

Mr Roney, representing the owners of CENTANI, said at T3:

"RONEY Well, my comment is that it appeared to me that my horse, once he got into the straight was going reasonably straight, and the horse coming from behind Mr Sestich's horse was trying to force a passage which in turn put pressure on the rest of the horses inside him, consequently resulting in the tightening of the horses inside. I believe my horse was going quite a good straight line. I don't believe that sort of, that we were responsible for impeding BLACK SPEED's progress, I believe it was the horses behind us which were causing that interference."

The next protest inquired into concerned the subject of this application, namely 2nd against 1st. The rider of the 2nd placed horse, Mr Sestich, said at T4- T5:

"SESTICH Yes Sir. Just getting to what I thought was about a bit before the furlong post, I was making a run up behind the three horses in front of me which were Troy Jackman, Jeff Noske and Troy Turner. I was running up behind CENTANI at the time, there was a run inside CENTANI and outside BLACK SPEED, I went back to the inside of CENTANI and in doing so I made a run in between those two horses – as I got in there I felt the outside horse, which was CENTANI, come across and crowd me to an extent where I was pushed up against the other two horses on the inside, in doing so I called on several occasions to Troy to give us ample room so I could get at my horse, hardly at any stage I couldn't ride my horse out because I was being pushed up against the inside horses and I know the type of sprint that my horse has got, he's got an explosive sprint when he gets into the clear, but I couldn't, at no time could I ride him out properly, and when I was being pushed up against the other horses my horse was having a tendency to crowd off that much he was going sideways. As I said I called to Troy on a number of occasions but to me it didn't look like he straightened his horse up to relieve the pressure at all. I felt that my horse, if he had had've had a clear run he would've exploded through and kicked like he did in his last couple of starts and he

would've won the race convincingly – as it is he's only been beaten a length, he met the same horse the other day and beat him by four and a half lengths, and I'm 100% sure that he would've beaten him by at least two to three lengths if he had had a clear run today."

Mr Turner, in reply, said at T5:

"TURNER All I'd like to say is I thought the run was already taken before Mark Sestich has actually gone for the run, and in the closing stages I thought he was forcing a run Sir."

Mr Roney, at T6, said:

"RONEY My comments are that I believe that Mr. Turner had had his horse clear before then, and the run that Mr. Sestich attempted to take was not there at the time of taking it and consequently (inaudible) appeared to push for the run, and consequently, you know, the run wasn't there, he couldn't get through and I believe he was still riding his horse considerably harder and bumping with the horses, you know, when my horse was going in a straight line."

During the taking of the evidence referred to above, the patrol film was available and was seen by all parties.

Other evidence was taken by the Stewards, which in my view is not relevant to this application.

After a short adjournment, the Stewards gave their decision. They gave no reasons for their decision.

THE LAW

Australian Rule of Racing 136(2) is in the following terms:

"(2) If a placed horse or its rider causes interference within the meaning of this Rule to another placed horse, and the Stewards are of the opinion that the horse interfered with would have finished ahead of the first mentioned horse had such interference not occurred, they may place the first mentioned horse immediately after the horse interfered with. For the purpose of this Rule, "placed horse" shall be a horse placed by the Judge in accordance with AR. 157."

There are therefore 2 elements to be proved to the Stewards satisfaction before placings can be reversed. They must find that there has been interference, and that the 2nd placed horse would have finished ahead but for that interference.

As to the first element, it is manifestly obvious that the rider of CENTANI, and Mr Roney on behalf of the owners, were both given a full opportunity to comment on the allegation, Effectively, both maintained that there had not been interference.

As to the second element, the "but for" aspect, that was never specifically raised by the Stewards or commented on by Mr Turner or Mr Roney. In my view, it would have been better if it was. Specific opportunity should have been given to the interested parties to make comments on that issue.

That does not mean, however, that the applicants must be successful in their application before me.

The question to be decided is whether the applicants were given a full and fair opportunity to present their case. Considering the comments made by Mr Noske and Mr Roney, it appears that both were of the view that there was no interference in any event. In those circumstances, I am not prepared to find that there has been any breach of natural justice in that aspect of the Protest Hearing.

This application is to be determined under sections 13(1)(d) and 13(2)(b) of the *Racing Penalties (Appeals) Act*. There must be a public interest in leave being granted, so that an appeal is heard by a full Tribunal. Further, because the granting or refusing of leave is an exercise of discretion, it is appropriate to take into account the prospects of success, should leave be granted.

PROSPECTS OF SUCCESS

I cannot see any merit in the proposed grounds of appeal. Natural Justice was afforded to the applicants. It was not necessarily required in this case that reasons be given. The rule in respect of protests is well known to all in the industry, and comprises the 2 elements mentioned above. In simply announcing their decision, the Stewards were obviously satisfied that the 2 elements had been made out.

It is not the case that the decision of the Stewards was perverse and contrary to the evidence. All parties viewed the patrol film, and evidence was taken from all riders involved. There was ample evidence for the Stewards to reach the decision that they made.

During submissions, Mr Percy QC for the applicants submitted that because the other protests were dismissed, in the face of obvious interference by MASTER TOUCH to the horses placed 3rd and 4th, the Stewards must not have considered the matter properly. This is not so, for the reason that the Stewards obviously found the interference to have been caused first by CENTANI to MASTER TOUCH. In those circumstances, the Stewards' decision to not uphold the other protests can be seen as a proper one.

PUBLIC INTEREST

Finally, I am not persuaded that there is any particular public interest in this proposed appeal being heard before the Tribunal. Natural Justice was afforded to the applicants, and reasons for the decision were not required in the circumstances of this case. It is equally in the Public Interest that protest hearings be determined expeditiously, which is what occurred in this case.

For these reasons, leave to appeal is refused.



PATRICK HOGAN, PRESIDING MEMBER