

DETERMINATION AND REASONS FOR DETERMINATION OF  
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: DAVID ANDREW O'HEARE  
APPLICATION NO: A30/08/424  
PANEL: MR P HOGAN (PRESIDING MEMBER)  
DATE OF HEARING: 14 JULY 1998  
DATE OF DETERMINATION: 14 JULY 1998

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**IN THE MATTER OF** an appeal by Mr D A O'Heare against the determination made by the Western Australian Turf Club Stewards on 28 June 1998 imposing 9 days suspension under Rule 137A(1) of the Australian Rules of Racing.

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Mr T F Percy QC, assisted by Ms C White, instructed by D G Price & Co, represented the appellant.

Mr L Wagener appeared for the Western Australian Turf Club Stewards.

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This is an appeal against conviction and penalty. The appellant is an apprentice jockey. He was the rider of MOONIJIN FLYER which ran in Race 5 at Northam on Sunday, 28 June 1998.

After the completion of the race, the Stewards opened an inquiry into the manner in which the appellant acted towards his mount following the running of the race. The Chairman of Stewards on the day, Mr Wagener, gave evidence of his observations. The appellant gave evidence, as did Mr Webster who is the appellant's master. The appellant was charged with an offence pursuant to Rule 137A(1) of the Australian Rules of Racing which states as follows:

*"The Stewards may punish any rider who in a race or trial, or in trackwork, uses his whip in an excessive, unnecessary or improper manner."*

The specifics of the charge were:

*"... that passing the winning post and on pulling up, you have acted in an improper manner ... in the use of your whip towards your mount MOONIJIN FLYER."*

The appellant pleaded not guilty. The Stewards considered the matter for a short time before convicting him. Mr Webster then spoke on the appellant's behalf in mitigation of penalty. The Stewards then imposed a penalty of 9 days suspension. The appellant today abandons his appeal against conviction and that being the case, the appeal against conviction is formally dismissed.

As to penalty, it is important in my view to note the following facts:

Firstly, the appellant admitted his wrong doing at page two of the transcript. The following short exchange took place:

Chairman: Now have your (sic) anything you can explain to the Stewards why you've done this?

O'Heare: No Sir, I just lost my temper a little.

Chairman: Do you think that's very nice?

O'Heare: No it's not.

And later at the same page of the transcript:

O'Heare: No not really Sir, just as I said earlier, Sir I've lost my temper with the horse, it shouldn't have happened and hopefully it won't happen again.

Secondly, in my view, it is important to note that the appellant has not offended when he behaved in this way before. The Chairman said at page 4 of the transcript:

Chairman: Mr Webster the Stewards will take into account what you have said in regards to Apprentice O'Heare, you have not known him to be, to act in that manner previously, but there's nothing else that you wish to add?

Webster: Yes Sir, David said that he'd make sure it doesn't happen again.

The third thing to take into account is that the Stewards acknowledged the appellant's remorse.

It is clear to me that the Stewards made no errors of fact in their findings on the day. The appeal against penalty will only succeed if it can be shown the penalty is outside the range, and that indeed is the manner in which Mr Percy QC has put the case today. The statistical information that has been provided to me by way of Exhibit A shows that the most common penalty imposed by far is a fine, and those fines can range from anywhere between \$25 to \$500, although it seems to be more likely to be something like \$100 for offences under this rule. Some riders appear to have been suspended for up to 9 days in the past, or indeed for other short periods of suspension.

One thing that is clear, in my view, is that the range of conduct which can be punished under Rule 137A is indeed wide. It is obvious that the whip can be used improperly in a number of different ways and importantly, in a number of different stages of the race. What makes the appellant's use of the whip at the top end of the scale of seriousness in this case is that he used it after the race was over, and in a fit of anger. Clearly, the Chairman of Stewards categorised the offence in the highest category of seriousness, both by his description of the offence and the penalty which he imposed. At the end of the day, the Stewards were obliged to impose a penalty commensurate with the seriousness of the offence and it seems to me that everything relevant was taken into account in categorising this offence. Periods of suspension are provided for under the Rules and have been imposed in the past.

For all of these reasons, I am not persuaded that there was any error made in the imposition of the penalty in this case. The appeal against penalty is therefore dismissed.

*P. J. Hogan*



PATRICK HOGAN, PRESIDING MEMBER