

DETERMINATION AND REASONS FOR DETERMINATION OF  
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: JOHN PIERRE CLAITE  
APPLICATION NO: A30/08/428  
PANEL: MR S PYNT (PRESIDING MEMBER)  
DATE OF HEARING: 8 SEPTEMBER 1998  
DATE OF DETERMINATION: 8 SEPTEMBER 1998

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IN THE MATTER OF an appeal by Mr J P Claite against the determination made by the Western Australian Turf Club Stewards on 15 August 1998 imposing 23 days suspension for breach of Rule 137(a) of the Australian Rules of Racing.

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Mr S Freitag was granted leave to appear for the appellant.

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

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This is an appeal against conviction and penalty.

The appellant was the rider of LADY LEXUS which ran in Race 2, The Princes Handicap over 1300 metres at Belmont Park on Saturday, 15 August 1998. Following the race the Stewards opened an inquiry into an incident running to the 800 metres of that race which caused TIME WELL SPENT ridden by Mr P Dyson to strike the running rail.

The Stewards heard evidence from the appellant, Mr Dyson and also Mr Harvey, the rider of WILD RUMOUR. Mr O'Heare, the rider of MEDAL LOVER was present at the inquiry but did not give any evidence concerning the incident. The Stewards also viewed the head on film of the race. The Chairman of the Stewards, Mr Powrie, described the incident at page 3 of the transcript:

*"Riders it would appear from my observations of the film that as the field runs to the 800m, that firstly MEDAL LOVER does cross, across to effectively the leading position on the fence. The horse directly outside LADY LEXUS appears to come across with MEDAL LOVER and WILD RUMOUR appears to have to restrain from the heels of LADY LEXUS and restrain somewhat inwards to the extent that it's tight and tightened onto TIME WELL SPENT. TIME WELL SPENT appears to buffet off the fence and appears to be restrained at that stage, the horses following namely AMERICAN QUILT has to restrain, comes out and bumps BONSANA which in turn goes out to TACO BELLE. It would appear from my observations that your horse Mr. Harvey, restrains or you restrain and your horse's, turns its head inwards away from the heels of LADY LEXUS."*

After hearing the evidence the Stewards charged the appellant as follows:

CHAIRMAN: *"Mr. Claite, Stewards believe you should be charged with careless riding under the terms of Australian Rule of Racing 137(a), you're aware of that Rule.*

CLAITE: *Yes Sir.*

CHAIRMAN: *The charge in terms of that Rule is that you in the opinion of the Stewards, have ridden carelessly in crossing WILD RUMOUR ridden by Paul Harvey at about the 800m mark in Race 2 the Princess Handicap when you rode LADY LEXUS thereby causing that horse to be restrained and put pressure onto TIME WELL SPENT. TIME WELL SPENT having to be, been tightened and indeed striking the running rail."*

Rule 137(a) of the Australian Rules of Racing states as follows:

*"Any rider may be punished if, in the opinion of the Stewards:*

*(a) He is guilty of careless, improper, incompetent or foul riding"*

Mr Claite pleaded not guilty but was convicted and suspended for 23 days. The original grounds of appeal were as follows:

*"My grounds of appeal are that I was not the cause of the crowding and alleged interference. I also believe the penalty to be excessive."*

At the first hearing date of the appeal the appellant was given leave to amend his grounds of appeal. As no prior notice was given to the respondent of these amendments an adjournment was granted to the respondent. A suspension of operation of the penalty was granted to the appellant.

In considering the particulars of the appeal of the appellant it is important to consider the role of the Tribunal in an appeal of this nature. The Tribunal should not interfere with the decision of the Stewards unless it can be established that the decision was clearly unreasonable or not in accordance with the evidence.

Ground 1 of the particulars of appeal was as follows:

*"The Stewards erred in convicting the Appellant of the offences in that their finding of carelessness was unreasonable, against the evidence and the weight of the evidence."*

I am satisfied that there is sufficient evidence on which the Stewards could properly reach their decision. In particular, the film shows that the appellant did not look to see what the consequences of his crossing would be, and the evidence of Mr Harvey at page 2 of the transcript was that pressure from the appellant's horse caused Mr Harvey's horse to be restrained and at the same time, came over on top of TIME WELL SPENT, and the evidence of Mr Dyson at page 1 of the transcript was that this had caused his horse to brush the rail.

Ground 2A of the particulars was that:

*“The Stewards erred in convicting the Appellant because they failed to address the proper question in the consideration of the charge.”*

I am satisfied having regard to statements of the Chairman at page 8 of transcript, that the Chairman did address the proper question and clearly found the actions of the appellant to be careless.

Ground 2B was that:

*“The Stewards erred in the nature of the charge against the appellant, in that the appellant was charged with interference at ‘around the 800m’ mark when in fact any interference that may have occurred was back at the 975m mark.”*

The wording of the charge referred to at about the 800m mark. While it may in fact have been 975 metres, nothing turns on this as the appellant clearly knew the incident which was being referred to by the Stewards.

Grounds 3 to 8 deal with whether the Stewards should have asked questions of Mr O’Heare and whether Mr Gundry should have been called. The appellant’s advocate argued that, in the absence of their evidence, inferences could be drawn that their evidence would have supported the appellant’s case.

I am satisfied that nothing Mr O’Heare could have said would have assisted the appellant.

Mr Harvey stated at page 2 of the transcript:

*“I just had a couple of horses, I think that David O’Heare’s mount’s been in front, he cleared me and John Claite was about a half a length back outside of David, following him across. I got a bit of pressure from John.”*

If Mr Claite thought the evidence of Mr O’Heare could have assisted him, then he should have asked questions of him. He chose not to. Further, the appellant has been unable to satisfy me that Mr Gundry’s evidence could have assisted him in this regard.

Ground 9 of the particulars was that:

*“In showing Claite only the head on video of the race he was disadvantaged procedurally in that all the evidence was not placed in front him for his defence. The Stewards should have given Claite the opportunity to view all the available footage of the incident.”*

I am satisfied from the transcript and viewing the film that the head on film was sufficient for the Stewards to reach their decision and I am not satisfied that the showing of any further footage would have assisted the appellant at the inquiry.

Ground 10 was that:

*“The Stewards erred in convicting the appellant of careless riding in that the alleged interference occurred as a result of events outside the control of the Appellant. Essentially any interference which did occur was unwilling and unavoidable by the Appellant.”*

For the reasons given in respect of Ground 1, I am satisfied that there was sufficient evidence for the Stewards to determine that the appellant was careless within the meaning of Rule 137(a).

For all of these reasons the appeal against conviction is dismissed.

In regard to penalty, this is a matter for the Stewards' discretion and should not be interfered with unless it can be shown that the Stewards have taken into account some irrelevant factor, or some relevant factor has not been taken into account, or the penalty imposed was outside the range of penalties commonly imposed.

At page 10 of the transcript the Chairman stated:

*"Mr. Claite the Stewards have considered the matter that you place before us in relation to the penalty, the Stewards have taken into consideration quite a few elements and indeed your previous record as well."*

Whilst it would be more beneficial to the Tribunal if the Stewards stated clearly what they had taken into account, I am satisfied that that the Stewards did not err in their decision to suspend the appellant for a period of 23 days, which is clearly within the range of penalties commonly imposed.

Accordingly, I also dismiss the appeal against penalty.

The suspension of the operation of the penalty automatically ceases.



STEVEN PYNT, PRESIDING MEMBER