

DETERMINATION AND REASONS FOR DETERMINATION OF  
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: JEFF NOSKE  
APPLICATION NO: A30/08/483  
PANEL: MR D MOSSENSON (CHAIRPERSON)  
DATE OF HEARING 17 DECEMBER 1999  
DATE OF DETERMINATION: 17 DECEMBER 1999

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IN THE MATTER OF an appeal by Mr J Noske against the determination made by the Stewards of the Western Australian Turf Club on 4 December 1999 imposing a 16 day suspension for breach of Rule 137(a) of the Australian Rules of Racing.

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Mr G R Donaldson, instructed by Mr D Manera, represented the appellant.

Mr F J Powrie appeared for the Western Australian Turf Club Stewards.

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This is an appeal by Jeff Noske the rider of DISCREET PASSION, which competed in Race 4 at Ascot Racecourse on 4 December 1999. Following an incident which occurred in that race the Stewards conducted an inquiry.

The Stewards called both Mr Noske and Mr P Harvey, the rider of WILD FLOOD to the inquiry. The Stewards heard from both of the riders and also from some of the Stewards who observed the race, namely Mr Zucal who was positioned in the main tower with Mr Powrie and Steward Chadwick who was positioned at the turn in another elevated tower. The patrol film of the relevant section of the race when the incident occurred was shown during the course of the inquiry.

Mr Noske was charged with a breach of Rule 137(a) of the Australian Rules of Racing. The particulars of the charge were that:

*"...in the opinion of the Stewards that passing the 250m mark you took DISCREET PASSION outwards thereby, causing WILD FLOOD ridden by Paul Harvey to be restrained."*

Mr Noske pleaded guilty to the charge.

After taking a little additional evidence in relation to the penalty Mr Powrie announced the Stewards' determination in the following terms:

*“Mr. Noske the Stewards have looked at your record, I’ve written down here, or just the last one anyway. Your record shows that you were suspended for 14 days in July of this year. Now your previous suspension was some 15 days in December of ’97 which theoretically, other than the July issue makes it fairly good, but as I say there is a suspension there only some four months ago. We took into consideration also your plea of guilty. The Stewards believe that the level of severity of the check or the restraining of Mr. Harvey wasn’t particularly high, but we believe that your actions in coming out when blocked probably or certainly are of a fairly positive and deliberate move in that, so therefore the carelessness involved is probably a little bit higher in that regard. In taking into consideration all those things, we’ve also considered that your plea of guilty and the manner in which you’ve dealt with this Inquiry’s made it fairly expeditious, but the Stewards have been conscious and we addressed the Jockeys with regards to the coming Carnival and we wish to have a good Carnival whereby we don’t wish or accept careless riding and to that end, we advise (sic) that we would be looking at harsh penalties. You’re (sic) record and your plea of guilty are such that we believe that we can extend some leniency where we don’t believe we should extend ultimately as you related to the level of carelessness that I’ve made reference to. Now Mr. Noske in saying that, the Stewards believe that a period of suspension from riding in races for 16 days would be appropriate. Right, now that would be from midnight tonight, till midnight the 20<sup>th</sup> of December. All right.”*

Mr Noske lodged his appeal some 10 days later and at the same time made application for a stay of proceedings. The Stewards opposed the application for a stay but in the event it was granted until the appeal was determined or as otherwise ordered.

The appeal is only against the severity of the 16 day penalty.

The ground of appeal as stated in the Notice of Appeal is:

*“The nature of the interference was minor to warrant (sic) the long term of 16 days.”*

Mr Donaldson of counsel appeared at the proceedings today having been instructed a short while earlier by Mr David Manera, Solicitor. Mr Donaldson acknowledged that he had no time in which to take instructions and that he was totally unfamiliar with matter but that due to a double booking and oversight, Mr Manera was not able to be present at the Tribunal this morning. Mr Donaldson sought to have the matter adjourned and sought a suspension of operation of the penalty.

After entertaining arguments from both sides I came to the conclusion that the justice of the matter did not justify the adjournment being granted and I ordered that the stay should cease to operate forthwith.

Mr Donaldson sought and was granted leave to withdraw.

Mr Noske elected to proceed with his appeal and argued that on the basis that he had up until yesterday missed 6 race meetings, that he considered that he served a sufficient penalty and that the 16 day penalty that was imposed was excessive. Mr Noske pointed out that the level of interference had been described by the Stewards as being not particularly high. Mr Noske explained why he had left it relatively late in which to institute his appeal. He also gave me to understand the adverse financial implications of the penalty thus far and argued that 10 to 12 days was quite sufficient in all the circumstances.

Bearing in mind the wording of the Rule in question which requires the Stewards to form an opinion of the incident before determining to convict and taking into account all of the other relevant circumstances, I am not persuaded that there is merit in this particular appeal. I am

satisfied that the Stewards have not fallen into error in setting the penalty that they did in this particular matter.

It is for these reasons that the appeal fails and is dismissed.

*Dan Mossenson*

DAN MOSSENSON, CHAIRPERSON

