APPEAL - 490

DETERMINATION AND REASONS FOR DETERMINATION OF

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT:	**JAMES WALLACE LEMON**
APPLICATION NO:	**A30/08/490**
PANEL:	**MR J PRIOR (PRESIDING MEMBER)**
DATE OF HEARING	**20 MARCH 2000**
DATE OF DETERMINATION:	**20 MARCH 2000**

IN THE MATTER OF an appeal by Mr J W Lemon against the determination made by the Western Australian Turf Club Stewards on 19 February 2000 imposing two months suspension for breach of Rule 137(b) of the Australian Rules of Racing.

Mr T F Percy QC assisted by Mr S Davies, instructed by D G Price & Co, appeared for the appellant.

Mr S J Carvosso appeared for the Western Australian Turf Club Stewards.

The appellant was the rider of LIT UP, which ran in Race 5 at Mt Barker on Saturday, 19 February 2000. Following the race the Stewards opened an inquiry into the riding tactics of Mr Lemon over the concluding stages of the race. LIT UP was placed second to AUSSIE CONNECTION, the official margin being a nose.

As a result of that inquiry Mr Lemon was charged with failing to ride out his mount under Rule 137(b) of the Australian Rules of Racing.

Australian Rule of Racing 137(b) states:

> *"137. Any rider may be punished if, in the opinion of the Stewards:*
> ...
> *(b) He fails to ride his horse out to the end of the race."*

The Chairman of Stewards announced the charge in the following terms:

> *" ...you as the rider of LIT UP have failed to ride that gelding out over the final stages of the race and in the opinion of the Stewards, this has contributed...to AUSSIE CONNECTION winning the race ahead of LIT UP."*

Mr Lemon pleaded not guilty. After further deliberations, the Chairman of Stewards announced a finding of guilt.

Following submissions, the Chairman of Stewards announced the penalty of suspension for two months in the following terms:

> *"Mr. Lemon the Stewards are of the opinion that prior to the winning post, you have stopped riding out your mount LIT UP. Stewards believe that this resulted in LIT UP being beaten for first place and as such, has affected the betting results on this race both on and off course as this was a TAB meeting. Also the prize money to be received by the Owners of LIT UP have been adversely affected. Stewards believe this to be a serious charge because of the above reasons as well as the possible implications to racing. As such, the Stewards believe your Licence to ride in races should be suspended for a period of two calendar months."*

On 25 February 2000 this Tribunal granted the appellant a stay of proceedings until midnight on 1 March 2000 or as otherwise ordered. On 29 February 2000, after hearing submissions from counsel for the appellant, the Chairperson of the Tribunal extended the suspension of operation of the penalty until midnight on 20 March 2000 or as otherwise ordered.

The grounds of appeal are:

A. CONVICTION

1. The Stewards erred in their interpretation and construction of rule 137(b).

Particulars

(a) The rule is not an absolute rule.

(b) The rule only requires a rider to ride his mount out to the extent necessary to win the race or obtain the best possible placing.

(c) The rule is sufficiently complied with if the rider continues to ride his mount to the line in a manner that is appropriate in all the circumstances.

(d) To be guilty of an offence the rider must have stopped riding out his mount. A decrease in the amount of vigour used is insufficient to constitute an offence under the rule.

2. The Stewards erred in failing to:

(a) find facts sufficient to warrant a conviction, or

(b) state the findings of fact upon which they relied to ground the conviction.

Particulars

(i) The Stewards failed to find as a fact whether the Appellant had stopped riding the horse out or simply decreased his vigour.

(ii) The Stewards failed to find as a fact where the infringement occurred.

(iii) The Stewards failed to give any or any sufficient reasons as to why the Appellant's contention was not correct, i.e. that he only stopped riding the horse along after passing the winning post.

3. The Stewards erred in failing to consider mistake as a defence.

Particulars

(a) Rule 137(b) requires a conscious decision on the part of the rider to cease riding before the line.

(b) The Appellant asserted that he rode his mount out to the finishing line.

(c) A real possibility existed that the Appellant mistook the location of the finishing line.

(d) In the event of a mistake as to the location of the line, no offence could be committed.

4. The finding of the Stewards was against the evidence and the weight of the evidence.

Particulars

(a) The offence involved the Stewards coming to the opinion that there was both –

(i) a failure to ride the horse out, and

(ii) the failure occurred prior to the end of the race.

(b) The finishing line is unmarked and is not otherwise able to be determined accurately by Stewards or riders during the race or subsequently on film.

(c) Whilst the Stewards may have reasonably come to the opinion that there was a cessation of riding near the post, there was no evidence that would have enabled them to reasonably come to the decision that any such cessation occurred prior to the finishing line.

B. PENALTY

5. The penalty was excessive in all the circumstances of the case.

Particulars

(a) The penalty failed to adequately reflect the momentary nature of the transgression and the unintentional nature of the offence.

(b) The penalty failed to adequately reflect the Appellant's previous good riding record.

(c) The penalty was excessive having regard to penalties imposed in other cases for similar offences.

(d) The penalty imposed was more akin to that required in the case of a deliberate failure to ride the horse out to the end of the race.

This is a matter which involves a breach of a rule couched in the terms *"in the opinion of the Stewards'* therefore, the normal principles previously enunciated by this Tribunal relating to such form of appeals applies.

Having considered the Stewards' inquiry transcript and race film, I am satisfied the Stewards came to an opinion reasonably that the Appellant did fail to ride his horse out. The race film reveals the Appellant did seem to stand up before the finish post. I am also satisfied that in this case it was due to a marginal error of judgement by the Appellant in the circumstances.

As to ground 1, I am satisfied that standing up in a mount or a decrease in vigour can amount to failing to ride a mount out and that was the circumstances the Stewards reasonably found in this matter to give rise to the conviction.

As to ground 2, I am satisfied the particulars of the charge, the reasons for conviction and the way the race patrol film was shown to the Appellant by the Stewards left the Appellant in no doubt as to why he was convicted.

As to ground 3, I am satisfied that the Appellant may have made a mistake in the circumstances of this particular race as to where the finish line was located. Nevertheless, the Appellant was an experienced rider and experienced with this particular racecourse. I am satisfied if in those circumstances this mistake caused the Appellant negligently to fail to ride his mount out, this can constitute a breach of Rule 137(b). The Stewards to some extent in policing this rule are obliged to consider the perception the public will have of such actions without knowing what is going through the rider's mind.

For the reasons as previously stated, as to ground 4 I am satisfied that there was ample evidence for the Stewards to have come to a reasonable opinion that the failure to ride the mount out occurred before the finish post.

For these reasons, the appeal against conviction is dismissed.

As to penalty, I am satisfied for all the particulars set out in ground 5 of the appeal that the penalty was manifestly excessive in the circumstances.

As previously stated, this matter was a marginal error of judgement very close to the end of the race.

The penalties for this type of offence seem to range from a $100 fine to 5 months suspension. Fines are often imposed. The penalty imposed by the Stewards was almost tantamount to a breach of Rule 135(b), a much more serious offence.

The Appellant had a relatively good record with no offences of similar nature.

In all of those circumstances I am satisfied a $500 fine was an appropriate penalty. I therefore allow the appeal against penalty and substitute this penalty in lieu of the 2 months suspension.

John Prior

Seal of the Racing Penalties Appeal Tribunal of W.A.

JOHN PRIOR, PRESIDING MEMBER