

DETERMINATION OF  
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: KEVIN NORMAN FORRESTER  
APPLICATION NO: A30/08/561  
PANEL: MR J PRIOR (PRESIDING MEMBER)  
DATE OF HEARING: 12 MARCH 2002  
DATE OF DETERMINATION: 12 MARCH 2002

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IN THE MATTER OF an appeal by K N Forrester against the determination made by the Stewards of the Western Australian Turf Club on 23 February 2002 imposing a two months suspension for breach of Rule 137(a) of the Australian Rules of Racing.

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The Appellant appeared in person.

Mr J A Zucal appeared for the Stewards of the Western Australian Turf Club.

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This is an appeal against conviction and penalty.

On 23 February 2002 the Stewards opened an inquiry into an incident that occurred over the final 100m in Race 5 over 1200m at Ascot that day. Called to the inquiry were the Appellant who rode KENSYL BAY and Jockey P Carbery, the rider of IRISH PRIDE.

After hearing the evidence of both riders and viewing the race patrol films, the Chairman announced that the Stewards were charging Mr Forrester with a breach of Australian Rule of Racing 137(a). That Rule states:

*"137. Any rider may be punished if, in the opinion of the Stewards:  
(a) He is guilty of careless, improper, incompetent or foul riding..."*

The specifics of the charge were:

*"You are charged with improper riding, improper riding being that in the opinion of the Stewards over the concluding 100m you have intentionally ridden KENSYL BAY outwards towards IRISH PRIDE, making contact with that gelding and carrying it wide on the track."*

Mr Forrester pleaded not guilty to the charge. In finding the Appellant guilty, the Chairman stated:

*“Mr Forrester we have considered all that you have placed before us and we have considered the charge. Based on the evidence and films, we believe that you have intentionally ridden out to IRISH PRIDE, making contact with that gelding. As such we do believe this is improper riding. We find you guilty as charged. Before determining a penalty Mr Forrester is there, do you wish to address us on penalty?”*

The Appellant made submissions in respect of penalty. The Chairman announced the penalty of a two months suspension in these terms:

*“Mr Forrester we have consider (sic) all that you have placed before us in regards to penalty. You tell us that you have no prior charges under this rule, we accept that, and we proceed on that basis. We’ve taken into account your personal circumstances and your financial state. We believe that you are a (sic) experienced extremely capable rider. The improper riding charge is a serious charge as it clearly involves intent. It is unacceptable to the image of racing and has a potential for serious consequences to horse and rider. The range of penalty in this state lies between one and three months for a first offence. After considering all these issue (sic) Mr Forrester, we believe that you should be suspended from riding in races for a period of two months.”*

The Tribunal Chairperson granted Mr Forrester a suspension of the operation of the penalty until midnight on 12 March 2002 or as otherwise ordered.

As to the appeal against conviction, the matters at issue are:

- i Did the Appellant’s horse make contact with the horse IRISH PRIDE
- ii If contact was made, is it as a result of riding by the Appellant in breach of Rule 137(a) and if so, was the nature of such riding “improper”

The Stewards in considering this matter had the following evidence available to them:

- i The evidence of the Appellant
- ii The evidence of the rider of IRISH PRIDE
- iii The evidence of the Chairman of the Stewards Mr Zucal who viewed the incident from the main tower
- iv The various race patrol films

In considering this appeal it is not for me merely to substitute my opinion for that of the Stewards. The Rule is couched in terms for an appeal to this Tribunal to succeed, the Stewards’ opinion must have been unreasonable, and the Tribunal has ruled on that interpretation on a number of previous occasions in this State.

I am satisfied there was sufficient evidence for a reasonable Steward to come to an opinion contact was made between the Appellant’s horse and IRISH PRIDE, which was more than touching stirrup irons. As to the issue of intent, which is an element required to be proved on the balance of probabilities, intent can be inferred from the factual circumstances if there is no direct admission by the rider in question. The evidence of the circumstances of the contact and therefore the rider’s intent came from the race films and the eyewitness accounts. The Appellant has continually denied contact other than contact by way of the stirrup irons touching.

I am satisfied there was sufficient evidence for the Stewards to infer on a reasonable basis that the Appellant’s riding of his horse outwards towards IRISH PRIDE, which gave rise to the contact, was intentional and therefore constituted improper riding.

The appeal against conviction is therefore dismissed.

As to penalty, the range of penalties for improper riding over the last 15<sup>1</sup>/<sub>2</sub> years is three weeks to three months suspension, even for a first offence of this nature. It can not be said therefore that the penalty was manifestly excessive in the circumstances.

As the offence of improper riding is serious because it involves intentional impermissible riding, it is difficult to consider circumstances where there would be a penalty other than a suspension of a rider.

Nothing has been demonstrated by the Appellant, who has the persuasive onus, that the Stewards in imposing a two month suspension fell into error. The transcript of their reasons for the penalty imposed indicates all relevant matters, including the Appellant's personal circumstances and his financial situation, were considered by them.

For these reasons, the appeal against penalty is also dismissed.

The suspension of operation of the penalty automatically ceases.

*John Prior*

**JOHN PRIOR, PRESIDING MEMBER**

