

**DETERMINATION OF**  
**THE RACING PENALTIES APPEAL TRIBUNAL**

**APPELLANT:** DOMINIC TOURNEUR  
**APPLICATION NO:** A30/08/566  
**PANEL:** MR P HOGAN (PRESIDING MEMBER)  
**DATE OF HEARING:** 16 APRIL 2002  
**DATE OF DETERMINATION:** 16 APRIL 2002

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IN THE MATTER OF an appeal by Dominic Tourneur against the determination made by the Stewards of the Western Australian Turf Club on 31 March 2002 imposing 18 days suspension for breach of Rule 137(a) of the Australian Rules of Racing.

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Mr B A Ryan was granted leave to represent the Appellant.

Mr R J Mance appeared for the Stewards of the Western Australian Turf Club.

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This is an appeal against both conviction and penalty.

Following the running of Race 3 at Geraldton Turf Club on 31 March 2002 the Stewards opened an inquiry into an incident that occurred 150 metres from the finish. Along with Mr Tourneur, Riders J Hustwitt and R Quartermaine were called to the inquiry.

As a result of the inquiry, Mr Tourneur was charged with a breach of Rule 137(a) of the Australian Rules of Racing the particulars of which were:

*"And the charge against you is one of careless riding, and the careless riding being when near the 150 metres you have shifted out with your mount SMART TALK, when not sufficiently clear of BRAESIDE BULLET, Mr Hustwitt's mount, which has resulted in BRAESIDE BULLET bumping with MANCHURIAN who was on his outside and this has caused BRAESIDE BULLET to be restrained and lose ground."*

Rule 137(a) 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..."*

Mr Tourneur pleaded not guilty. The Stewards in convicting him of the charge stated as follows:

*“...after considering all evidence, Stewards are of the opinion that you are guilty of this charge of careless riding. We believe that had you shown more care the incident wouldn't have happened, okay, and after considering everything put to us we find you guilty as charged.”*

The Stewards after hearing submissions from the Appellant, then went on to impose a penalty of 18 days suspension. The Chairman announced the penalty in these terms:

*“Okay we've taken into consideration the matter of penalty. And when assessing penalty, we've looked at, you said you were a clean rider and you know we don't have a great deal of trouble with you, but your record isn't really good, as far as where you were suspended on the twenty fourth of eleventh 02, (sic) where you were suspended for thirteen days. Okay so we've taken that into account. We believe the interference to be probably on the higher scale, we don't look at this as on the lower scale of incidents. We believe that Mr Hustwitt was interfered with and seriously interfered with and we don't believe there was any mitigating circumstances regarding the incidence, (sic) we just thought that had you shown more care, it's all right to do your best to win, but you've got to do that without causing interference to other runners. Now in saying that we believe that a eighteen day suspension of your riders licence would be the appropriate penalty and that is what we are doing, we are suspending you for eighteen days which starts midnight tonight and you're free to ride on the nineteenth of the fourth, 2002. Now on saying that you do miss out on your cup ride but on looking at penalty, and the seriousness of the incident and how it occurred, we believe that the eighteen days is the appropriate penalty after taking into account everything you did put to us on penalty.”*

On 8 April 2002 Mr Tourneur lodged a Notice of Appeal and an application for a stay of proceedings. He was granted a stay of proceedings until midnight on Thursday, 18 April 2002 or as otherwise ordered.

The Ground of Appeal is as follows:

“I am appealing against the conviction and the penalty given to me by the WATC Stewards”

#### **A. CONVICTION**

The Appellant was the rider of SMART TALK. Near the 150m mark, the Appellant came out and caused BRAESIDE BULLET to check off his heels. That in turn caused BRAESIDE BULLET to bump the horse on its outside, namely MANCHURIAN. Jockey J Hustwitt, riding BRAESIDE BULLET, described the Appellant's horse as veering out (T1). The Stewards described the Appellant as shifting out when not sufficiently clear (T7). They also described the Appellant as angling out (T6). The Appellant described his riding somewhat differently. He described his movement as easing out (T2, T3, T4 and T5). He expressly took issue with the Stewards' description of his riding as angling out (T6).

On the hearing of the appeal, Mr Ryan for the Appellant submitted that the incident could properly be described as a race incident and nothing more. He pointed out that BRAESIDE BULLET was dropping out of the race in any event. Jockey J Hustwitt on BRAESIDE BULLET confirmed that himself at T1. On the other hand, Mr Hustwitt quite correctly answered the Stewards' questions at T4 to the effect that he was entitled to maintain his racing position.

The above brief references to the transcript indicate that there was a difference of opinion between the Appellant and the Stewards as to the manner of his riding. The Stewards were entitled to form the opinion which they did, namely that the riding was careless. There was evidence on which they could come to that view, including the fact of the interference itself having occurred. Nothing has been demonstrated to me that the Stewards were in error. For those reasons, the appeal against conviction is dismissed.

**B. PENALTY**

The Stewards categorised the incident as probably higher on the scale. In fixing the penalty, they took into account the Appellant's record, and his upcoming rides. It is not alleged on appeal that the penalty was so far outside the range as to manifest error. As the fixing of the penalty was a matter for the discretion of the Stewards, and no error has been demonstrated or alleged, the appeal against penalty is dismissed.

In fixing the penalty, the Stewards needed to impose a penalty with some substance. There had to be a deterrent, as that is one of the purposes of a penalty. The primary deterrent was that the Appellant would miss his upcoming ride in the Geraldton Cup, and 2 minor meetings in the weeks following that. The penalty was specifically aimed at the Appellant missing his cup ride (T11). As it transpired, the Appellant rode in the cup on his stay of proceedings. Particularly in this case, had the Stewards given notice to the Appellant that they would seek a higher or different penalty on the hearing of the appeal against penalty, I would have given consideration to varying the penalty by increasing it pursuant to Section 17(9)(c) of the *Racing Penalties (Appeals) Act*.

The operation of the suspension of the penalty automatically ceases.



PATRICK HOGAN, PRESIDING MEMBER

