

DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: DANIEL JURGEN STAECK
APPLICATION NO: A30/08/572
PANEL: MR A E MONISSE (PRESIDING MEMBER)
DATE OF HEARING: 28 MAY 2002
DATE OF DETERMINATION: 28 MAY 2002

IN THE MATTER OF an appeal by Mr D J Staeck against the determination made by the Stewards of the Western Australian Turf Club on 18 May 2002 imposing 18 days suspension for breach of Rule 137(a) of the Australian Rules of Racing.

Mr G Lilleyman was granted leave to appear for the Appellant.

Mr B W Lewis appeared for the Stewards of the Western Australian Turf Club.

This is an appeal against the severity of the penalty made by the Stewards of the Western Australian Turf Club on 18 May 2002 imposing 18 days suspension for breach of Rule 137(a) of the Australian Rules of Racing.

On 18 May 2002 following the running of Race 5, The Healthway Provincial Championship Final over 1400 metres at Belmont Park on Saturday, the Stewards commenced an inquiry into an incident that occurred at the 1200 metre mark. After hearing evidence from various witnesses and viewing the race patrol films the Chairman of the inquiry announced:

"Mr Staeck at this stage of the Inquiry the Stewards have decided to charge you under the Australian Rules of Racing 137 and I'll read that Rule to you.

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

a) he is guilty of careless, improper, incompetent or foul riding.

You are charged under that Rule with careless riding. The careless riding being that in the opinion of the Stewards near the 1200 metres, metre mark in race five the Healthway Provincial Championship Final, you allowed your mount MAGGORO to shift inwards carrying WELSH SPIRIT, Apprentice L. Camilleri, in onto POLISH PLEASURE, P. King, with that horse checking and losing ground."

The Appellant pleaded "Not Guilty" but after a short inquiry the charge against him was proven.

In announcing the penalty the Chairman stated:

"Mr Staeck, we've considered all that you've put before us in regards to penalty and taken that into account. We've considered your record which shows that you were last

suspended on the 5/7/01 for fourteen days and prior to that 19/5/01 for thirteen days for careless riding. Within twelve months that reasonably (sic) a good record. We've taken into account also the circumstances of the incident and by that I mean the degree of carelessness and I've got to say on behalf of the Stewards that we find this starting to approach mid-way from the angle that you came in and caused the interference. We find that the interference to Mr King's mount was significant. He has lost significant ground, dropping back through the field. We also have considered that you're a prominent rider and that you do have a number, a good book of rides per race meeting. We see the starting point for this incident at twenty two days however we have discounted it if you like, to compensate for your record, and all the other factors of four days and we have decided to suspend you from riding in races for a period of eighteen days from midnight the 20 May until midnight 7 June. That allows you back to ride on Saturday the 8th June. That encompasses two Saturday meetings and two midweek meetings and four provincials and we believe that to be appropriate under the circumstances of this matter."

The Stewards made an assessment as to the degree of careless riding in these reasons for decision. In my view they should generally be entitled to make that assessment for reasons which include them being regularly involved and experienced in inquiries of this nature.

The general principles which apply in this review of penalty include those recently expressed by the Presiding Member in *King* (Appeal 565, determined 16 April 2002), Mr P Hogan). The imposition of a penalty at first instance, such as Stewards' decisions on penalty, is an exercise of discretion. Accordingly there is a strong presumption in favour of the correctness of the decision appealed from – *House v The King* (1936) 55 CLR 499. Another principle is that of "parity" in that the penalties imposed should as far as possible be consistent between persons who are convicted of similar offences – *Lowe v R* (1984) 154 CLR 606. These principles arguably combine to conclude that while other similar cases can be considered when reviewing penalty, *precise* comparisons of them are not required. Pertinently, it is clearly open for an appeal court to set aside the penalty imposed if it is manifestly excessive, or in other words, outside the range of penalties commonly imposed for offences of its type.

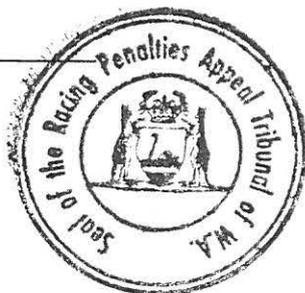
In the current racing calendar year commencing 1 August 2001 and to end on 31 July 2002, the WA Turf Club has frequently been required to determine the period of suspension for acts of careless riding. A relevant and significant sub-set of these periods involve jockeys receiving the following penalties for their first offence of careless riding in the current racing calendar year:

▪ WB Arnold	10 days
▪ NL Rudland	10 days
▪ TK Turner	12 days
▪ P King	12 days
▪ PAJ Dyson	12 days
▪ JS Whiting	13 days
▪ CM Davies	18 days
▪ PJ Harvey	18 days
▪ JF Miller	23 days

Given this range of penalties it cannot be said that the penalty received by the Appellant namely 18 days suspension was outside the range of penalties commonly imposed for careless riding.

For these reasons I dismiss the appeal against penalty.

A E Monisse



ANDREW MONISSE, MEMBER