

DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: PAUL KING
APPLICATION NO: A30/08/594
PANEL: MR R J NASH (PRESIDING MEMBER)
DATE OF HEARING: 29 APRIL 2003
DATE OF DETERMINATION: 29 APRIL 2003

IN THE MATTER OF an appeal by Paul King against the determination made by the Stewards of the Western Australian Turf Club on 14 April 2003 imposing 20 days suspension for breach of Rule 137(a) of the Australian Rules of Racing.

The Appellant represented himself.

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

This is an appeal against both conviction and penalty.

On 14 April 2003 the Stewards opened an inquiry into interference received by KESTREL CALL and KENNEDY near the 600 metres in Race 8 The Burswood Casino-Melvista Stakes run over 2200 metres at Ascot on Saturday, 12 April 2003.

Called to the inquiry were:

Paul King	Rider of SARAH'S SPIRIT
John Claite	Rider of KESTREL CALL
Alana Sansom	Rider of KENNEDY

The patrol films were viewed and each rider gave his/her evidence on the particular incident. After reviewing the evidence the Chairman of the inquiry announced a charge against the Appellant in these terms:

"Mr King at this stage of the inquiry the Stewards have decided to charge you under Australian Rule of Racing 137(a). I'll read that rule to you

'any rider may be punished if in the opinion of the Stewards (a) he's 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 when riding SARAH'S SPIRIT in Race 8, you have shifted out near the 600m when insufficiently clear of KESTREL CALL (J. Claite), bumping and impeding that colt."

Mr King pleaded not guilty.

The Appellant then requested that Jockey Jeff Noske be called to the inquiry. Mr Noske was the rider of SECRET EYE in the race in question. The Appellant then questioned Mr Noske and Mr Claite.

After adjourning to consider all the evidence the Chairman announced a guilty finding in these terms:

"Mr King the Stewards have considered all the evidence and we've considered the charge. Central to this issue is that in our opinion there was never room for you to take a run on the outside of SECRET EYE (J. Noske) and on the inside of KESTREL CALL (J. Claite). SECRET EYE may roll marginally but in our opinion that has no bearing on this matter as there was never adequate room for you to go where you went. Accordingly we believe you have ridden carelessly, we find you guilty as charged. Now Mr King it's left for the Stewards to determine the penalty do you wish to address us on penalty?"

Mr King continued to plead his innocence to the charge and declined to make any submissions on penalty.

The following exchange then took place:

"CHAIRMAN Mr King in relation to penalty the Stewards have taken into account you (sic) record which shows that you were suspended for sixteen days on the 26th ...

KING Fifteen days sir.

CHAIRMAN Fifteen days sorry. The 26th of March this year this was your first day back from that suspension. Previous to that was the 1st of the fourth last year where you received a 21 days suspension. We've taken into account the degree of carelessness and Mr King I've got to say in our opinion it's approaching half way mark because in our opinion you have shifted out coming to a turn where there is inadequate room and we see it as a particularly dangerous situation. We acknowledge that the interference to KESTREL CALL was somewhat on the low side but it was bumped and impeded but our remarks in relation to the somewhat dangerous situation shifting out at that stage sticks well on our mind. After considering all those factors Mr King we have decided to suspend for a period of 20 days from midnight the 19th of April, 2003 to midnight the 9th of May, 2003 and that takes effect on Saturday night at 12.00."

Mr King lodged Notice of Appeal on 15 April 2003 and applied for the suspension of operation of the penalty. A stay of proceedings was granted until midnight on Wednesday, 30 April 2003 or as otherwise ordered.

The grounds of appeal are:

- A. CONVICTION – The decision to convict was unsafe and unsound and not open on the evidence
- B. PENALTY – The penalty imposed was manifestly excessive in all the circumstances of the case.

Appeal against Conviction

Mr King very ably represented himself and I thought he argued his case clearly and well. However, the question for this Tribunal is whether or not the opinion of Stewards was one that no reasonable Stewards acting reasonably, could arrived at on all of the evidence that was before them. It is the opinion of the Stewards with which the rule is concerned. The evidence in this case included not only the video but also the evidence of Mr Bush who is a Stipendiary Steward and who was in the 600 metre observation tower, and the evidence of the other jockeys who were involved and called at the hearing before the Stewards.

It is for Mr King to persuade the Tribunal that the appeal should be upheld and after reading the transcript of evidence, hearing Mr King, who as I say argued this case very well and very clearly, hearing Mr Zucal and observing the video on a number of occasions, I simply cannot be persuaded that the Stewards have not reasonably formed the opinion that they did.

Accordingly the appeal against conviction is dismissed.

Appeal against Penalty

It is also for Mr King to persuade the Tribunal that the penalty imposed was manifestly excessive and beyond the discretionary range of penalties reasonably open to the Stewards, having regard to all the circumstances of the case and also having regard to Mr King's riding record.

I have considered very carefully the submissions of both parties in relation to penalty and it has not been demonstrated that the penalty was beyond the discretionary range open to the Stewards or was manifestly excessive.

Accordingly, the appeal against penalty is also dismissed.

As a consequence, the suspension of operation of the penalty automatically ceases.

ROBERT NASH, PRESIDING MEMBER

