

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

**APPELLANT:                        THOMAS SHEEHY**  
**APPLICATION NO:              A30/08/671**  
**PANEL:                             MR D MOSSENSON (CHAIRPERSON)**  
**DATE OF HEARING:              30 APRIL 2007**  
**DATE OF DETERMINATION: 30 APRIL 2007**

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**IN THE MATTER OF** an appeal by Thomas Sheehy against the determination made by the Racing and Wagering Western Australia Stewards of Harness Racing on 20 April 2007, imposing a 33 day suspension for breach of Rule 163(1)(a) of the Australian Rules of Harness Racing.

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Mr T Sheehy appeared in person.

Mr W E Sullivan appeared for the Racing and Wagering Western Australia Stewards of Harness Racing.

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**BACKGROUND**

The Racing and Wagering Western Australia (RWWA) Stewards of Harness Racing conducted an inquiry on 20 April 2007 into the reason that Mr Thomas Sheehy broke racing off the back straight on the first occasion. At the inquiry Steward B M Sumner gave evidence that he was stationed at the turn up the back straight and *observed 'Mr Suvaljko's horse ROCKSTAR close to the uprights, after traveling approximately a few hundred, or may be 100m Mr Sheehy's let his horse shift down, contacted Mr Suvaljko when insufficiently clear of him causing Mr Suvaljko's horse to break and lose considerable ground.'*

The inquiry, which was a rather short affair, led to Mr Sheehy being charged for a breach of Rule 163(1)(a) of the Rules of Harness Racing which makes it an offence for a driver to “cause or contribute any crossing, jostling or interference”. The Stewards charged Mr Sheehy with:

*“... causing interference and the interference being that racing off the back straight on the first occasion, you shifted from the two wide line down towards the pegs when not sufficiently clear Mr Suvaljko’s horse, which as a result of that you’ve made contact with its off fore leg and ROCKSTAR broke at that point.”*

Although Mr Sheehy pleaded not guilty the Stewards did convict him and did so in these terms:

Sheehy pleaded not guilty the Stewards convicted him and did so in these terms:

*‘... you should be found guilty, we do believe that the evidence from Mr Sumner who was looking head on from an elevated position and also the evidence of Mr Suvaljko has probably confirmed to a certain degree by the film, the film’s not conclusive, but it certainly does show Mr Suvaljko grabbing his horse up and then breaking, so we do find the charge sustained, ...’*

As a consequence the Stewards arrived at their penalty in the following terms:

*‘Mr Sheehy when we consider penalties there’s a couple of things that we do consider and that’s the degree of carelessness and on this occasion we believe it was probably on the high side of mid on a scale between 1 and 10 so you’re probably looking at about 8 and then the interference of course was high to when Mr Suvaljko’s horse broke causing a fair bit of shamossle back through the field, so we believe that the base penalties a 33 day suspension, now however, in mitigation we can’t find anything in your favour with only having had 9 drives, I know it’s a long time since you drove, your last suspension was only 9 drives ago, so it is a 33 day suspension against your reinsperson’s license.’*

## **THE APPEAL**

Mr Sheehy appealed on the basis of there being “lack of video evidence, no front on film, lack of Stewards evidence, severity of the charge, driver in the same race got 21 days and I got 33 days. I am doing this for a living and have full custody of 3 kids.”

At the appeal hearing Mr Sheehy argued that the incident was not one hundred percent his fault. He claimed he endeavoured to pull up the track. No contact was made with the wheel of his horse. He argued that Mr Suvaljko’s horse was unruly the whole way around. He denied he was guilty of letting it go down to Mr Suvaljko. He said he did not have great familiarity with his horse. He submitted that it was one man’s word against his and claimed he was a “victim of the circumstances”.

On behalf of the Stewards it was argued that this was a clear case where Mr Sheehy did not give Mr Suvaljko the room that he was entitled to. I viewed the incident on the film. Mr Sheehy, I was told, should have remained one wide.

I was not persuaded by Mr Sheehy's argument. I was satisfied the Stewards were entitled to convict on the evidence before them. Although there clearly was a conflict between the evidence of the drivers there was in addition the clear evidence from the Steward who observed the incident. I was satisfied the film confirmed the Steward's description of the incident and showed Mr Sheehy having come across when not sufficiently clear.

The Stewards dealt with the penalty aspect pursuant to guidelines they had introduced for imposing penalties for driving infringements. I had not previously been exposed to the guidelines which set out the information and factors the Stewards '*should be mindful of*' in the following terms:

*'The circumstances of the incident should be addressed: What was the degree of carelessness shown by the driver throughout the incident. This should be assessed on a scale of Low, Mid, High including combinations (eg Mid/High).*

*What was the degree of Interference received by other runners which should also be assessed on the scale of Low, Mid, high including combinations (eg: Low/Mid).*

*Other factors to be taken into account include the driver's record, his forthcoming engagements and whether or not he has acknowledged the offence.*

*We are not "tied" to the thinking that interference should incur a 28 suspension with 7 days off for a good record or crossing should incur a 21 day suspension with 7 days off for a good record.*

*I concede that this approach has stood the Stewards in good stead over many years but does not reflect our current attitude to penalties. It does, however, provide a reasonable starting point to assist in determining penalties.*

*In future, we should use 28 days as the "starting point" for interference on the first turn of any race and 21 days as the "starting point" for any other interference, including crossing. These "starting points" are to be used for what can be termed "normal" incidents ie; Mid degree of carelessness/Mid degree of interference. For incidents either less or more serious than "normal" the "starting point" should be varied down or up as appropriate.*

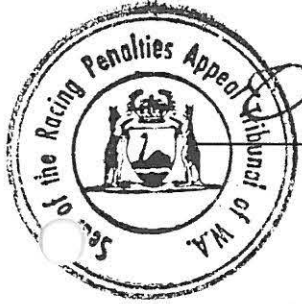
*As a rule of thumb, a "Guilty" plea should attract a 10% discount on penalty. A good driving record (not suspended within the last 6 months) should attract a 10% discount with a further 10% discounts for a very good record (not suspended within the last 12-18 months) and a further 10% discount for an excellent record (not suspended within the last 2 years).*

*In practice an incident assessed by Stewards as worthy of a 21 day suspension, if committed by a driver with an excellent record who pleaded "Guilty" would incur a suspension of 13 days. An incident assessed by Stewards as worthy of perhaps 17 days (eg: Low degree of carelessness/Low degree of interference) committed by the same driver would incur a suspension of 9 or 10 days.*

*In assessing penalty however Stewards do need to be mindful of both the specifics of a particular offence and the effect of the penalty on the offending driver.'*

The Stewards' policy clearly indicates the approach now being adopted by the Stewards in dealing with this type of offence at a sentencing level. The policy appears to be a suitable and sensible approach and makes it entirely clear for everyone the factors that come into the equation including the manner of arriving at the penalty for these infringements. The factors identified in the reasons and the process of evaluation by the Stewards are consistent with the policy and reflected no error on the part of the Stewards.

For these reasons I dismissed the appeal both as to penalty and conviction.



*Dan Mossenson*

**DAN MOSSENSON, CHAIRPERSON**