

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

<u>APPELLANT:</u>	MIKE SANTICH
<u>APPLICATION NOS:</u>	A30/08/457 & A30/08/458
<u>PANEL:</u>	MR D MOSSENSON (CHAIRPERSON) MR J HEALY (MEMBER) MR R NASH (MEMBER)
<u>DATE OF HEARING</u>	20 MAY 1999
<u>DATE OF DETERMINATION:</u>	20 MAY 1999

IN THE MATTER OF appeals by Mr M Santich against the determinations made by the Western Australian Turf Club Stewards imposing two concurrent periods of suspension of four months and one month for breaches of Rule 175(a) and Rule 175(gg) of the Australian Rules of Racing respectively.

Mr Santich represented himself.

Mr F J Powrie appeared for the Western Australian Turf Club Stewards.

This is the unanimous decision of the Tribunal.

These appeals arise out of an inquiry by the Stewards of the Western Australian Turf Club which was conducted over the period 30th March through to the 6th April 1999.

The Stewards were inquiring into the care and supervision of the thoroughbred two-year-old filly, by RAVENEAUX out of DAUGHTER OF AIR. That filly was in the care of Mr Santich, a licensed trainer. The Stewards were also inquiring into the evidence that was given by Mr Santich at the initial inquiry on the 30th March 1999.

As a consequence of the inquiry, the Stewards eventually charged Mr Santich with two offences. The first charge is under Rule 175(a) of the Australian Rules of Racing which states:

“ The Committee of any Club or the Stewards may punish:

- (a) Any person, who, in their opinion, has been guilty of any dishonest, corrupt, fraudulent, improper or dishonourable action or practice in connection with racing.”*

The specifics of this charge are:

" ... by your actions you have failed to render proper care to the badly injured RAVENEAUX/DAUGHTER OF AIR filly, such filly being destroyed as a result of those injuries on the 30th of March 1999."

Mr Santich entered a plea of not guilty. Stewards announced their finding of guilt to the charge in the following terms:

" ... the stewards find you guilty, and that we believe that you could have done more to look after this filly, that even that you yourself admitted that you could have done more, Mr Santich, and in retrospect that you would have done it differently, that you're experienced enough Mr Santich to know better and the stewards are aware of your experience having owned some very good horses for some many years. That, it's of some concern to the stewards that two weeks prior to the horse being eventually inspected by Dr Hilbert that you have advised us, and Mr Adler has advised us, that you were advised by someone to take the horse for a, that the horse was serious, and that you said I will take the horse for a checkup, which this was never done. The stewards are satisfied that although the RAVENEAUX/DAUGHTER OF AIR filly's unregistered, that the filly is indeed a thoroughbred and was stabled initially in a registered set of stables, being at 41 Epsom Avenue, and then returned there on several occasions, by your evidence, from the panel beating yard over to those stables at 41 Epsom Avenue. That you did also fail to contact Dr Brian Hilbert, the person that you believed sighted the filly some week after it's injury, and although Dr Hilbert is in attendance at his surgery at 47 Epsom Avenue and is indeed adjacent to the premises that you, as a racing trainer, utilise as your stabling premises."

The penalty of suspension for four months which was imposed are couched in the following terms:

"Mr Santich, the stewards have considered all elements of the case in relation to firstly the charge of 175(a) and we believe that the essence of good and proper horse racing is the fact that horses should be well cared for. But we believe it is very, very important the person that holds a license (sic) should demonstrate and indeed properly care for horses so as that their welfare is paramount. The situation is that whilst we take into consideration the fact that you are now remorseful, it is very much in the case of the stewards, very, we're very considering of the fact that if it had not been for the intervention of Veterinary Steward Peter Symons, how long would this have gone on, and as such we believe that a fine is not appropriate at all. We believe that suspension of your license (sic) would be a proper and fitting penalty. The period of that suspension we believe should be one of four months' suspension."

The second charge is under Rule 175(gg) which states:

" The Committee of any Club or the Stewards may punish:

(gg) Any person who makes any false or misleading statement or declaration in respect of any matter in connection with the administration or control of racing"

The specifics of the charge are:

" ... the stewards are charging you in terms of that rule, with misleading statements, the particulars of the charge being that the evidence given to the stewards on the 30th of March 1999 as (sic) Ascot in relation to (1) the stabling of the RAVENEAUX filly at night after being stabled at the panel beaters' stables, in your own admission that was incorrect, and

(2) that your advice related to the stewards on page four that both he looked at it and said to me, referring to Brian Hilbert, is incorrect and indeed in the opinion of the stewards, misleading."

Mr Santich also entered a plea of not guilty to this charge. The Stewards found the charge proved for the following reasons:

"In relation to the charge under Australian Rules of Racing 175(gg) the stewards are satisfied that the charges (sic) made out and indeed by your own admission you agreed that you did not speak to Brian Hilbert until advised by Dr Peter Symons, and that is inconsistent with evidence that you gave initially to the stewards. Further, the evidence related to the stabling of the RAVENEAUX filly is inconsistent with evidence related to where indeed the filly was stabled, or at least housed, in the panel beating yard and it is certainly inconsistencies related to that and those inconsistencies, in the opinion of the stewards, amount to misleading evidence to the stewards. Now, as such, we find you guilty."

The penalty of suspension for one month to be served concurrently with the penalty of four months suspension was announced in the following terms:

"... the stewards are very conscious of the fact that any charge under this rule has the ability to erode the stewards' power to do their job properly by way of having people tell them...(approx 15 seconds not recorded)... to be of hindrance to the stewards. The stewards deem it quite serious from that point of view and we are also conscious of the fact that in assessing a penalty that we should be, work within a framework of penalties. We believe that the record shows that charges in terms of 175(gg) are as great as three months suspension and have also been applied at fine level. We do not believe on this occasion that a fine is appropriate and we believe a suspension of a trainer's licence for a period of one month would be appropriate and that such a penalty would be concurrent on the four months related to the charge on 175(a)."

In regard to the first charge, Mr Santich appeals against both the conviction and the penalty. In the second notice of appeal he appeals against the conviction only.

Mr Santich made certain submissions before the Tribunal. In addition he produced fresh evidence in the form of some correspondence. Further, he called Doctor Hilbert who gave evidence and was cross-examined in the course of the appeal.

After giving careful consideration to all of the submissions which have been made and to the evidence that was placed before us, we have come to the conclusion that the Stewards were entitled to convict Mr Santich in relation to both offences. It was open to the Stewards to conclude that Mr Santich contravened both rules in question.

The evidence from Dr Hilbert in regard to the first offence confirmed other evidence which is contained in the transcript of the Stewards' inquiry that Mr Santich could have and indeed should have done more to attend to the plight of the horse. His conduct as a consequence did offend the relevant rule. The fact that the horse was placed in a conspicuous location in the heart of a racing area, we did not find to be an influencing factor. The Tribunal has come to its conclusion on the basis of the other evidence and other considerations.

The fact that the filly by RAVENEAUX out of DAUGHTER OF AIR was not racing at the time does not bring this matter outside of the jurisdiction of the Stewards to beyond the scope of the

Rules of Racing. Mr Santich did admit to the Stewards that he “ ... *bought it as a racing proposition ... he bought it ... to race it ...* ”

Rule 8 empowers the Stewards in controlling racing to:

“(d) *To regulate and control, enquire into and adjudicate upon the conduct of all ... licensed persons, persons attendant on or connected with a horse ... and to punish any such person in their opinion guilty of improper conduct or unseemly behaviour.*”

We are satisfied in regard to the second offence that the Stewards were entitled to conclude that Mr Santich did mislead them in the course of presenting his evidence during the Stewards' inquiry. Nothing has been put before the Tribunal to demonstrate that the Stewards were in error in imposing the four months' suspension for the first offence.

It is for these reasons that all aspects of the appeals do fail and they are dismissed.

Dan Mossenson



DAN MOSSENSON, CHAIRPERSON