

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

APPELLANT: PAUL KING
APPLICATION NO: A30/08/488
PANEL: MR P HOGAN (PRESIDING MEMBER)
DATE OF HEARING 16 FEBRUARY 2000
DATE OF DETERMINATION: 16 FEBRUARY 2000

IN THE MATTER OF an appeal by Mr P King against the determination made by the Western Australian Turf Club Stewards on 25 January 2000 imposing 24 days suspension for breach of Rule 137(a) of the Australian Rules of Racing.

Mr T F Percy QC assisted by Ms J McLean, instructed by D G Price & Co, appeared for the appellant.

Mr R J Davies QC appeared for the Western Australian Turf Club Stewards.

The appellant was the rider of PRESTO PAK, which ran in Race 8 at Pinjarra Park on Tuesday, 25 January 2000. Following the race the Stewards opened an inquiry into the reason for BLACK LABEL, ridden by Danny Miller checking and losing ground near the 300m mark.

Mr King, Mr Miller and the Chairman of Stewards gave evidence. The films of the race were shown.

The following exchange then took place between the Chairman of Stewards and Mr King:

“CHAIRMAN *Mr. King after assessing the evidence before us, the Stewards believe you should be, have a, charged under Australian Rule of Racing 137(a), now are you aware of that Rule?*

KING *Yes Sir.”*

The Chairman of Stewards announced the charge in the following terms:

“ ... that near the 300m you as the rider of PRESTO PAK, have angled that mare out from behind the heels of SLOANE ridden by Daniel Staeck and in doing so, have crowded BLACK LABEL ridden by Danny Miller, causing that mare to be checked.”

The following further exchange took place:

- "CHAIRMAN *On behalf of the Stewards, how would you plead to that charge?*
- KING *I've obviously got to plead guilty, I have angled out to sort obtain (sic) a run, but then she's come out further than I expected.*
- CHAIRMAN *All right, so do I take that as a plea of guilty or not guilty Mr. King? How about I take it as a plea of not guilty as pleading not guilty, is there anything further other than what you've put to us already, that can help us decide on the, on the charge before us?*
- KING *Um.*
- CHAIRMAN *No, all right if there's nothing further, is there anything from the Stewards?"*

After further deliberations, the Chairman of Stewards announced their finding as follows:

"Mr. King the Stewards do find you guilty of the charge. It's now up to us to arrive at an appropriate penalty. Is there anything that you can put to us to help us arrive at that penalty? Obviously your record and any up coming rides. I understand that you've just come back from a suspension?"

The Chairman of Stewards announced the penalty in the following terms:

"Mr. King in assessing the penalty, the Stewards have taken into consideration your record, you've had two suspensions fairly close together recently. We've also taken into consideration, that you've stated that you believe the mare has shifted out further than you wanted to, but against that obviously the check to Mr. Miller, even though he's going backwards, does look quite severe. Taking everything into account Mr. King, the Stewards believe that you should be suspended from riding in races for a period of 24 days. That's to commence midnight the 29th January, which is Saturday night until midnight the 22nd February the year 2000."

On 31 January 2000 the appellant applied for and was granted a stay of proceedings by this Tribunal until midnight on 16 February 2000 or as otherwise ordered.

Mr King has appealed against both the conviction and the severity of the penalty.

The grounds of appeal are:

"A. CONVICTION

1. *The conviction was void for uncertainty and should be set aside.*

Particulars

- (a) *The Stewards failed to nominate the specific charge under s 137(a) which was being laid.*
- (b) *The Stewards failed to read the section of the Rules to the Appellant.*
- (c) *The taking of any plea was accordingly vitiated by uncertainty and a nullity.*

(d) *The finding of guilt by the Stewards was accordingly vitiated by uncertainty.*

B. PENALTY

2. *The penalty imposed by the Stewards was void for uncertainty.*

Particulars

(a) *The Stewards failed to nominate the specific under s 137(a) in respect of which they were imposing a penalty.*

(b) *The penalty was accordingly void for uncertainty.*

3. *The Stewards erred in their assessment of the case and imposed a penalty which was excessive in all the circumstances.*

Particulars

(a) *The penalty reflected the recent poor riding record rather than the degree of carelessness, incompetence or foul riding involved.*

(b) *The penalty imposed was outside a broad discretionary range of penalties for an incident which had no aggravating features.*

(c) *The Stewards erred in failing to place the riding in a category of seriousness for its type.*

(d) *The Stewards erred in failing to indicate a starting point and to specify what allowances had been made in the circumstances of the case."*

APPEAL AGAINST CONVICTION

The appellant was convicted of an offence under Rule 137(a). That is what the Chairman of Stewards said, in first charging the appellant, then convicting him. At no stage in the process of charging, convicting or even imposing the penalty did the Chairman say which particular part of Rule 137(a) was being applied. The appellant says that this omission (called a failure) gave rise to uncertainty and the purported conviction was a nullity. In order to understand that submission, it is necessary to refer to the Rule.

Rule 137(a) is in the following terms:

"137. Any rider may be punished if, in the opinion of the Stewards:

(a) *He is guilty of careless, improper, incompetent or foul riding..."*

The appellant's submission depends upon accepting that each of the 4 types of riding described constitutes a separate offence. It is generally accepted that the prohibited conduct is described within the Rule in upward degrees of seriousness. Careless riding is the least serious, foul riding the most serious. Both improper and foul riding require proof of some degree of deliberate conduct. In recording convictions, the Stewards invariably record a precise description of the actual type of riding which was found proved. The range of penalties is higher for the more serious offences than it is for careless riding.

Accepting all of the above, it makes no difference in my view whether the different types of prohibited riding are described as separate offences, or as particulars of the one offence. (Whatever it may be called) That is because what is required is only that the Stewards, in dealing with the appellant, observe the principles of natural justice. If that is done, then the Stewards' decision will not be overturned.

Counsel for the appellant placed reliance on the case of *KAILIS v R* (1999) WASCA 29. In that case, Malcolm CJ. said at page 22:

"In my view, where it is uncertain as to which of two or more possible offences the accused has been convicted, there must necessarily have been a fundamental flaw in the proceedings which necessarily involves a miscarriage of justice."

His Honour was there applying well established principles of criminal law to a criminal appeal. Certainty is a requirement when applying natural justice, but not to the same strict levels demanded by the criminal law. While the principle remains the same, its application will often be different as between the criminal courts and the Stewards constituting a domestic tribunal.

In *HALL v NEW SOUTH WALES TROTting CLUB* (1977) 1 N.S.W.C.R. 378, Samuels JA. said at page 386:

"However, the rules of natural justice are not immutable; they are influenced by the circumstances in which they are invoked. In Russell v. Duke of Norfolk (12) Tucker L.J., as he then was, said: "There are, in my view, no words which are of universal to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend upon the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth."

This statement was quoted with approval by Gibbs J. in Stollery v. Greyhound Racing Control Board (13). It is necessary, therefore, to establish the nature and content of the rules which the stewards were bound to observe in the circumstances of this case."

In Hall's case itself, one the questions for consideration was whether the charge against Hall should have been particularised. Mahoney JA. at page 399 set out what is required:

"The plaintiff argued that the proceedings were vitiated, because the charge had not been properly particularized. In courts and analogous tribunals by which a person may be penalised, it is desirable, and in some cases, essential, that that for which he is to be penalised be particularized, i.e. that he be told, in advance, that he is charged, what is the charge, and the general outline and constitutive facts to be proved in order to prove the charge: R. v. Associated Northern Collieries (56); cf. Bailey v. Federal Commissioner of Taxation (57). If this is not done, the tribunal may stay the proceedings, or its orders may be set aside: Johnson v. Miller (58).

However, it is not essential to the validity of the proceedings on tribunals of all kinds that all of these things be done. Quasi-judicial tribunals may do so, and it may be expedient that they do so in most cases. But it is not a rigid requirement. What is to be done in order to comply with the requirements of natural justice will depend upon the circumstances. It was not argued, in the present case, that the rules governed the matter. The matter must be determined by reference to general principles."

and

"However, the inquiry reached a stage at which it was decided that the stewards, as they described it, "charge" the plaintiff. It was suggested that at that stage particularization was necessary. I do not think that this is correct."

Applying what was said in Hall, it is appropriate then to examine the conduct of the Stewards' inquiry to see if there was compliance with the rules of natural justice.

There was only one incident under consideration. It was described by the Chairman at the outset. There was not then nor later any allegation of deliberate wrongdoing on the appellant's part. The terminology used by the Stewards, and by the appellant, is commonly understood by all in the racing industry to refer to the least blameworthy type of riding. Both the appellant and the Stewards were using the terminology of "*careless riding*."

In the inquiry stage of the proceedings, the appellant acknowledged the interference and went some way towards accepting responsibility himself. At page 4, the appellant said:

"So you know, I may have let her come a little bit more than I probably should have at the time, but like I said, she does have the tendency to lay out and she had done it previously with myself and a few other riders."

and later:

"...but she probably come out just, probably just under half a horse more than I liked, which is enough to cause the interference that's happened to Mr. Miller."

Taking into account all that took place, it could not be said that the appellant did not know what he was facing when the Chairman actually charged him and later convicted him. The Stewards referred to the Rule, and there were sufficient particulars because the appellant knew exactly what was under consideration. He knew what he had to respond to and he did so.

The appellant relied upon the decision of the Chairperson of this Tribunal in the case of SESTICH (Appeal 469). The factual circumstances of this case come nowhere near the unusual situation found to have occurred in SESTICH. The Stewards' inquiry in that case was conducted in a "*mood of informality and indifference*". That was not the case here.

For these reasons, the appeal against conviction is dismissed.

APPEAL AGAINST PENALTY

It was submitted on behalf of the appellant that the same error which tainted the process of conviction likewise affected the process of fixing a penalty. Because there was no finding as to the degree of seriousness of the offence, there was no starting point to fix a penalty. It was submitted that in fact the Chairman did fix a starting point.

I do not accept the submission. The Stewards categorised the seriousness of the conduct by the charge and the particulars in support of it. It was a "*common garden variety*" of careless riding. The penalty imposed was within the range of penalties commonly imposed. It is not alleged that there was any error of fact in the sentencing process.

For these reasons, the appeal against penalty is also dismissed.

The suspension of operation of the penalty automatically ceases.



P. J. Hogan

PATRICK HOGAN, PRESIDING MEMBER