APPEAL - 567

DETERMINATION OF

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT:	**ALANA SANSOM**
APPLICATION NO:	**A30/08/567**
PANEL:	**MR P HOGAN (PRESIDING MEMBER)**
DATE OF HEARING:	**16 APRIL 2002**
DATE OF DETERMINATION:	**16 APRIL 2002**

IN THE MATTER OF an appeal by Alana Sansom against the determination made by the Stewards of the Western Australian Turf Club on 26 March 2002 imposing 21 days suspension for breach of Rule 137(a) of the Australian Rules of Racing.

Mr T F Percy QC appeared for the Appellant.

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

This is an appeal against penalty only.

On 26 March 2002 the Stewards of the Western Australian Turf Club opened an inquiry into the reason for METAL DUMP falling, dislodging Jockey N. Rudland in Race 4 The Sovereignito (1200m) run at Ascot on the 23rd of March, 2002. Jockey Rudland sustained a broken collarbone in the fall.

Called to the inquiry were:

A Sansom	Apprentice Rider of BLINDED
P Carbery	Rider of DON'T SAY DANNY
Jason Brown	Rider of ROYAL SONATA
D Harrison	Host Trainer for Apprentice Sansom
N Chapman	Rider of MAGISSA
N Rudland	Rider of METAL DUMP

After hearing from the witnesses and viewing the patrol films, the Stewards laid a charge against Apprentice Sansom in these terms:

> *Miss Sansom, at this stage of the Inquiry the Stewards have decided to charge you Miss Sansom, under the Australian Rule of Racing 137 with careless riding 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're charged under that rule with careless*

riding. The careless riding being in the opinion of the Stewards, when riding BLINDED approaching the 100m you've attempted to take a run between DON'T SAY DANNY on your outside and MAGISSA on your inside where there was insufficient room. As a result DON'T SAY DANNY and BLINDED both became unbalanced, with BLINDED shifting in to the path of METAL DUMP, that horse falling dislodging Jockey N. Rudland."

Miss Sansom pleaded guilty to the charge.

The following exchange then took place:

CHAIRMAN Thank you for that guilty plea. Before the Stewards to determine a penalty is there anything you wish to say in regards to penalty, you should mention at this stage your record and anything that may influence us in regards to that.

SANSOM Yes, sir. I don't think I've been, I don't know the specific date, but I don't think I've been suspended for about two years.

CHAIRMAN Right.

SANSOM Which is probably for me about 1500 to 2000 race rides. I haven't had a lot of warnings lately. The other thing is I'm supposed to be riding the nominal favourite in the Derby LORD MASON. If there was any possibility I could, you know, hopefully get back in time to ride him, it would be much appreciated.

CHAIRMAN Right, and the Derby is on the 13th of April from recollection. Is there anything you wish to say in support, Mr Harrison?

HARRISON Yes, only that I was here, Alana was desperate to get out of the trouble there and by giving her a bit of a holiday, even just by a warning, she would learn her lesson that she has to make sure there's a run there before she tries to, before she tries to force one, irrespective of how well she's travelling. Because the other fellow riders that have careers and lives at stake so even if you're bolting you've still got to stay straight. I'm sure that she would learn that lesson from just this discussion today, given a week or ten days or something suspension is still a pretty hefty penalty because TAOLANI would be one of favourites in the Oaks and she won't be able to ride that and.

CHAIRMAN Were you engaged for, for that?

SANSOM Yes, sir.

HARRISON So you know, like she's got some good rides coming up, she's riding well and her, really like what Alana said, she's got a good record and she rides very fair and clean and very strong and she's a very vigorous sort of rider that has probably got where she's got by taking the runs when they're there and she just misjudged this one at this time. She went before it was there.

CHAIRMAN Any clarifications or any questions from the Stewards? Right, if there's nothing more Miss Sansom, we would ask you to wait outside again.

Miss Sansom and Mr Harrison leave the room

Miss Sansom and Mr Harrison re-enter the room

CHAIRMAN Mr Harrison and Apprentice Sansom, the Stewards have considered all of what you've placed before us in regards to penalty. We have taken into account your guilty plea, your record which shows that you have not been suspended for two years and with the amount of rides that you do have, that is a good record. We've also taken into account the circumstances of this

incident, by that I mean the degree of carelessness and I must say to you, Miss Sansom, that the degree of carelessness here is starting to approach the upper level of carelessness. You are a talented and experienced apprentice and on this occasion a horse and rider have fallen with the rider being injured. Clearly the prime concern of the Stewards is safety. I believe in delivering a penalty we must have a certain deterrent effect. We have also considered your plea in regards to the Derby and we also note that you do have a ride in the Oaks. Both these events are significant events on the WA racing calendar. After considering all these factors, Miss Sansom, it is the opinion of the Stewards to suspend you from riding in racing for a period of 21 days from midnight 27th March 2002 to midnight 17 April 2002.

The Grounds of Appeal are:

1. The penalty imposed was excessive in that no adequate allowance or discount was made for the Appellant's plea of guilty.

2. The penalty imposed was excessive in that no adequate allowance was made for the Appellant's previous good record.

3. The Stewards erred in imposing a deterrent penalty when in all the circumstances of the case no specific or general deterrent was appropriate.

Much of what occurred was not in dispute. The Appellant was the rider of BLINDED. After the 250m mark, the Appellant attempted to take a run between DON'T SAY DANNY and MAGISSA. There was never a run there. The Chairman of Stewards described it as going "where angels fear to tread". In going there, the end result was that METAL DUMP fell, dislodging Jockey N Rudland. Jockey Rudland suffered a broken collarbone. The Chairman described the riding as at the upper level of carelessness. The Appellant had a very good record. She had not been suspended for two years, and she had had a great number of rides during that time. She is a talented and experienced apprentice.

Ground 3 can be dealt with first. I find that there is no merit in that ground. It is accepted that suspension is often imposed for careless riding, and it is a type of penalty within the range commonly imposed. Deterrence, both general and specific, is a primary purpose of imposing punishments. The Appellant acknowledged that she had received warnings, albeit not many in the recent past. That simply serves to demonstrate that suspensions, like warnings, have a part to play in specific deterrence.

Grounds 1 and 2 allege the same type of error. They can be dealt with together. They are similar too in that the Chairman of Stewards expressly said at T16 that the Stewards had taken both those things into account in arriving at the penalty.

In broad terms, the Stewards went about the process of announcing the penalty in accordance with the procedure referred to by the Chairperson of this Tribunal, Mr Mossenson, in the case of Harvey (Appeal 547). They gave reasons for their decision. As Mr Mossenson pointed out, the rationale for the requirement of giving reasons is a prospective Appellant can assess whether he thinks the penalty is unfair, and so that the Tribunal can adjudicate properly if there is an appeal. There is recent High Court authority to the same effect, but taking the requirement further. In ***Cameron -v- The Queen*** (1992) 76 ALJR 382, Kirby J was of the opinion that a starting point should be specified, and discounts specified for the relevant matters. This then would allow the process to be scrutinised on appeal and as well encourage pleas of guilty where appropriate as other persons would know the relevant discount. It is the case that there is a difference of opinion in the High Court on the matter. In ***Wong –v- the Queen*** (2001) HCA 64, Gaudron, Gummow and Hayne JJ held that the two stage approach to sentencing should not be followed.

In my view, the approach set out by the Chairperson in HARVEY should be followed. The discount should be specified where appropriate.

In this case it is likely that the Stewards had a higher starting point, and reduced it to 21 days for the matters to which they referred. However, it should be borne in mind that the process before the Stewards and here is adversarial, and the Appellant rightly takes the point that that cannot be certain. She is entitled to have the matter determined in her favour because the decision is of the type referred to by the Chairperson in HARVEY, namely one which has serious consequences in that it affects livelihood. For these reasons, I would uphold grounds 1 and 2. The sentencing process miscarried.

In exercising the discretion again, I determine that an appropriate discount for mitigatory factors would be one of 7 days. For the sake of convenience only, I would make that 8 days to equate with the time already served. It is the very good record which deserves that discount, although the plea of guilty and expressions of remorse by the Appellant also play a part. The resultant penalty of 13 days is within the range of penalties commonly imposed.

It should not be taken that the process of fixing a penalty would in every case necessitate a discount. There may be cases in which factors balance each other out, including a good record. Not every mitigating factor need be specified in order to arrive at a proper penalty. There simply needs to be a starting point and a finishing point.

PATRICK HOGAN, PRESIDING MEMBER

Seal of the Racing Penalties Appeal Tribunal of WA