

*"In relation to this matter in Race 1, at this stage of the inquiry, Apprentice Hughes, the Stewards have decided to charge you under Australian Rule of Racing 137(a) for careless riding and 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 in Race 1 The Winter Show 1000m when riding ON TARGET near the 150m when held up, you've taken your mount outwards when insufficiently clear, bumping JUST*

*AMIABLE C. Harvey, unbalancing that filly. Do you understand the nature of the charge Apprentice Hughes?"*

After acknowledging that he did understand the charge the Appellant pleaded not guilty.

Apprentice Hughes declined to say anything further or call any other witnesses in respect of the charge.

After adjourning to consider all the evidence the Chairman announced a guilty finding as follows:

*"The Stewards have considered the charge and all the evidence placed before us. The end of the day, we'll, we believe that there has been a marginal shift from JUST AMIABLE, it's a marginal shift inwards from JUST AMIABLE. However, we are strong in our belief that you have angled out when insufficiently clear, bumping with JUST AMIABLE C. Harvey and unbalancing that filly, accordingly we find you guilty as charged, Apprentice Hughes. If you wish to address us on penalty now would be the time in relation to the, the leading apprentice rider and any other matter."*

The major submission from the Appellant on penalty at the inquiry was the following statement:

*"Yes, sir, as I was starting to say earlier, for me it's been quite a successful season, one that I never thought I'd be able to do for my last year in my apprenticeship. I never thought I'd be able to be in this sort of a position with three meetings to go to be a chance of taking out the leading apprentice award and also, my last year to ride in the Apprentices' Cup. I just wish for a bit of leniency when deciding upon my penalty, sir, that's all I've got to say."*

The Chairman announced the penalty as follows:

*"The Stewards have given considerable thought to the matter of penalty. They've taken into account your record that shows that you were last suspended for careless riding on the 27th March this year for 12 days. We're also conscious of the fact that on Thursday you were reprimanded on DELTA MASTER. We've taken into account the degree of carelessness and as we see it, it is half way on the, on the scale of carelessness, that is you've angled out, we know you were held up, and we know that you were on a favourite, but you have angled out to win. The consequences have not been severe but a horse has been bumped and unbalanced. Your plea for leniency has weighed heavily with us and we've taken into account the fact that you may miss the Apprentices' Cup and you have got the championship coming up. We have the power of only to defer the penalty for five days, if it was longer maybe it would be different. However, under all these circumstances, we are deferring the penalty but we have decided to suspend you for a period of 13 days to run from midnight the 23rd of July to midnight the 5th of August 2003. Now that encompasses two Saturdays, one mid-week and two provincials, a total of five meetings which really is the minimum that we can go. Under normal circumstances we believe that a penalty from 16 to 17 days upwards may have been appropriate in these circumstances, but we do believe on this occasion the penalty of 13 days to commence from midnight the 23rd of July, next Wednesday, to be appropriate."*

Apprentice Hughes lodged Notice of Appeal on 23 July 2003 and applied for the suspension of operation of the penalty. A stay of penalty was granted until midnight on Tuesday, 29 July 2003 or as otherwise ordered.

The grounds of appeal are:

*"Pleaded not guilty to charge as my horse was not tractable and rider of other horse stated his horse layed (sic) in. This horse contributed to incident. He also said the bump was not severe. The appeal will be against the severity of the sentence in addition to the conviction."*

### **Appeal against Conviction**

At the outset of the appeal hearing Mr Ryan, on behalf of the Appellant, called Apprentice Harvey, the rider of JUST AMIABLE as a witness. During examination Mr Ryan produced as an exhibit a bridle and questioned Apprentice Harvey as to the problems he faced with his mount as to its tractability, balance and tendency to lay in during the race. Apprentice Harvey demonstrated to the Tribunal the movement of the bit during the race and explained that the horse was trained with a special bit.

In cross examination by Mr Zucal, Apprentice Harvey admitted that he had control of his mount during the race, albeit the horse did cause him some problems as stated earlier. He also admitted that the horse raced with a normal bit.

Also produced were Stewards' Reports for the meeting in question, from the meeting held on 26 July 2003 and a report from a Dr J Vandenberg as to ON TARGET's teeth problems.

A viewing of the films clearly showed that JUST AMIABLE received a bump when ON TARGET moved off the fence to make its run. The bump did cause JUST AMIABLE to become unbalanced and shift wider on the track. ON TARGET went on to win the race with JUST AMIABLE finishing fourth 3.25 lengths from the winner.

The Stewards' Report of the meeting held on 26 July 2003 and the report from Dr Vandenberg were of no use as these were clearly events that happened after the Stewards' inquiry.

The evidence before the Stewards to form their opinion at the inquiry included the Appellant, Apprentice Harvey, the eye witness account of Steward Mr B Lewis, Mr N Parnham, the Master of the Appellant, and the various films of the race. I am not satisfied the additional evidence provided by the Appellant at the appeal hearing which has been referred to above adds anything significant to the original material before the Stewards.

This Tribunal has on numerous occasions stated the test when appeals are made against convictions for breaches of rules which contain the phrase "in the opinion of the Stewards". This creates a significant burden on the Appellant for appeals of this nature to succeed.

After hearing submissions from both Mr Ryan and Mr Zucal, viewing the various films of the race and reading the Stewards' inquiry transcript, I am satisfied that the Stewards were entitled to form the opinion of the incident which they did. I am not satisfied the Stewards opinion formed was unreasonable on the totality of the evidence available to them.

Accordingly the appeal against conviction is dismissed.

### **Appeal against Penalty**

After considering the submissions from both parties in relation to penalty I am satisfied that it has not been demonstrated that the penalty was beyond the discretionary range open to the Stewards or that the penalty was manifestly excessive. A discount was included in the ultimate penalty imposed by the Stewards to take into account the particular effect the suspension would have on this Appellant.

Accordingly, the appeal against penalty is also dismissed.

### **Deferment of Penalty**

Mr Ryan requested that I use my discretion to defer the commencement of the suspension until midnight on Saturday, 2 August 2003. This request was made on the basis of the Appellant's upcoming engagements as follows:

Belmont Midweek Meeting on Wednesday, 30 July 2003 (last meeting of the 2002/03 Metropolitan season)

The Appellant is currently tied as the leading Metropolitan Apprentice.

Belmont Saturday Meeting on 2 August 2003 (running of the Apprentices' Cup)

Mr Ryan referred me to the matter of CLAITE (Appeal 592) heard by Mr P Hogan, Presiding Member on 16 April 2003.

In response to this request Mr Zucal did not oppose the penalty being deferred until midnight on Wednesday, 30 July 2003 but was strongly opposed to any deferment to include the 2 August 2003.

I am not satisfied that it is appropriate to defer the commencement of the suspension until 2 August 2003. Final jockeys do not close until 11.00am on Thursday, 31 July 2003 leaving ample time for connections to name another apprentice for this important race. Indeed, it would be surprising if connections had not already made alternative arrangements pending the outcome of this appeal.

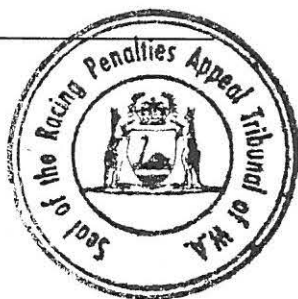
I am however satisfied that the suspension should be deferred until midnight on Wednesday, 30 July 2003 to allow the Appellant to fulfil his engagements at the meeting to be held tomorrow. The naming of riders for this meeting closed at 11.00am on Monday, 28 July 2003.

The granting of the deferment should not be taken as a precedent and every case should be determined on its own particular facts and merits.

Accordingly, it is ordered that:

1. The appeal against conviction is dismissed.
2. The appeal against penalty is dismissed.
3. The suspension will commence from midnight on Wednesday, 30 July 2003.

*John Prior*



JOHN PRIOR, PRESIDING MEMBER