

REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

<u>APPELLANT:</u>	CALLAN SUVALJKO
<u>APPLICATION NO:</u>	A30/08/604
<u>PANEL:</u>	MR D MOSSENSON (CHAIRPERSON)
<u>DATE OF HEARING:</u>	23 SEPTEMBER 2003
<u>DATE OF DETERMINATION:</u>	23 SEPTEMBER 2003

IN THE MATTER OF an appeal by Callan Suvaljko against the determination made by the Stewards of Harness Racing on 6 September 2003 imposing 28 days suspension for breach of Rule 163(1)(a) of the Rules of Harness Racing.

Mr G Winston was granted leave to represent the appellant.

Mr L Austin appeared for the Stewards of Harness Racing.

Background

Following the running of Race 6, a standing start over 2,140 metres at York on 6 September 2003, the Stewards opened an inquiry into an incident that occurred racing into the first turn. The details of the incident and consequences that followed are best summarised by the Stewards' Report of the race.

'FREDY TOO SHOES (Callan Suvaljko) jumped sideways at the start.

ELITE CRUISE (Robin Bell) began badly and will remain ODS.

Racing into the first turn MY EVERYTHING (Darryl Cooper), SYMBOLMIN (Ross Johnson) and FREDY TOO SHOES (Callan Suvaljko) were severely checked and Mr. Suvaljko was dislodged from his sulky and SPORTSMAN LADY (Stephen Reed) was checked. SYMBOLMIN was retired from the event. At a subsequent inquiry Mr. Suvaljko was found to be in breach of Rule 163 (1)(a) by causing 'interference'. In the incident Mr. Suvaljko severely tightened MY EVERYTHING when racing to its outside causing it to gallop resulting in Mr. Suvaljko being dislodged from his sulky and the other runners mentioned, being checked. Mr. Suvaljko's driver's licence was suspended for 28 days. He was given a stay of proceedings to complete his engagements at Kalgoorlie (Sunday) and Pinjarra (Monday). Therefore, Mr Suvaljko will be free to drive after the 6th October."

Called to the inquiry were:

- Callan Suvaljko Driver of FREDY TOO SHOES Front line
- Darryl Cooper Driver of MY EVERYTHING 10 metres
- Lindsay Harper Driver of IRON SPUR 10 metres

At the outset of the inquiry the Chairman called for a report from Steward Mr Reg Denney who stated as follows:

'Yes, thanks Mr Austin. I viewed the race from the stand out on the back straight and at the start Mr. Suvaljko had initially drawn 1 at the barrier and began reasonably well, but racing a cart away from the rubber upright Mr. Cooper's horse viewed by the back line has begun very quickly and moved to the inside of Mr. Suvaljko. Mr. Suvaljko has then started to cross down when Mr. Cooper was starting to get to his inside. As a result he has had to go over the rubber upright. You were racing extremely tight Mr. Suvaljko on Mr. Cooper. At this stage Mr. Harper started to come onto the scene from the outside of 10 metres was racing in a three wide position and started to lower his racing tight on Mr. Suvaljko. There was no contact until Mr. Suvaljko has tried to relieve the pressure from Mr. Cooper and as a result has contacted Mr. Harper's wheel, but the initial contact was made by Mr. Suvaljko through racing very tightly on Mr. Cooper and Mr. Suvaljko was dislodged from the sulky.'

After the three drivers gave evidence and the film of the incident was viewed on several occasions the Chairman announced a charge in these terms:

'Thanks drivers. Mr. Suvaljko, the Stewards have viewed that film with you on a number of occasions and we have viewed it again in your absence and we do feel that the film demonstrates that tightening did occur for some time prior to Mr. Cooper's horse actually been (sic) carried all the way over and breaking gait. We do feel that the observations were supported by the evidence of Mr. Cooper on this occasion in as much as there was sufficient room to take the position inside of you. We felt it was the obligation of yourself to relieve the pressure prior to Harper covering you. We don't feel that Harper had any contributing factor in this incident. Certainly we believe when you have tried to take away, albeit too late, you couldn't because Harper was there. As a result of that we do feel you ought to be charged under the provisions of (Rule 163 (1)) which states "a driver shall not cause or

contribute to any crossing, jostling or interference". From the specifics on this occasion is we do believe you caused interference to Mr. Cooper's drive MY EVERYTHING by not relieving that pressure and as a result of that incident MY EVERYTHING was severely checked and galloped and that caused you to be dislodged and in turn a number of runners were checked behind you.'

Mr Suvaljko entered a plea of not guilty. After Mr Suvaljko questioned Mr Cooper further the Stewards adjourned to consider the evidence. The Stewards then announced a guilty finding which the Chairman stated in these brief terms:

'Mr Suvaljko the Stewards, for the reasons outlined, do find you guilty as charged. We have to now consider penalty. Is there anything you want to put to the Stewards on the matter of penalty. When was the last time you were suspended – we can only go back to your last 10 misdemeanors and most of those of those are for whips. You get a 14 day suspension under (Rule 163 (1)(b)) and you got a 14 day suspension which meant you would have got a 7 day remission. When was the last time you were suspended before that?'

In response to an invitation from the Chairman address on penalty, Mr Suvaljko made the following comments:

'Well I would have liked to have seen the tape again as I said to Mr. Hallows and...I don't know, I think I have been very hard done by sir, whichever way it is sir.'

and

'What I was saying, I believe it is a two part interference, I don't think it is a one check interference, it is a two part interference, but obviously we are all seeing a different view of it''

The Chairman announced penalty in these terms:

'Mr. Suvaljko you have given us great cause for thought because we don't have enough record in front of us, however notwithstanding that we do feel that your Licence ought to be suspended for a period of 28 days up to and including the 4th October, 2003.'

The Appeal

Mr Suvaljko lodged a Notice of Appeal on 10 September 2003 and sought a stay of proceedings. The appellant was granted a suspension of operation of the penalty until midnight on 23 September 2003 or as otherwise ordered.

The grounds of appeal are:

'I believe I was not solely responsible for the interference and reviewing the tape of the incident and seeking several independent expert opinions. I also I was denied a full and fair hearing on the night as the video was removed before I had completed my case and was unavailable to me to explain my case. I also wish to appeal against the severity of the penalty if I am not solely responsible for the incident.'

During the course of the appeal hearing both sides made lengthy submissions whilst the video of the race was being played. Unfortunately, the race video was taken with a camera which was positioned some 300 metres from the incident on the other side of the track. Only a side on view of the incident was taken. A head on angle would clearly have assisted in the determination process as the Stewards were confronted with the task of considering the respective positions of the front 3 drivers and of deciding whether room was available and who was responsible for the tightening which occurred. The camera provided only a poor perspective of the incident as was acknowledged by Mr Winston at the outset. On the other hand the Steward who gave the telling evidence at the inquiry, Mr Denney, had a good view. The incident unfolded directly in front of Mr Denney. As Mr Austin pointed out Mr Denney was positioned only some 75 metres away in an elevated position head on which enabled him to look into the field as the incident unfolded.

The underlying propositions presented by Mr Winston on behalf of the appellant were that:

- Mr Suvaljko drove a consistent line throughout the race,
- Mr Suvaljko was entitled to maintain his position,
- Mr Suvaljko had no obligation to give the inside horse a run,
- there was plenty of room when the interference occurred,
- the evidence of the video contradicts some of the evidence before the Stewards and that no contact was made until Mr Harper transgressed by applying pressure on the outside.

Further, according to Mr Winston, Mr Harper contributed to the incident and if there were 2 parties to blame then the penalty should be split between them.

In response Mr Austin pointed out that Mr Denney, a senior steward, had a great number of years of experience. In essence Mr Suvaljko had tried to tighten up Mr Cooper on his inside and freeze him out of the race. Mr Austin argued Mr Harper was not to blame in the incident.

I am fully satisfied that Mr Denney's account of the incident is both credible and compelling. Despite strenuous efforts by Mr Winston to put different interpretations on what transpired during the relevant part of the race, some aspects of his propositions were unclear from the video and others were not visible. I am not persuaded by Mr Winston's interpretations or assumptions as to some of the material facts so as to displace the clear and compelling evidence of the Steward on duty who watched the incident live. As to the other grounds of appeal I am satisfied that Mr Suvaljko was solely responsible for the incident. There is no merit in the allegation that he was denied a full and fair hearing. For these reasons I am satisfied that the appeal as to conviction has no merit and should be dismissed.

As to the penalty it was explained on behalf of the Stewards that for an offence of causing interference to be committed, contact must be made causing a horse to break gait and possibly result in a fall and the risk of injury. Causing interference is a serious offence. Normally it attracts a penalty of 28 days suspension. The severity of an incident may result in a 6 week suspension depending on the consequences including the damage caused. In the case of a driver's good driving record, the penalty may be reduced by up to 7 days. I am persuaded by Mr Austin a 28 day penalty is the standard penalty imposed for a first offence.

I am told there is a policy which allows drivers to make an election for up to 2 offences in any 12 month period to convert suspensions to fines. A fine in the sum of \$200 plus GST is the equivalent to 7 days suspension. The opportunity to elect to take a fine may be afforded to a driver depending on the circumstances of the matter at the discretion of the Stewards.

It was pointed out that Mr Suvaljko does not enjoy a good record. In fact he had on 10 January 2003 been convicted of a breach of Rule 163(1)(a) when a fine of \$600 was imposed. Mr Suvaljko next offended on the 1 February 2003 for the same offence and a fine of \$440 was imposed. Those 2 fines were remissions of penalties of 21 days and 14 days suspension respectively. The offence the subject of the appeal is a third offence of the same kind. This offence occurred within a 12 month period. Bearing in mind the fact that Mr Suvaljko was thrown from his cart and risked not only serious injury to himself but also potential injury to others as a consequence, the penalty which was imposed was entirely appropriate in all of the circumstances.

The 28 days suspension was consistent with the range of penalties imposed for this type of an offence in the circumstances of this incident for a driver of Mr Suvaljko's record. I am persuaded by the arguments presented on behalf of the Stewards.



DAN MOSSENSON, CHAIRPERSON

