

<u>APPELLANT:</u>	GLENN LEON SMITH
<u>APPLICATION NO:</u>	A30/08/616
<u>PANEL:</u>	MR P HOGAN (PRESIDING MEMBER)
<u>DATE OF HEARING:</u>	6 JULY 2004
<u>DATE OF DETERMINATION:</u>	6 JULY 2004

Jockey P King	Rider of RIVER MIST
Jockey G Smith	Rider of COPPERTITO
Jockey P Harvey	Rider of ON TARGET

Jockey J Claite	Rider of THERMO KING
Jockey D Staeck	Rider of ON THE WHISTLE
Apprentice W Pike	Rider of CHANGING LANES
Jockey T Turner	Rider of ON THE WATCH
Jockey J Whiting	Rider of BREMER BAY
Apprentice T Ikenushi	Rider of COPPERFIELD

The race patrol films were shown of both the head-on and side-on views of the incidents of the interference. Mr Zucal, the Chairman of Stewards, made the following comment (T2):

"Right after seeing those films which are the head-on and the side-on, it's my reading of the films that at approximately 100 metres after the start COPPERTITO when insufficiently clear, has shifted inwards, bumping and tightening ON THE WHISTLE which then shifted in crowding ON TARGET which has then been obliged to move in onto THERMO KING which checked. INTUITION which was following, restrained in consequence. THERMO KING when checking, struck the hindquarters of RIVER MIST which then has carried inwards crowding COPPERFIELD which was forced inwards onto CHANGING LANES which was severely inconvenienced and shifted inwards, cannoning in onto ON THE WATCH which crashed through the running rail and fell dislodging Jockey T. Turner. BREMER BAY which was following was severely inconvenienced. ON THE WATCH when crashing through the rail catapulted a section of the rail out striking Apprentice B. Albuino (LUKABOOM) and dislodging that rider. Now in viewing those films, Mr Smith I believe that you were insufficiently clear of Mr Staeck at the time you did shift in and that essentially has set off a concertina effect back through the field with horses checking to various degrees from very severely and falling to restrains. Now, Mr Staeck, you've heard my observations and seen the film, is there anything you wish to say? Do you agree with me, or do you disagree with me or any comments?"

Mr Staeck responded as follows (T3):

"I do agree with what you said but I did come in contact with ON TARGET. We were racing, we jumped together, we were racing level at the time and when COPPERTITO, probably just a neck better than the rest of us, sort of stayed in that position. That's what caused my horse to, what it looks like, to twist inwards. I think had (sic) ON TARGET pushing me outwards behind of the (sic) and COPPERTITO carrying me inwards."

The other jockeys and apprentices called to the inquiry declined to comment. The Appellant did not question any of the other riders at the inquiry.

The Appellant maintained that the interference was not totally of his doing. He stated that (T3-T4):

"Well, I don't totally agree with it. I think, yeah, I have shifted in a little bit but I think Daniel's [Staeck] horse has, hasn't begun a neck behind me, it's probably missed a kick three quarters of length, a length, maybe. When he dug his horse up, to come up in between us I was on a (sic) inward shift, yes, but he's come in sort of a little bit sideways. I don't think there was enough room to sort of be poking up in there, myself, but I was, you know, I did shift in and have caused a fair bit of the interference but I don't think it's solely my fault, like I did pull the horse out a little bit, you can see the horse's head was coming out soon as I heard calling, kicked him up forward and once I come into view probably three lengths in front of the rest of the field, and then there was still interference after that."

After adjourning to consider the evidence the Stewards preferred a charge against Jockey Smith in these terms:

"Mr Smith, at this stage of the inquiry the Stewards have decided to charge you under Australian Rule of Racing 137(a) 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're charged under that Rule with careless riding, the careless riding being that in the opinion of the Stewards when riding COPPERTITO in Race 5 the Belmont Guineas approximately 100 metres after the start you've allowed your mount to shift in when insufficiently clear of ON THE WHISTLE (D. Staeck) bumping and tightening that horse inwards onto ON TARGET (P. Harvey) which was carried in onto THERMO KING (J. Claite) which checked. INTUITION (P. Carbery) which was following restrained. THERMO KING in checking, bumped the hindquarters of RIVER MIST (P. King) which was then obliged to shift inwards onto COPPERFIELD (T. Ikenushi) which crowded CHANGING LANES (W. Pike) on its inside which was forced to check severely and shift inwards, cannoning into ON THE WATCH (T. Turner) which crashed through the running rail, falling and dislodging Jockey T. Turner. BREMER BAY (J. Whiting) which was following was severely inconvenienced. When ON THE WATCH crashed through the running rail a section of rail has catapulted outwards striking and dislodging Apprentice B. Albuino (LUKABOOM)."

Jockey Smith pleaded not guilty to the charge.

The following exchange then took place at T6.

"Chairman Is there anything further you wish to say, or any witnesses you wish to call?"

Smith No.

Chairman Nothing in answer to the charge?

Smith No, you know, I have a different opinion to you on the film but I do say yeah, I wasn't totally clear at first, but I don't think all that interference has been solely caused by me.

Chairman Alright, well just, just in relation to that, can I ask you why you don't think it is? The tightening's come from the outside and you can see tightening from ON THE WHISTLE which you say you have tightened and you've put a case to that.

Smith I didn't say I tightened ON THE WHISTLE.

Chairman You didn't tighten ON THE WHISTLE?

Smith I didn't say that.

Chairman You didn't tighten it?

Smith Well, I don't think I, I've shifted in a little bit at the start, like my horse has jumped inward and it's, it's missed the kick by three quarters of a length or a length, but straight away because my horse has come in straight away, there was, Daniel shouldn't I don't think, should've poked his horse up in there, even though you think he's entitled to be there, I don't think there's enough room to be poking a horse up in there and if he hadn't of done that, I don't think that all that would have happened. I'm not blaming Daniel, I'm, you

know, I've probably caused the majority of it but I don't think solely it's my fault completely and once he's drove, drove his horse up in there, you can see I'm trying to pull the horse out because of the rump, it's been turned in I have no other option but to go in. Once I was called, I did get, like Daniel eased back out of it, I've been able to come off a little bit. Then as you say, I was like clear after that for three lengths clear but it was all too late then."

The Chairman announced the Stewards' finding on the charge in these terms:

"The Stewards have considered the charge and all the evidence placed before them. We see the matter as like this. We find the video patrol of this incident to be compelling evidence. We believe that ON THE WHISTLE (D. Staeck) was entitled to be racing where it was and Jockey Staeck had no option but to shift inwards. The Stewards believe that your riding on COPPERTITO has been the catalyst to the, for the interference to all the mentioned runners and consequently, we find you guilty as charged."

When addressing penalty the following exchange took place at T8:

"Chairman What do you say to the fact that ten, ten horses at least had been interfered with, some severely interfered with, two horses, two riders have been dislodged, one horse has fallen. Really it's only through the grace of God that somebody wasn't very seriously or even worse injured in this matter. What do you say to that?"

Smith We have different opinions on the film so I can't really say too much about that. Maybe when my horse jumped inwards straight away I should have pulled it straight out, maybe none of that would have happened, but it was a split second decision at the time and..."

And further at T9:

"Chairman Mr Smith, I know you said that you don't agree, you're pleaded not guilty to the charge and you don't agree in the total of it, but what will you say if I'm sitting here representing the Stewards that it's most probably the worst interference I've seen on a racecourse? I can't think of any interference or incident that has occurred where I've been where it's as severe as this.

Smith I can't comment on it, if you think I'm guilty, I'm guilty, you know. You think I'm guilty, it's a decision for yourselves to make. I'm not, like I can't add any more on it like."

The Stewards announced their finding on penalty as follows:

"Mr Smith, Stewards have considered the matter of penalty. Firstly, you're (sic) record shows that you're (sic) last suspension was on the 3rd of the 5th month 03 and you received a 15 day suspension at Ascot. Prior to that it was the 28th of the first, 02, 12 days at Bunbury. Pertinent to the matter of penalty we see that ten horses have been interfered with, one horse falling and two riders being dislodged. ON THE WATCH suffered significant injuries to the off knee, near left fore leg. The range of penalty in relation to careless riding in this State is from seven days to two months. The Stewards find you grossly careless, as you've tightened runners going into a turn. It is clearly at the high end of the scale and this interference is the most severe the Stewards have seen for some considerable time. Riders have been put on notice in the past that fines will be considered in additions to suspension. We see the safety of riders and horses as paramount to the racing industry. We believe your carelessness

and resulting, and the resulting severe interference deserves a heavy penalty and as such the Stewards have decided to suspend you for a period of two months and fine you the sum of \$2,000. And you have the right of appeal against that decision if you so desire. You're not riding on Monday, Mr Smith? So it's effective forthwith. Thank you."

Mr Smith filed a Notice of Appeal and an application for a stay of proceedings on 17 June 2004. In my capacity as Acting Chairperson, I refused the application for a stay of proceedings on 18 June 2004.

The grounds of appeal as stated in the Notice of Appeal dated 17 June 2004 are:

1. The decision of the Stewards to convict was unsafe and unsatisfactory in all the circumstances.
2. The penalty imposed by the Stewards was manifestly excessive in all the circumstances of the case.

Appeal Against Conviction

In opening the argument for the Appellant, Counsel submitted that there were several causes for the incident, not simply the act which is attributable to the Appellant. It was submitted that the Stewards failed to take into account relevant facts, and took into account irrelevant facts. It was further submitted that the Stewards failed to properly identify the time at which the incident occurred. It was submitted that there were at least 4 incidents prior to the Appellant's interference, which contributed to a "bottlenecking" effect coming towards the Appellant's mount.

It is important at the outset to remember that the Appellant was not charged (by way of particulars) with causing tightening of the field, nor with causing interference, nor with causing the incident. Those things could have been particulars of the careless riding in this case, but they were not. In the particulars, the Stewards alleged that the Appellant allowed his mount to shift in when insufficiently clear of ON THE WHISTLE, bumping and tightening that horse inwards. What followed in the Stewards' recitation of the particulars was the result of the alleged careless riding, that result being directly relevant to penalty rather than conviction.

The head-on film was shown at the Stewards' inquiry and here on the appeal. Counsel played the film "frame by frame", and pointed out the 4 incidents referred to prior to the Appellant's shift inwards. These individual incidents were not referred to in evidence at the Stewards' inquiry, but they are clearly observable and must have been observable to the Stewards. What is to be made of them is another matter. Counsel for the Appellant described the incidents referred to. He submitted that ON THE WHISTLE missed the start. (This was described by the Appellant at the inquiry, when he said ON THE WHISTLE "...missed a kick three quarters of a length, a length maybe.") ON TARGET moved out and interfered with ON THE WHISTLE. SUN KONYAH moved outwards causing LUKABOOM and MAFEKING to check. THERMO KING moved out causing SUN KONYAH to bump ON TARGET outwards. ON THE WHISTLE layed in onto ON TARGET shortly before the incident of COPPERTITO bumping ON THE WHISTLE. It was submitted that at that stage, there was a "bottleneck" coming at the Appellant, and he had not changed his line at all.

In the particulars, and in their reasons for conviction, the Stewards did not refer to any of the incidents referred to by Counsel in his submissions. In my view, that is not to say that they were not taken into account. The incidents referred to occurred in the first 100 metres of the race. The field of 14 was racing towards the first turn at the 1400 metre mark. It was submitted by Counsel for the Stewards that the horses were simply taking up position

immediately after jumping, a submission which I accept. At the Stewards' inquiry, the only one of those incidents referred to by the Appellant was the fact that ON THE WHISTLE missed the start by about a length. Bearing in mind that neither the Stewards nor the Appellant saw the incidents as anything more than the field taking up position, I would not attach any significance to them.

Counsel for the Appellant invited me to look at the film in terms of looking for the lines of the various horses from the barrier positions to the point of the Appellant shifting in. In effect, I was invited to find that the Appellant had not deviated. In my view, that is not a matter upon which I can place any weight. To do so would be to replace the Stewards' opinion with my own, in circumstances where the Stewards were obviously better placed than me on appeal to decide its significance, if any. The Stewards had the benefit of observation at the time, and the benefit of taking into account their own knowledge of the track.

A further point made by Counsel for the Appellant was that because the incidents amounting to the interference followed on after the Appellant's shifting in, he was not responsible for them. It was submitted that the Appellant's action of shifting in occurred at about 100 metres after the start, and the movements (shifting, checking, striking, being carried inwards, crowding, inconvenience, cannoning into, crashing and falling) of the other horses following on over the next 100 metres were not relevant to that shifting in. It was submitted that the Appellant was not charged with causing those movements of the other horses, but rather charged only with the shifting in at 100 metres after the start. In my view, that is a submission which cannot be accepted. In fairness to the Appellant, the Stewards gave particulars of the charge, which included the shifting in and the results of the shifting in. The submission on behalf of the Appellant is one which appeared to have some merit on a first viewing of the film. Clearly the tightening of the field continued on after the act of shifting in. However, the only reason for that is that the Appellant's continued movement after his shifting in was a severe act of carelessness in itself. He continued on to cross the field in a way which contributed to the end result.

The Stewards saw the shifting in as a careless act in itself, and also what followed as attributable to that careless act. They found that the Appellant's actions amounted to the one careless act, a finding which is clearly open. Racing is a thing which takes place over time and distance. What took place before the shifting in, and what took place after the shifting in, were all facts relevant to the Stewards' decision to charge and convict. In giving his reading of the films, the Chairman of Stewards said that the Appellant's act set off a "concertina effect". In giving reasons for decision, the Chairman said that the Appellant's shift was the "catalyst" for the interference to the other runners. Simply because the shifting in occurred at the precise point of 100 metres after the start does not mean that the charge against the Appellant was limited to that point of time and place. That is not what the Stewards said.

The Appellant himself accepted responsibility at the inquiry. As noted above, he said at T4:

"I did shift in and have caused a fair bit of the interference but I don't think it's solely my fault, like I did pull the horse out a little bit, you can see..."

He went on to say at T7:

"I've probably caused the majority of it but I don't think solely it's my fault completely..."

In my view, this is a case in which considerable weight should be given to the opinion of the Stewards. There is nothing in my viewing of the film nor in the submissions put to me to persuade me that the Stewards were unreasonable in their finding.

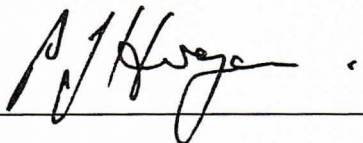
For the above reasons, the appeal against conviction is dismissed.

Appeal Against Penalty

The Stewards categorised the careless riding as being at the high end of the scale. They found that the Appellant tightened the other runners going into a turn. The interference was the most severe that the Stewards had seen for some considerable time. On behalf of the Appellant, it was submitted that this was an incorrect approach, in that the Appellant was thereby punished for the end result of his careless riding, rather than for the act of carelessness itself. I do not accept that submission. The interference to the other runners was directly attributable to the Appellant's act of carelessness. It is permissible in imposing a penalty to take into account the result of an offence.

It was submitted also that the penalty imposed was at the highest end of the scale, and that this offence was not deserving of such a severe penalty. The penalty was indeed at the top of the range for careless riding, but that simply reflects the fact that the offence itself fell into that category. The fact that the Appellant later suffered the additional punishment of his conviction becoming widely known from press reports, and "ostracism" from people in the industry were not things which the Stewards could properly have taken into account in assessing penalty. Those things had not occurred at that time. The Stewards could only act upon the relevant information at the time of imposing the penalty. It has not been shown that the Stewards erred in the exercise of the discretion in imposing the penalty.

For these reasons, the appeal against penalty is dismissed.



PATRICK HOGAN, PRESIDING MEMBER

