

APPEALS – 618 & 619

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

APPELLANT: CLINT KENNETH HARVEY
APPLICATION NO'S: A30/08/618 & 619
PANEL: MR D MOSSENSON (CHAIRPERSON)
DATE OF HEARING: 14 OCTOBER 2004
DATE OF DETERMINATION: 14 OCTOBER 2004

IN THE MATTER OF two appeals by Clint Kenneth Harvey against the determinations made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing for breaches of Rule 137(a) of the Australian Rules of Racing as follows:

- 1 Appeal 618 - 21 days suspension at Kalgoorlie on 11 September 2004.
 - 2 Appeal 619 - 20 days suspension at Belmont Park on 15 September 2004.
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Mr B A Ryan was granted leave to appear for the appellant.

Mr W J Delaney appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

Following the hearing of these two appeals against penalty on 14 October 2004 I dismissed them both and confirmed the penalties which had been imposed by the Stewards. I now publish my reasons.

Background

Appeal 618 – Kalgoorlie on 11 September 2004

Following the running of the Listed XXXX Gold Kalgoorlie Cup over 2300 metres at Kalgoorlie on 11 September 2004 the Racing and Wagering Western Australia Stewards of Thoroughbred Racing opened an inquiry into an incident which occurred shortly after the start. Called to the inquiry were:

Jockey C Harvey rider of BOLD MIRAGE
 Jockey L Camilleri rider of VICTORY LORD
 Apprentice S Parnham rider of MERCEDARIO
 Jockey P Knuckey rider of REIGNING FORT
 Jockey N Rudland rider of PRISTINE PARTNERS
 Jockey B Mathews rider of NOON
 Jockey S Miller rider of BLEVVO

After hearing evidence from the riders and viewing the race patrol films the Chairman of the inquiry announced a charge against Mr Harvey in these terms:

'Mr Harvey Australian Rule of Racing 137 states Any rider may be punished if in the opinion of the Stewards (a) he is guilty of careless, improper, incompetent or foul riding. After considering the evidence tendered to this stage of the Inquiry Stewards feel you have a charge to answer under the provisions of that rule and it is a charge of careless riding with the specifics being that near the 2200m you have shifted inwards when not sufficiently clear, tightening VICTORY LORD which was restrained and bumped the hindquarters of MERCEDARIO with that gelding shifting inwards tightening REIGNING FORT inwards causing PRISTINE PARTNERS to be tightened, restrained and strike the running rail.'

In announcing a guilty finding towards the end of the inquiry the Chairman stated:

'We are satisfied that you have shifted inwards when not sufficiently clear of VICTORY LORD therefore causing the interference received by that gelding and runners to its inside. We're also of the opinion that inwards shifts from BLEVVO and latterly NOON were not factors in the tightening to those runners which was caused by the angle of your inward shift placing you in a position inside BLEVVO. Accordingly we do find the charge sustained that is we find you guilty.'

After Mr Harvey declined to make any submissions on penalty the Chairman announced penalty in these terms:

'Mr Harvey, we looked at a number of factors in arriving at penalty. Firstly there's the degree of carelessness, which we have assessed as being high and primarily because of the, the angle of your shift in the early stages of the race in our opinion showed little regard for your fellow riders. The degree of interference that was received we also assessed that as high. A number of runners had their chances in a feature race significantly affected by this incident. We looked at your record which shows that you were last suspended on 19th November 2003 for a period of seventeen days. Now we acknowledge that you have spent a considerable amount of time on the sidelines through injury. In saying that, we in our view would be

comfortable with any, any penalty up to 28 days, but having taken those factors into account, particularly the fact that you have been on the sidelines, we are imposing a 21 day suspension, which will take effect from midnight this evening, so the 1st September and it will expire on Midnight on 2nd October and you're free to resume riding on the 3rd.

Subsequently, pursuant to Local Rule 196, the Stewards deferred the commencement of the penalty until midnight on Wednesday, 15 September to allow Mr Harvey to undertake rides at York on Sunday, 12 September and Belmont Park on Wednesday, 15 September.

Local Rule 196 states:

'The Stewards shall have the power to defer, for a period no longer than nine (9) days, the commencement of any suspension imposed by them upon a rider provided that such rider has been engaged as the rider of a horse on one of those days.'

Appeal 619 – Belmont Park on 15 September 2004

Following the running of The Free Empire over 1300m at Belmont Park on 15 September 2004 the Stewards opened an inquiry into the reason for TRIPLE GEE (John Claite) checking near the 250m. Called to the inquiry were:

Jockey C Harvey rider of WHIPBIRD
Jockey J Claite rider of TRIPLE GEE
Jockey W Arnold rider of PAPER ROCKET

Jockey Claite stated at T1:

'... my horse was stopping abruptly at the time, and yep, Mr Harvey's mount was coming pretty quick up outside me and, I, I just seemed to run out of room there.'

Mr Harvey stated at T2:

'Yes just on straightening sir I was, had a handful of horse, Mr Arnold's horse rolled out, so I went to go up inside it and no sooner had I got up inside of him that Mr Arnold's mount come back on top of him, which caused me to go on top of Mr Claite.'

When asked by the Chairman if there was room there, Mr Harvey stated at T2:

'Only just sir.'

When the Chairman asked Jockey Arnold if he thought there was room on his inside for anybody to go there, he stated at T2:

'Not really no, I was only probably half a horse off the rails.'

At T2-T3 Steward Criddle gave his observations of the incident as follows:

'... approaching the 250m I've observed Mr Harvey on WHIPBIRD angled inwards from behind PAPER ROCKET to obtain a run, where I didn't believe there was

sufficient room for him to take that run and when shifting in caused TRIPLE GEE which was racing on his inside, ridden by John Claite to restrain quite badly and, and lose ground.'

After the various race patrol films were viewed the Chairman at T3 stated:

'... it does show that passing the 400m Mr Harvey, you're riding WHIPBIRD and following behind PAPER ROCKET back and maybe just slightly to the inside. TRIPLE GEE is racing on the rails. On straightening and getting to the 250m TRIPLE GEE is commencing to tire. You're still back to the inside of PAPER ROCKET Mr Harvey, and that stage take a run to the inside of PAPER ROCKET where I've got to say I can't see that there is a clear run for you and in doing so shift in tightening TRIPLE GEE which checks albeit that it is tiring. After that incident PAPER ROCKET does shift in, but the point that I make in relation to the interference to TRIPLE GEE is that I'm finding it difficult to see where there was room for you to take the run to the inside of PAPER ROCKET. You've seen the film, you've heard the observations of Mr Criddle, you've heard my comments, what do you think?'

At T4 in response to the question from the Chairman as to whether he thought there was room there, Mr Harvey responded:

'Partially. Like I said sir, there was only just a run there, I had the horse to take it. As soon as I give the horse a kick in the guts Mr Arnold started rolling in on top of me and it was all over.'

and

'Just there sir, there's half, three quarters of a run there and I thought I'd be able to get through if, look if Mr Arnold's keeps that line I squeeze through there, and he rolled in a fraction which caused me to roll in a fraction which put Mr Claite in a lot of bother.'

The Chairman announced the charge in these terms:

'Mr Harvey 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 is guilty of careless, improper, incompetent or foul riding. Now you are charged under that rule with careless riding, the careless riding being that in the opinion of the Stewards when riding WHIPBIRD in Race 8, you've angled for a run on the inside of PAPER ROCKET (W. Arnold) near the 250m where there was insufficient room, bumping and checking TRIPLE GEE (J. Claite).'

A guilty finding was announced by the Chairman as follows:

'The Stewards have considered the charge Mr Harvey and we see it like this. We don't believe that there was never (sic [ever]) a full clear run for WHIPBIRD. We believe that you had the option of basically holding up, we believe by taking the run where there was insufficient room you've caused TRIPLE GEE to check.'

Consequently we find you guilty as charged Mr Harvey. Would you like to make a submission in relation to penalty?’

Mr Harvey declined to make submissions. In announcing penalty the Chairman stated:

‘We’ve discussed the matter of penalty. Pertinent to penalty we see that firstly your record, you currently from midnight tonight are serving a twenty-one day suspension incurred at Kalgoorlie on the eleventh of the ninth that is to run from the fifteenth of the ninth to the sixth of October 2004. Prior to that your last suspension was the nineteenth of November 03 of seventeen days and we are also conscious that in that time that you have been injured. Secondly Mr Harvey the degree of carelessness in this matter is a concern to the Stewards because we believe that this is a circumstance where you could have bought yourself down and another rider. So we see it on the high level of the scale if you like, in the degree of carelessness. We are conscious of your injury interrupted career of recent times. After considering all those factors Mr Harvey, we believe that you should be suspended from riding in races for a period of twenty days. This is to be served cumulatively with your current suspension which means that this, this suspension will commence midnight the sixth of October and expire on midnight the twenty sixth of October 2004. Are you clear on that Mr Harvey?’

Australian Rule of Racing 196 states:

‘(1) Any person or body authorised by the Rules to punish any person, may unless the contrary is provided, do so by disqualification, or suspension and may in addition impose a fine not exceeding \$75,000, or may impose only a fine not exceeding \$75,000.

(2) Unless otherwise ordered by the person or body imposing the penalty, a penalty of disqualification or suspension imposed in pursuance of subrule (1) of this Rule shall be served cumulatively to any other penalty of suspension or disqualification.’

The ground of appeal in respect of each matter is the same, namely:

‘Severity of penalty.’

The appellant’s arguments

In summary Mr Ryan on Mr Harvey’s behalf raised the following matters:

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- Mr Harvey had not been judged on the film but only on the Stewards’ observations and the film did not support the penalty which was imposed.
- *‘The Stewards could have been a bit more lenient than the 21 days’* and coupled with 20 days for the second offence it meant that 41 days total was severe.
- *‘12 days is normal for this type of offence’.*
- There was no dispute as to the distance Mr Harvey’s horse was ahead.

- The interference was '*not that bad*' and no one was '*knocked out of the race completely*'.
- Mr Harvey's young age and personal circumstances, including his hospitalisation and attempts to return to work are all mitigating factors.

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Mr Ryan conceded the second interference. Whilst acknowledging that there could be no disputing it, he argued that rather than the second offence being imposed cumulatively it should have been concurrent. As 31 days of the sentence had already been served it was submitted, if Mr Harvey were allowed back on the forthcoming Saturday he would have served sufficient time, namely 31 days.

The Stewards' response

Mr Delaney clarified the position regarding the films and the material which had been relied on by the Stewards at the inquiry. He made it clear that for a rider to be clear of another by one and half lengths was not sufficient. A rider must be 2 lengths clear when crossing another runner.

The first race was an important event with substantial prize money. Mr Harvey had caused interference to a number of riders. There was nothing incorrect with the Stewards' findings as set out on pages 15 and 16 of the transcript in relation to the Kalgoorlie ride. The Stewards stated during the inquiry that they had '*...looked at a number of factors in arriving at penalty*'. Those factors, which are quoted above, can be summarised as follows:

- The high degree of carelessness due to the angle and lack of regard for others.
- The high degree of interference.
- Mr Harvey's record.
- Mr Harvey's absence from racing due to injury.

According to Mr Delaney what would otherwise have justified a 28 day penalty had been reduced to 21 days because of the personal considerations.

Reasons for Determination

The Rules do contemplate two or more penalties may be cumulative at the discretion of the Stewards. As quoted above AR196(2) states that unless otherwise ordered disqualification or suspension imposed under subrule (1) shall be served cumulatively.

During the course of the first inquiry Mr Harvey had told the Stewards he was '*...a length and a half clear of my runners when I crossed*'. The accepted safety margin however is two lengths (refer to *Paul Harvey Appeal 603 p3*).

I am not persuaded by the submissions on behalf of Mr Harvey that the Stewards fell into error. The Stewards were entitled to reach the conclusion which they did as to the appropriateness of a 28 day suspension in the circumstances of this case. They correctly

made a seven day allowance for the mitigating factors. The Stewards were perfectly entitled under the Rules to impose the second suspension cumulatively.

The appeals were therefore dismissed.



DAN MOSSENSON, CHAIRPERSON

