

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: MARK ZAHRA
APPLICATION NO: A30/08/511
PANEL: MR D MOSSENSON (CHAIRPERSON)
DATE OF HEARING 12 JULY 2000
DATE OF DETERMINATION: 12 JULY 2000

IN THE MATTER OF an appeal by Mr M Zahra against the determination made by the Western Australian Turf Club Stewards on 24 June 2000 imposing a 20 day suspension for breach of Rule 137(a) of the Australian Rules of Racing.

Mr D J White was granted leave to represent the appellant.

Mr G M Bush, accompanied by Mr F J Powrie, appeared for the Western Australian Turf Club Stewards.

Following the running of Race 2, the Jenark Handicap of 1,000 metres at Belmont Park on Saturday 24 June 2000 the Stewards opened an inquiry into an incident that occurred shortly after the start. Called to the inquiry were:

M Zahra	Apprentice Rider of SHAKE MY HAND
D J White	Master of Apprentice M Zahra
Jason Miller	Apprentice Rider of JODI'S GAMBLE

After hearing evidence and viewing the race patrol films the Chairman of the Stewards made the following announcement:

"Apprentice Zahra after considering the evidence the Stewards believe you should be charged with careless riding under Australian Rule of Racing 137(a) and it states that, "Any rider may be punished if in the opinion of the Stewards he is (a) guilty of careless, improper, incompetent or foul riding." The charge in terms of that rule is one with careless riding in that in the opinion of the Stewards, you have allowed your mount SHAKE MY HAND to shift in shortly after the start of the Jenark Handicap today at Belmont and thereby cause JODI'S GAMBLE to dip from the heels of SHAKE MY HAND."

Apprentice Zahra pleaded not guilty.

The Stewards announced a finding of guilty in the following terms:

“Apprentice Zahra in relation to this charge, the Stewards believe that there are certain issues that we believe should be considered and indeed, sorry the Stewards have considered certain matters, but they, we believe that we should expand what our belief is in relation to what has been said. The inside running rail, we believe, plays no part in this particular incident at all. It is in the true position and as such, also the Stewards are satisfied that the head-on film in (sic) truly in its position, demonstrates the shift of your horse. The Stewards are not satisfied at all that there is a general or an inside movement jumble in relation to the impediment received by JODI’S GAMBLE. Further, any movement from DEL FRISCO outwards to ZABASET is not, in the opinion of the Stewards, of any significance at all to the impediment to JODI’S GAMBLE as the horse ZABASET does indeed, miss the start by a margin that effectively doesn’t put it into a position that interferes with at all JODI’S GAMBLE and the Stewards are quite comfortable in preferring the initial evidence of Apprentice Miller. As such, the Stewards find you guilty of the charge and before we arrive at a penalty would you like to address us with regards to that penalty?”

After hearing submissions from both Apprentice Zahra and Mr White the Chairman of Stewards announced the penalty as follows:

“Apprentice Zahra the Stewards have looked at your record and Mr White highlighted the fact that you’ve only recently returned from a suspension and indeed that is correct that on the 6th May you had a suspension of 16 days. Effectively there were three reprimands in May and two in April and a suspension of 12 days also in February of this year. So quite realistically that’s not a good record in the space of six months. The Stewards have taken into consideration what you said about a reprimand Mr White and we don’t believe a reprimand would be appropriate at all, we’ve considered it, but we believe a suspension from riding in races or a suspension of Apprentice Zahra’s permit to ride in races would be appropriate. Now in considering what period should apply, we consider that taking into, sorry taking everything into consideration, that a three week suspension would be appropriate. However, the Stewards are of the view that you what you highlighted yourself the fact that the issue of JODI’S GAMBLE dipping for one stride, the horse didn’t blunder, it didn’t dislodge the rider and that had it not been on that particular stride, which was an error on your part, had it not been on that, it might have been a restrain of that horse and not a dip that could have eventuated in the rider being dislodged. It is not the upper level of careless level of riding from the point of view of your cause, or indeed from the resultant interference. As such, we’re prepared to give you a discount to bring it inside the three week period and impose a suspension of 20 days which would thereby reduce it by two metropolitan meetings so effectively we would allow you to ride on Wednesday the 28th to fulfil any engagements for a period of 20 days until midnight the 18th of July this year.

The ground of appeal as contained in the Notice of Appeal dated 27 June 2000 simply stated:

“I feel I am not guilty of the charge imposed on me by the W.A.T.C.”

On 27 June 2000 Apprentice Zahra applied for and was granted a suspension of operation of the penalty until the appeal is determined or as otherwise ordered.

During the course of submissions from Mr White on behalf of Apprentice Zahra it became apparent that the question of the severity of the penalty was also being argued. The Stewards did not oppose the enlargement of the grounds of appeal but requested a short adjournment to present argument on penalty should the appeal as to conviction be dismissed.

After that concession from the Stewards I announced that the appeal against conviction was dismissed for the following reasons:

The rule in question is quite clear and it specifies that if, in the opinion of the Stewards, a person is guilty of careless riding that person commits an offence. To a large measure Mr White presented his argument on the basis of his own opinion compared to the opinion or conclusion which had been reached by the Stewards. Mr White also put forward some reasons why from his perspective he would invite the Tribunal to substitute his opinion for that of the Stewards. Such a course is inappropriate according to the wording of the rule in question. Unless I am persuaded that no reasonable Stewards could have arrived at the conclusion that these Stewards did in relation to this particular incident, it is inappropriate for me to substitute another's opinion as was suggested.

Having had the benefit of reading the transcript and listening to submissions from both sides and also viewing the film of the race, I am more than satisfied that these Stewards were entitled to reach the conclusion which they did of the particular incident. In the circumstances it was open to the Stewards to find, as they did, that Mr Zahra was guilty of this particular offence.

After entertaining the argument in relation to the severity of the penalty and after reconsidering what the Chairman of Stewards stated in relation to the penalty, I am not persuaded that the penalty was inappropriate in all of the circumstances. It has not been demonstrated to my satisfaction that the Stewards were in error in arriving at the penalty which they did, particularly taking into account the riding record of Apprentice Zahra over the last 6 months which can be described as not a good record. It is also noted that some concession was in fact made by the Stewards.

In those circumstances I dismiss the appeal as to the penalty in addition to dismissing the appeal as to the conviction. The suspension of operation of the penalty automatically ceases.



DAN MOSSENSON, CHAIRPERSON

