

**GREYHOUND AND HARNESS RACING APPEALS TRIBUNAL  
NEW SOUTH WALES**

**TRIBUNAL: JUDGE B. R. THORLEY**

**ASSESSORS: MR D. CLOUGH  
MR K. RUSSELL**

**APPEAL OF MR JOHN BOSERIO**

**DECISION**

This is an appeal by driver John Boserio, who was in charge of Four Trumps when it competed in the sixth race at Bathurst on 16 January 2008. An incident occurred in that race as the field were leaving the back straight on the first occasion when Gold Claim, driven by Ms Amanda Turnbull, was observed to collide with the rear of the gig upon which Mr Boserio was seated. Gold Claim did not break its gait but it certainly raced roughly until it was able to resume its normal gait. At all events, the incident attracted the attention of the stewards, who determined to open an inquiry into it. This took place at Bathurst on that evening, with Ms Scott as the chairperson of the stewards inquiry, together with Mr Paul in attendance.

Towards the conclusion of that inquiry the stewards decided to charge Mr Boserio under Rule 163(1)(a) with causing or contributing to crossing, jostling or interference. They did not proceed to conclude the matter that evening since Mr Boserio wished that there be called a witness Mr Winnell. For that purpose then the hearing was adjourned until 21st idem, when Mr Winnell gave evidence. In the result, the stewards found the Appellant guilty and subjected him to a penalty of 14 days suspension.

It has taken some little time for this appeal to come on for hearing. This has not been because of a lack of availability of the Tribunal to assemble, but because there simply was not sufficient of a workload to justify that happening before today.

The events that were outlined by the stewards really concern an allegation that right from the start Mr Boserio drove his charge forward at a brisk speed to take the lead. This he achieved, but in so doing he did not provide adequate room for

those horses, including Gold Claim, which he was overtaking. Mr Boserio takes the view that he did provide adequate room and attributes the collision that occurred to Ms Turnbull not taking full charge of her horse and simply allowing it to run into the back of his gig.

We have had the benefit of earnest arguments both from Mr Boserio and from Mr Paul, who was one of the observing stewards on that night. We have also had the benefit of watching the video of the race taken from two angles. In the result, we have no doubt that the case which the stewards sought to make out has indeed been made out.

There is frequently an argument put up in these types of cases as to who collided with whom. The fact is that there was a collision; that is to say, there was an act of interference. The question is: Did the person charged by the stewards cause or contribute to that act of interference? The answer to that question is one to be reached from a civil onus of proof. We do not overlook the fact that this is a charge which carries a penalty, and that that fact needs to be reflected in the quality of the onus of proof, although we observe that this is not a charge of deep gravity.

Mr Boserio wishes to take some comfort from the fact that, as he argues, Mr Paul did not appear all that confident about the quality of his observations. Indeed, that is not the impression which we get. The phrase which was used by Mr Paul (as is recorded on page 10 of the transcript) is that he was "comfortably satisfied". That phrase adequately describes a discharge of the appropriate onus of proof which is applicable in this case. We would share his view.

The appeal then is dismissed.

Mr Boserio further complains that the penalty handed to him is disparate to a \$200 fine which was imposed upon the same Ms Turnbull on 24 January in a race also at Bathurst. He has indeed produced for our observation a video of that race. Once more there was a collision, and there appears to be no doubt that Ms Turnbull was herself responsible for that event. Why, he asks, did she receive a \$200 fine when he received a 14-day suspension?

Some answers were given by Mr Paul in his endeavours to explain this disparity, but we do not propose to enter into a comparison of these two events in order to try to justify, either to Mr Boserio or the stewards, or to ourselves, why there was a disparity. Of course, disparity often produces in the mind of a person who is the victim of the higher penalty a feeling that he himself has been dealt with unfairly. To that, we merely respond by saying that we do not think the imposition of a penalty of two weeks suspension for the events which were at stake at Bathurst on 16 January is in any way untoward. It was an appropriate penalty and it is not one with which we propose to interfere.

The penalty of two weeks suspension is confirmed.

We note that Mr Boserio, although he drives regularly, is not as busy a driver as, for example, Ms Turnbull. We are also informed that he has a current obligation in about ten days time to drive in heats of the Bathurst Gold Crown. Whilst we appreciate that the imposition of this order will impede that event, nonetheless it has long been the practice of this Tribunal, other than in very exceptional cases, to order that the penalty operate from the date of its announcement, and it is so ordered.

The appeal deposit is forfeit.

B. R. Thorley, Judge  
13 March 2008