

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

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

**ASSESSORS: MR A. G. MULLINS  
MR J. SCHRECK**

**APPEAL OF MR A. FRANCIS**

**DECISION**

Four horses hotly contested the end of the third race at Newcastle on 1 May 2008. The horse Aliclay, which was placed fourth by the judge, was driven by driver Proctor, who forthwith lodged a protest against the first horse past the post, namely, Blue Eyes Wide Open (driven by Mr Adam Francis) and the second-placed horse, being Whatanerror (driven by driver Pengilly). The stewards heard these two protests. They upheld the first protest against Blue Eyes Wide Open, but dismissed the protest against Whatanerror.

The reasons why a different result was reached in each protest we think derive from the fact that the interference that was demonstrated, and accepted by the stewards, in the case of Blue Eyes Wide Open occurred about 100 metres back from the winning post, but the interference which was accepted by the stewards in relation to Whatanerror occurred very close to the finishing line and was such, in the opinion of the stewards, that they could not be satisfied that it made any difference to the result.

It follows from what we have said that the stewards were perfectly satisfied that both driver Francis and driver Pengilly had caused interference. Indeed, after dealing with the protests, the stewards then proceeded to charge Francis under rule 163(1)(a), found him guilty, and subjected him to a penalty of 21 days suspension. They then proceeded to charge driver Pengilly under rule 162(1)(ww), found him guilty and subjected him to a fine of \$200.

Mr Hammond, solicitor, has appeared for the Appellant Francis and has put, in his usual succinct way, all that could be said on his behalf. That is distilled down to a submission really that the video reveals all that would support the Appellant in his contentions. We regret to say that, having viewed the video on many occasions, both in the presence of the Appellant and in his absence, we do not share

Mr Hammond's submission that the video is demonstrative of his client's lack of involvement. We think the video supports the views expressed by the stewards and enunciated by them in the formulation of their charge. It is for that simple reason that we think this appeal falls to be dismissed.

We were considering whether or not there was warrant for such a disparity between the two penalties imposed. However, having regard to the fact that Pengilly was charged under a different rule and that the events which were at stake there did not in the opinion of the stewards alter the result of the race, we think that there is cause for the disparity to continue. Otherwise, the penalty of 21 days we do not think is out of kilter with the facts of the case. The penalty is confirmed.

The Appellant got a stay of proceedings on 5 May from Mr Justice Haylen. The suspension will date from today, but the Appellant is to have credit for the 4 days that were served prior to his suspension.

The Appellant's appeal deposit is forfeit.

B. R. Thorley, Judge  
4 June 2008