

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

**TRIBUNAL: JUDGE J. C. MCGUIRE**

**ASSESSORS: MR K. RUSSELL  
MR J. SCHRECK**

**APPEAL OF MR J. DOUGLASS**

**DECISION**

Mr Douglass, the Appellant, appeals against a penalty imposed for a breach of Harness Racing Rule 163(1)(a), which provides:

*A driver shall not—*

*(a) cause or contribute to any crossing, jostling or interference.*

Following an inquiry into the Appellant's conduct when driving Ronald Street the stewards found that the Appellant was guilty of a breach of the subject rule. Having considered the evidence presented by reporting steward Mr Cable and other drivers involved in the incident, they found that the particulars of the charge had been established. That is, that in rounding the home turn during the running of race 9 at Penrith on 12 June 2008 Mr Douglass directed his drive Ronald Street out when insufficiently clear of the drive of Mr Portelli, which was Tulhurst Storm. This resulted in a heavy contact to that runner, which then galloped, shifted out and resulted in interference to Gadalka, driven by Mr McElhinney. There is little point in repeating the evidence of Mr Cable and the other drivers. Having viewed the video on a number of occasions, this Tribunal agrees with the findings of the stewards and is completely satisfied that Mr Douglass was guilty of gross carelessness.

The question arises as to whether the penalty of 21 days suspension should be reduced. The stewards started from the point of a 35-day suspension and applied discounts of 7 days for Mr Douglass's guilty plea and a further 7 days because of his good driving record, resulting in the period of suspension of 21 days.

The Appellant queries the evidence of Mr Cable and has put various submissions to this Tribunal with regard to the way he conducted himself. However, the Tribunal is not impressed by his account of events. It has available to it the evidence that was

depicted in the video, which is at odds with Mr Douglass's account and is in accordance with the evidence of Mr Cable and the other drivers.

The Appellant contended that he should have been afforded the advantages of further discounts. He made reference to a table which is contained in a publication the *Gazette*, a Harness Racing New South Wales official publication. Referring to that table, he claims to be entitled to 14 days discount by reason of his record, together with the 7 days discount because of his plea of guilty. Albeit that certain discounts are outlined in an official table published in the *Gazette* described which Mr Douglass contends should be applied in his favour, this Tribunal is not bound by such table. It would produce an unbalanced and indeed grotesque result in a very serious instance of a breach of Rule 163(1)(a) if the application of the various discounts referred to resulted in a suspension so lenient that there is little punishment and no message of deterrence. Drivers responsible for such interference, as the Tribunal finds to be the case in this instance, where the chances of a horse or horses are destroyed and the potential risk to horses and drives is the result of serious misconduct, must receive an appropriate penalty.

The stewards, as stated, fixed a starting point of 35 days and applied the discounts outlined. This Tribunal considers that discounts should not be accumulated so as to produce an unbalanced and inappropriate penalty—a penalty not reflecting the gravity of the conduct of which this Appellant was undoubtedly guilty. This Tribunal wants it to be clearly understood by members of the public and by all participants in the industry that in considering appeals on penalty it does not regard itself as bound by the table referred to or indeed any other publication not provided for in the rules. It will deal with each appeal on the facts relating to the conduct established and the merits or otherwise of such appeal as it deems appropriate.

It is the opinion of this Tribunal that Mr Douglass has been treated most leniently, and it does not propose to interfere with the penalty imposed.

The appeal is dismissed. The penalty of 21 days suspension is confirmed. That suspension is to commence on 23 August 2008 and is to expire on 14 September 2008.

The appeal deposit is forfeited.

J. C. McGuire, Judge  
15 August 2008