

REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: DANIEL JURGEN STAECK
APPLICATION NO: A30/08/577
PANEL: MR D MOSSENSON (CHAIRPERSON)
DATE OF HEARING: 22 JULY 2002
DATE OF DETERMINATION: 22 JULY 2002

IN THE MATTER OF an appeal by Mr D J Staeck against the determination made by the Stewards of the Western Australian Turf Club on 17 June 2002 imposing 6 weeks suspension for breach of Rule 135(b) of the Australian Rules of Racing.

Mr T F Percy QC, assisted by Mr L Lee, appeared for the appellant.

Mr R J Davies QC appeared for the Stewards of the Western Australian Turf Club.

This appeal was heard on the 22 July 2002. At the conclusion of it I announced I was not persuaded by the appellant's arguments and I dismissed the appeal. I now publish my reasons.

Mr Staeck rode DEXIAN in Race 6 at Belmont Park on 15 June 2002. DEXIAN started at 4/7 and was placed second. The official margin was a nose. After the race the Stewards opened an inquiry into the riding tactics of the appellant. In addition to Mr Staeck, DEXIAN's trainer, Mr P Humann was called to the inquiry. After viewing the race patrol films and hearing the explanations put forward by both Mr Staeck and Mr Humann the Chairman of Stewards adjourned the inquiry. At the resumption of the inquiry on 17 June

2002 the owner of DEXIAN, Mr A Bergersen, gave evidence. After considering all the evidence the Stewards decided to charge Mr Staeck in the following terms:

'Mr Staeck at this stage of the inquiry the Stewards do believe you have a charge to answer under Australian Rule of Racing 135(b), I'll read that rule in it's (sic) entirety to you, 135(a) states every horse shall be run on its merits (b) the rider of every horse shall take all reasonable and permissible measures throughout the race to ensure that his horse is given full opportunity to win or obtain the best possible place in the field and (c) any person who in the opinion of the Stewards has breached or is a party to breaching any portion of the rule may be punished and the horse concerned may be disqualified. You are charged under that, 135(b) in that you failed to take all reasonable and permissible measures throughout the race to ensure that DEXIAN was given full opportunity to win Race 6, the Belmont Guineas, the particulars being that when riding DEXIAN in Race 6, the Belmont Guineas at Belmont Park on the 15th June, 2002 that between the 250m to passing the 200m when held up behind FORTUNE STREAK P. Carbery, you excessively delayed in shifting DEXIAN to the inside of FORTUNE STREAK where there is a clear and permissible run for you to make ground.'

Mr Staeck pleaded not guilty. In announcing a guilty finding the Chairman stated:

'Mr Staeck, the Stewards have considered all the evidence in relation to this matter. You put to us that the shift of FORTUNE STREAK played a considerable part in this issue. We accept that FORTUNE STREAK has shifted out under pressure. However we are of the opinion that at no stage was there a permissible run between FORTUNE STREAK and BEST PICTURE on your outside. Also we believe that you were never committed to the outside of FORTUNE STREAK's heels and consequently were not dictated to by FORTUNE STREAK. We do acknowledge that the margin was a nose but at the end of the day we're of the opinion that DEXIAN should have won the race. You have been charged under AR135(b). In the particulars of that charge it read in part that you excessively delayed shifting DEXIAN to the inside of FORTUNE STREAK where there was a clear and permissible run for you to make ground. To the Stewards it is central to the issue whether the prolonging of you in failing to take the run on the inside of FORTUNE STREAK was outside the acceptable bounds that we would expect of a competent rider. After full consideration we do believe that it was unreasonable for you not to shift earlier. For these reasons we find you guilty as charged Mr Staeck.'

The Stewards went on to impose a penalty of six weeks suspension from riding in races.

The appellant lodged a Notice of Appeal and an application for a stay of proceedings on 18 June 2002. Initially, suspension of operation of the penalty was granted until midnight on 3 July 2002 or as otherwise ordered. On 2 July 2002 Mr Staeck sought an extension of the stay until 22 July 2002. I refused to grant an extension.

The amended grounds of appeal, which were pursued, are:

- 1 *The Stewards erred in convicting the Appellant in that they adopted an incorrect test of what constitutes an offence under the provisions of rule 135(b).*

Particulars

- (a) *The correct test of whether rule 135(b) has been breached is formulated in the case of **Honan** and adopted by this Tribunal in **Miller** (App. 413/1998).*
- (b) *The test does not penalise errors of judgment even when they might amount to incompetence.*
- (c) *The test requires riding which is objectively unreasonable in some aspect beyond an error of judgment: **Dye** (referred to in **Camilleri** 525/2001).*
- (d) *The unreasonableness may involve features such as:*
- *lack of vigour (**Miller, Knuckey** App. 407/1998, **Hall** 256/1995, **Dyson** 434/1998, etc.)*
 - *failure to ride to instructions (**Camilleri** 525/2001)*
 - *failure to ride one's mount to the line (**Dredge** 557/2002).*
- (e) *Simple or even pronounced incompetence is provided for under the provisions of rule 137(a). Different considerations and penalties apply.*
- (f) *Where one rule specifically penalises a particular aspect of riding then it is improper to punish that type of transgression under another more serious rule: **Knight** (App. 250/1995).*
- (g) *Even where the incompetence is seen to have affected the chance of the horse to obtain the best possible placing the more stringent test laid down in **Honan** must be satisfied before any offence under rule 135(b) is made out. The mistake in itself needs to be completely unreasonable, not simply a matter of degree.*
- (h) *The Stewards' finding in the present case was essentially that the Appellant's riding was not entirely competent. There was no objection taken as to the course of action taken by the Appellant, only the timing of it.*
- (i) *The Stewards accordingly did not address the relevant and essential issues required to justify a conviction under the rule.*

2 *The Stewards erred in convicting the Appellant as there was insufficient evidence to make out a charge under rule 135(b) had the correct test been applied.*

I agree that *Miller* (Appeal 413) sets out the test regarding Rule 135(b) and applies the case of *Honan*. In *Honan* Judge Goran in dealing with the equivalent provision in the Rule of Harness Racing considered that errors of judgment which cannot be explained, which are completely unreasonable, are caught by the Rule. Having observed the video and taking into account all of the material before me I am satisfied that Mr Staeck's error of judgment here falls within that category. The rider's tactic was so unreasonable as to be culpable in all of the circumstances of this particular case. The Stewards were entitled to exercise the discretion which the Rule vests in them to convict. It is very hard to dislodge

their opinion on an appeal relating to a provision couched in terms of *'in the opinion of the Stewards'* as the subject rule is. No attempt has been made on behalf of the appellant to show that the Stewards' decision was so unreasonable that no reasonable Stewards could come to it. The Stewards did not err in applying the test which they did and properly enunciated the test in their reasons. The ride was not within the permissible standards of riding competence. Mr Staeck's failure to take the permissible measure of shifting DEXIAN to the inside at the appropriate moment when the clear and permissible run became available to him denied his horse the opportunity to win. That error of judgment was not reasonable in the circumstances. The owner of DEXIAN gave evidence to the effect that the gap was there long enough to have been taken. As the Stewards concluded the delay was *'excessive'*. This elevated the matter from a simple error of judgment. Mr Staeck did not vigilantly seek a clear run at the critical stage in the race when the opening appeared and expanded. I am persuaded by senior counsel for the Stewards that no rider need wait for a gap to open so wide. Mr Staeck proceeded with a *'one track mind... and totally failed to observe the opportunity'* which clearly presented itself to him.

I am satisfied that the appellant's error of judgment in this case is caught by the Rule and was capable of founding the opinion reached by the Stewards. The Stewards have properly enunciated particulars and then proceeded to apply the correct test appropriately after hearing all of the evidence.



DAN MOSSENSON, CHAIRPERSON

