

**REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL**

APPELLANT: JASON BROWN

APPLICATION NO: A30/08/672

PANEL: MR D MOSSENSON (CHAIRPERSON)

DATE OF HEARING: 30 April 2007

DATE OF DETERMINATION: 1 May 2007

IN THE MATTER OF an appeal by Jason Brown against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 19 April 2007 imposing 16 day suspension for breach of Rule 137(a) of the Australian Rules of Racing.

Mr J Brown appeared in person.

Mr C W Waller appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

BACKGROUND

Mr J Brown is an experienced jockey whom the Racing & Wagering Western Australia Stewards of Thoroughbred Racing acknowledged had an exceptional record. After riding at Bunbury Turf Club on 19 April 2007 the Stewards inquired into an incident which occurred at the 200 metre mark in Race 8. As a result Mr Brown was charged with careless riding for allowing his mount to shift inwards when insufficiently clear of TRUE PRICE which in turn had to be restrained. The charge was brought under Australian Rule of Racing 137(a) which states:

'Any rider may be punished if in the opinion of the stewards he is guilty of careless, reckless, improper, incompetent or foul riding'.

Following the reading of the charge and in response to the Chairman of Stewards, Mr Brown acknowledged he understood both the Rule as read and the specifics of the charge. Mr Brown then pleaded not guilty to the charge. The Stewards in convicting him stated:

'Mr Brown Stewards have taken into account the submissions you've made as well as the questions to Jockey Ikenushi we've also taken into account the video footage that we have available, but we the Stewards don't feel that Jockey Jason Brown made sufficient effort to correct MR FIX IT at that stage passing the 200m and that the attempt to do so was belated which has resulted in the interference. We also feel that the contact made between your mount and Mr Ikenushi's was irrelevant as Mr Ikenushi was already in tight room and having to restrain prior to it. We do therefore feel after taking all those matters into consideration that the charge can be sustained and we do therefore find you guilty'.

In their reasons on penalty the Stewards stated:

'...Stewards have taken into account all the, the evidence that you've put forward. Your record, which is to your credit, a plus 700 rides since your last suspension and quite a period before that one. We've also taken into account the, the degree of interference which we feel is the mid to low range. The carelessness factor which we feel is mid to high it was quite a restrain from Mr Ikenushi who was in an awkward spot. So putting all those factors together, as you are probably aware the base penalty has risen quite substantially to around the 21 days for a suspension. We can't give you any dispensation for your record, however, sorry for your plea, however your record we do that a substantial amount of time must be taken off for that to, to reward people with records like yours, so we therefore feel that a suspension of 16 days ...'.

At the conclusion of the appeal hearing I reserved my decision. I undertook to advise the parties of the outcome the following day, which I did. I decided to dismiss the appeal. I now set out my reasons for having dismissed the appeal.

THE APPEAL

Mr Brown appealed on the basis that he was not guilty. Mr Brown's grounds were that:

'Horse raced greenly and erratically during the race. Featured three separate times in the Steward's report. Severity of sentence since I have not been suspended since early 2005 and before that it was the year 2000'.

In the course of presenting his argument at the appeal Mr Brown submitted that MR FIX IT ran ungenerously early, he had very little control over MR FIX IT, it was his first ride on the horse, which was untractable and his horse 'came in a bit' and the other horse that was interfered with 'came out a bit'. Mr Brown also argued he made limited use of the whip which was uncharacteristic of his riding as he had an aggressive style. In that regard I was shown a video of a different race which was described as being a typical example of Mr Brown's aggressive riding. The aggressive example was compared or contrasted with Mr Brown's riding actions exhibited in the video of the race in question.

Mr Brown in arguing the severity of the sentence relied on penalties which had been imposed on jockeys Pike, Stewart and Fox. Further he claimed that the starting point adopted by the Steward in determining his own penalty had not been warranted.

In response Mr Waller submitted that Mr Brown knew that MR FIX IT had an inclination to lay inwards when he struck it with the whip on the first occasion. On that occasion Mr Brown was obliged to straighten the horse immediately. Upon passing the 200 metre mark whilst using the whip again the horse again shifted inwards. I was told the second use of the whip was excessive as by then the jockey knew of the horse's nature. Further, there was only a belated attempt to straighten MR FIX IT at that stage. Consequently Mr Brown was unable to correct his mount. This meant that the horse was ridden incorrectly insofar as the general instructions from the Stewards are concerned. I was told all riders are instructed by the Stewards to straighten their mounts once their horses begin to shift ground.

Mr Waller explained that the base penalty for this type of offence was 21 days. There are two factors that are taken into account, which were identified at page 12 of the transcript, and quoted above. One was the carelessness factor, which was described as mid to high. The other was the degree of interference, which was mid to low. Mr Waller admitted these had been stated in incorrect order at the Stewards' inquiry. I was satisfied despite that fact that this slip neither prejudiced Mr Brown nor had any adverse effect on the way the matter was dealt with by the Stewards. I therefore did not compromise the Stewards' position in relation to the appeal.

The various penalties imposed on the other offenders including the ones relied on by Mr Brown were next the subject of submissions from Mr Waller. I was told the Pike matter occurred prior to the increase in the length of the penalty imposed by the Stewards for this type of offence. The former base was in the order of 14 days. The Stewards had issued a warning to Jockeys that penalties would rise on 10 February 2007. In the case of Stewart 13 days were added cumulatively on top of another offence as two offences occurred in the one race. Miss Fox had pleaded guilty in a case where there was a low level of interference. Miss Fox had far fewer rides than Mr Brown and was dealing with a difficult horse. While Mr Brown's horse was ungenerous it was not racing at a level which required it to go back to trial. According to Mr Waller Mr Pike did not have a good record. Although days are not added on for a bad record in the case of careless riding, days were not taken off for a good record as Mr Brown has. In the case of C Harvey 23 days were applied because the offence was serious on both aspects. In the case of Alana Sanson 16 days was imposed. A plea of guilty was recorded in her case and Ms Sanson's record of riding was not as good as Mr Brown's. Further in her case feature races were missed as a consequence of the penalty. S McGruddy had 16 days imposed. A Kennedy had 21 days for low to medium interference, by a jockey with a bad record who pleaded not guilty.

In response Mr Brown argued his responsibility was to keep his horse straight and to try and finish in the best position.

I was not persuaded there was merit in Mr Brown's argument as to conviction. I accept the propositions put to me by Mr Waller in reply to Mr Brown's arguments. It was not shown there was any error on the part of the Stewards. Further, on the material before me, I was satisfied the basis for arriving at the penalty was fair and reasonable. I reached that conclusion in the light of the various penalties which had been imposed on numerous jockeys since the Stewards introduced tougher penalties for riding offences.



Dan Mossenson

DAN MOSSENSON, CHAIRPERSON