

REASONS FOR DETERMINATION OF

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT:

Daniel STAECK

APPLICATION NO:

A30/08/683

PANEL:

MR D MOSSENSON (CHAIRPERSON)

DATE OF HEARING:

17 March 2008

DATE OF DETERMINATION: **17 March 2008**

IN THE MATTER OF an appeal by Daniel Staeck against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 9 March 2008, imposing an 18 day suspension for breach of Rule 137(a) of the Australian Rules of Thoroughbred Racing.

Mr T Percy QC, instructed by Mr M Millington, represented Mr Staeck.

Mr RJ Davies QC appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

BACKGROUND

Following the running of Race Four at Mt Barker on 9 March 2008 the Stewards conducted an inquiry into the reason for SNAPSHOT KID having been tightened and restrained. This led to the Stewards to charge Mr Daniel Staeck with careless riding in allowing his mount to shift outwards when not clear passing the 50m resulting SNAPSHOT KID being tightened and restrained. Mr Staeck pleaded not guilty to the charge, but the Stewards found:

'... that you did have an opportunity to straighten this gelding, that you have allowed the gelding to shift out....for something up to 25m to 30m so we believe you've had time to stop riding and attempt to straighten the gelding even though it may be green we thought you should have straightened earlier. We've heard that Mr Frethey said, we don't believe Mr Frethey was a contributing factor to the incident, we believe that had you shown more care the incident wouldn't have happened ...'

In relation to the penalty the Stewards made the following findings:-

'... we've considered everything that you've put to us, the greenness of the horse and all other points put to us, we look at the level of carelessness, ... we believe to be probably in the mid range, the amount of interference caused ... we think ... was only low, what's happened to the horse is only low. ... you're riding records quite good, you haven't been suspended for two hundred and nineteen rides.... and haven't been suspended since the 6/10/07. We look at what this type of interference would warrant and starting points for suspensions start at twenty one days. ... but we look at other mitigating circumstances which can get penalties back so we looked at your good, ... riding record, we looked at the low level, everything you put to us, saying that we believe the correct penalty to be eighteen days. In that you miss out on two Metro, six Provincials, three Country.'

GROUNDS OF APPEAL

The appeal against conviction was made on the basis that the conviction was not reasonably open to the Stewards. That proposition was supported by the following particulars in the amended grounds of appeal:

- (1) *There was no interference alleged by any other rider, nor any protest lodged.*
- (2) *There was no evidence that any change of riding on the part of the Appellant would have led to any different result.*
- (3) *There was uncontradicted evidence that:*
 - (a) *The Appellant had never ridden the horse before.*
 - (b) *The horse was young, green and lacked race experience.*
 - (c) *The horse may have shied away from the winning post; as it had never previously been in a winning position in a race.*
- (4) *The circumstances prevailing at the time of the incident including the tightness of the other runners were contributing factors in any interference.*
- (5) *The combination of the factors in (1) to (4) above made the opinion of the Stewards that the Appellant rode carelessly in all the circumstances of the case unreasonable.'*

The penalty was said to be manifestly excessive for the following reasons specified in the amended grounds:

- (1) *The factors set out in ground one of the appeal against conviction were strong mitigating factors which were not or not adequately taken into account in the Steward's assessment of penalty.*
- (2) (a) *The Stewards erred in their assessment of the overall seriousness of the offence and in fixing a "starting point" of 21 days suspension.*
- (b) *The discount of 3 days for prior good record was inadequate in all the circumstances of the case.*
- (3) *The Stewards erred in failing to take into account that the period of suspension would include the Easter Carnival and failed to adjust the penalty accordingly.*
- (4) *The Stewards erred in not considering and imposing:*
- (a) *a fine; or*
- (b) *a reprimand.*
- as sufficient disposition of the case.'*

THE SUBMISSIONS

Mr Percy QC for the appellant argued that there were a whole range of factors which collectively supported the proposition that it was not reasonably open to the Stewards to convict, including the fact that:

- 1 The incident had no potential affect on the outcome of the race.
- 2 The horse that was interfered with finished fourth.
- 3 There was no protest by anybody.
- 4 The interference was illusory at best.
- 5 This was the horse's maiden race.
- 6 This was the first time the jockey had ridden on the horse.
- 7 The interference lasted a very short time and resulted in no complaint from anyone and no one lost position.
- 8 The riding could be best described as lack of care and attention rather than careless.
- 9 The tightening was not the appellant's fault.
- 10 There was a contributory aspect to what happened.

Essentially, although the complaint was the rider could have done better, the quality of the riding did not fall below the line of what amounted to careless riding. Although there was an obligation to straighten the horse coupled with a failure to do so, nothing happened as a consequence and no reasonable Stewards could reasonably come to the conclusion which the Stewards did.

By way of response Mr Davies QC submitted, inter alia, that the Stewards had thoroughly and fairly assessed the incident and carefully articulated their reasons. The passages in the transcript relied on by Mr Percy were said to be misleading. It was argued the rider of SNAPSHOT KID had escaped from a potentially serious situation. No one fell but for the quick thinking of the other rider. There was no attempt by Mr Staeck to stop riding.

As to the penalty, senior counsel for Mr Staeck argued that the factors which he had relied on as to convictions were equally relevant to this second aspect of the appeal and were mitigating considerations. It was also submitted the starting point adopted by the Stewards was wrong as it was inappropriate to impose 21 days for such an incident which amounted, at best, to only low interference. Rather, one should start at the very low end of the scale which ranged from seven days up to 21 days suspension.

In the course of his penalty argument Mr Percy QC also relied on a number of earlier appeal determinations which related to the same type of offence. The first one referred to was M Sestich (Appeal 469) where the rider was suspended 27 days after pleading guilty to what amounted to 'severe interference'. The case is unusual due to the way the inquiry was conducted, the ambiguity of the charge and the uncertainty as to what it was Mr Sestich was pleading guilty to. The case was relied on by senior counsel due to the fact that in it I had referred to another careless riding case (*P. Knuckey* – Appeal 393) where Member J Prior indicated the normal range for this type of offence was between seven and 21 days. The second was PJ Harvey (Appeal 485) where the interference was 'severe'. The shifting in caused crowding, tightening, checking, blundering and a horse to fall. There was an absence of mitigating circumstances and the rider had a poor record. The 25 day suspension was said, on appeal, not to be outside the general range to demonstrate error. In the third, J Hustwitt (Appeal 254) the inwards movement caused tightening, restraining and the loss of a little ground. The 10 days suspension on appeal was held to be not outside the range for a 'lower level' of carelessness for this jockey who had a good record. In the next one referred to, MK Roney (Appeal 382), the level of interference was described as 'mid range'. The attempt at an inside run caused bumping, restraining and loss of ground. A plea of not guilty was entered. The jockey had a good record. The penalty was reduced on appeal from 12 days to seven. This was followed by J Oliver (Appeal 568) where the interference was described as 'quite severe', involving a shift outwards causing heavy buffeting, restraint and loss of ground. There was a plea of not guilty. The jockey was said to have an 'excellent riding record'. The Stewards imposed a 12 day suspension which was regarded as harsh by the Tribunal and reduced by five days. The Stewards had not taken several matters into account, or had not given them sufficient weight. D Luciani (Appeal 626) was a case of a rider with a good record whose movement inwards, bumped and pressured another to the running rail. This carelessness resulted in a 12 day suspension. The Stewards' had concluded the starting point was 14 days suspension but they reduced the penalty in view of the good record. The penalty was then further reduced on appeal to six days.

The final case relied on was LJ Millington (Appeal 240) where shifting ground inwards, carrying in, crowding and checking occurred. The eight days suspension imposed by the Stewards was reduced by the Tribunal to five, which amounted to one Geraldton meeting. This situation was said by senior counsel to be contrasted with Mr Staeck's loss of two Metro Meetings, six Provisional and three Country Meetings. In the light of these decisions Mr Percy argued that Mr Staeck had already served eight days and a 12 day suspension would have been more than sufficient for this offence in view of the rides he had already consequently missed.

In response Mr Davies QC argued there had been a stiffening of attitudes by the Stewards over riding standards in the more recent period. Further, to succeed an appeal against penalty for such an offence one must demonstrate that there has been an error on the part of the Stewards. According to senior counsel, the Stewards were particularly careful in dealing with this particular matter. They had described this offence 'as moderate to intermediate' based on the dramatic shifting of ground in the context of the position of the horses. Senior counsel for the Stewards submitted the Stewards had asked the relevant questions. It was said the test is whether the penalty imposed was outside the proper discretionary range. It was submitted a manifest error had not been demonstrated to justify the Tribunal interfering.

REASONS

I dismissed the appeal as to conviction as I was not persuaded that the Stewards were in error in forming the opinion which they did as to the nature and quality of Mr Staeck's ride. I was satisfied that it was clearly open to the Stewards to have concluded Mr Staeck did have opportunity to straighten, and further, that Mr Staeck allowed the shifting out movement to continue for the distance 25 to 30 metres as found. The Stewards did take into account the horse's greenness. The Steward's were in my opinion entitled to find Mr Frethey was not a contributor to the incident. I therefore concluded had the appellant displayed greater care the incident would not have occurred and that the riding tactics employed amounted to carelessness on his part.

The determination of penalties for riding offences is a discretionary matter which requires a careful evaluation of a whole range of factors and considerations more than simply the quality of the ride. The safety of all of the riders and their respective charges, the image of the industry, the importance of the race, maintenance of the betting public's confidence, the errant jockey's riding record and the personal impact on the offender are all clearly important issues of relevance which need to be evaluated. Unfortunately there is no simple or scientific way to crystallise these various considerations and any other relevant factors and arrive at an appropriate and fair result. There is no formula or guidance for this juggling act set out in the Rules. The exercise of the sentencing discretion requires a great deal of care to identify and give appropriate weight to all of the relevant considerations. Rarely is it a simple process to properly evaluate them. Added to this is the task of correlating each new matter in light of other previous transgressions and earlier decisions. Whilst previous decisions do assist in the overall process, their usefulness is often diminished by lack of information as to all of the surrounding details. Added to this is the problem of the evolving attitude of the Stewards to riding offences. At times the industry is put on notice of a hardening of attitudes by the Stewards. In this context I was conscious of the argument put to me by Mr Davies QC that many of the cases relied on by the other side had been determined some time ago and there has been a hardening of attitudes more recently to riding offences.

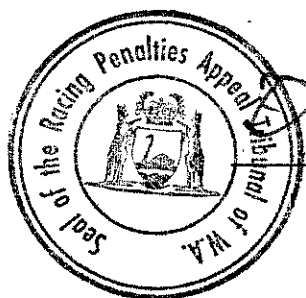
I also was assisted and influenced by having been provided with over five pages of 2007 onwards careless riding penalties from the WATC Racing Information System for breaches of AR. 137 (a). This print out revealed a wide range of penalties for this type of offence. Quite a number of reprimands were given. Some fines were imposed for some offenders in addition to periods of suspension ranging from 10 days to 10 weeks.

Bearing in mind some of the various factors which were identified by Mr Percy QC, and taking into account the appellant's 'quite good' riding record and the penalties which had previously been imposed by the Stewards, I was satisfied that the Stewards had fallen into error in reaching their conclusion to suspend Mr Staeck for 18 days. In view of the nature of

the carelessness, the level of interference displayed and all of the other relevant circumstances I was of the opinion the Stewards wrongly started at the too high end of the range of penalties.

In the end I concluded the Stewards should have made allowances or greater allowance for a combination of some of the mitigating factors identified by Mr Percy QC which were both particularised in the first ground of appeal (namely 1, 2 and 3) and the subject of oral submission by Mr Percy QC (namely 1, 2, 3, 5, 6 and 7 quoted above). After carefully evaluating the reasons given by the Stewards, I considered no or insufficient consideration had been given to the fact that there was a lack of affect on other runners' prospects in the race. The poor standard of riding did not affect placings. This was further supported by the fact that no protest was made. Not only was the horse clearly inexperienced, as the Stewards acknowledged, but the rider had no prior experience of riding this horse. The interference, which certainly occurred, was only short lived. The Stewards described the carelessness as '... probably on the mid range...' which caused interference they described as '.. minimal to only low'.

For these reasons I reduced the penalty to a 12 day suspension.



A handwritten signature in black ink, appearing to read 'Dan Mossenson', written over a horizontal line.

DAN MOSSENSON, CHAIRPERSON