

**REASONS FOR DETERMINATION OF**

**THE RACING PENALTIES APPEAL TRIBUNAL**

**APPELLANT:**

**Willie ARNOLD**

**APPLICATION NO:**

**A30/08/689**

**PANEL:**

**MR D MOSSENSON (CHAIRPERSON)**

**DATE OF HEARING:**

**14 July 2008**

**DATE OF DETERMINATION:**

**14 July 2008**

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**IN THE MATTER OF an appeal by Willie Arnold against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 6 June 2008, imposing an eight week suspension for breach of Rule 135(b) of the Australian Rules of Thoroughbred Racing.**

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Mr M Millington, appeared for Mr Arnold.

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

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**BACKGROUND**

Jockey Willie Arnold was suspended from riding by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing for a period of eight weeks following his ride at Kalgoorlie Racecourse on 1 June 2008 due to his failure to take all reasonable and permissible measures in breach of Rule 135(b) of the Australian Rules of Thoroughbred Racing.

The first of the amended grounds of appeal asserts that the Stewards erred in convicting the appellant of the offence because:

- '(a) *The rule implicitly requires an intention on the part of the rider not to allow his mount to run to the best of its ability and obtain the best placing.*
- (b) *The offence cannot be made out as a result of carelessness or negligence on the part of a rider.*
- (c) *The Stewards specifically did not allege that the Appellant deliberately prevented the horse from obtaining the best possible placing, but that this had occurred by a serious error of judgment which was unreasonable in all the circumstances.*
- (d) *The Stewards misconceived the nature of an offence under rule 135(b) which has as a pre-requisite a guilty intention on the part of the rider.'*

The second ground claims the Stewards erred in their interpretation of the phrase 'reasonable and permissible' in the Rule on the basis that:

- '(a) *The phrase refers to the limitation on the measures that are required to be taken by a rider during the course of a race.*
- (b) *The words do not create an offence for a rider who makes an unreasonable error of judgment which in the opinion of the Stewards was not reasonable.*
- (c) *The Stewards erred by finding the offence established by the proof of an error of judgment on the part of the rider, which cost his mount its best possible placing.'*

The third ground as to conviction asserted that the Stewards decision to convict was not reasonably open to them on the evidence.

Finally, the amended grounds state the penalty was excessive by not adequately reflecting the lack of intention to finish in the best possible position and by being similar to penalties imposed where riders had deliberately cost their mounts the best prospects in the race.

Rule 135 reads:

- '(a) *Every horse shall be run on its merits.*
- (d) *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 to obtain the best possible place in the field.*
- (c) *Any person who in the opinion of the Stewards has breached, or was a party to breaching any portion of this Rule may be punished, and the horse concerned may be disqualified.'*

After hearing argument from both counsel and viewing the video I was not persuaded that there was any merit in any of the grounds of appeal. I dismissed the appeal and now publish reasons.

## REASONS

I was persuaded by the arguments of Mr Davies QC on behalf of the Stewards that the particulars in support of the first two grounds were misconceived. The Rule does not necessarily require intention on the part of a rider. Active carelessness or negligence on the part of a rider does not preclude the offence from being made out. Serious errors of judgment can be caught by the Rule, as is established by the authorities.

The incompetence displayed by Mr Arnold in the ride in question was more than evident from viewing the video of the race. Mr Arnold attempted to move his horse inward rather than continue on his outward trajectory as he approached the finishing line.

I previously considered the Rule in question in *S J Miller* (Appeal 413). In that appeal I quoted at length the decision of Judge Goran (New South Wales Harness Racing Appeals Tribunal 26/10/1983). The New South Wales case is most helpful. It addressed an equivalent provision albeit contained in the harness racing rules. Part of what Judge Goran stated is worth repeating:

*"... The rule demands that the measures of the driver must be 'reasonable and permissible'. Obviously it is not expected that a driver would be permitted to interfere with another horse in order to win with his own horse, but his failure to take a permissible measure to win or to secure the best possible place in the field must be a reasonable failure. It is for this reason that I have said that a mere error of judgment is not a breach of the rule because a mere error of judgment may be reasonable in the circumstances.*

*It is expected that drivers will at times makes errors of judgment although, like Judges, it is expected that they will not make them too often. But an error of judgment which cannot be explained as such... that is which is completely unreasonable... is caught by the rule. Thus, a driver who tries for a furlong or more to challenge for the lead, causing the leader's and his own defeat, tearing away from the rest of the field, will find such an error of judgment most difficult to explain and, indeed, may well be disqualified for failing to allow his own horse to race on its merits if the Stewards find his reason is merely designed to bring about the defeat of the leader.*

*There are an infinite number of possibilities when this present rule will apply, and the list here is not by any means intended, therefore, to exhaust these instances by illustration but merely to demonstrate the application of the rule. In short, however, the unreasonableness of the driver's tactic must be culpable – that is, blameworthy. He carries with him the weight of public money and also the reputation of the sport, and the Stewards must be zealous to see that both of these are guarded. It is true that the standards expected of one driver may differ from those expected from another. For example, it may well be that in a particular case a tactic that would be judged to be unreasonable in a leading driver would not be considered so unreasonable in a new or restricted drive. Each case will turn upon its own merits, but overall in taking into account all the circumstances the actions of the driver are unreasonable then he may be considered in breach of this particular rule."*

I went on to state in the Miller appeal:

*“...Even although both Mr Justice Perrignon and Judge Goran ... were dealing with the equivalent provisions in the trotting rules their pronouncements are directly on point and assist with the interpretation and application of ARR135. This Rule of Racing begins with the brief statement which in effect requires that all horses be raced according to their just desserts. The second part of the Rule obliges all jockeys to employ all suitable actions that are both ‘reasonable’ and at the same time ‘permissible’. This obligation applies to all stages of a race. The underlying purpose is to guarantee that every mount being ridden in a race will be given ‘full opportunity either to win’ or to gain ‘the best possible place’ in the race. It is clear the Stewards formed the view that Mr Miller, with his level of experience in this particular race, did not fully extend DOCTOR’S ORDERS at all stages in the race so as to demonstrate what the horse was fully capable of achieving in the race. By referring to “full opportunity” it is clear that the Rule requires jockeys to give their mounts complete and uninhibited prospects but subject to their actions remaining within the bounds of what is considered appropriate and is otherwise sanctioned by the rules.*

*... The third part of the Rule gives the Stewards discretion to punish someone should they form the opinion that the Rule has been breached. ... this opinion is very hard to dislodge. The Rule having been so framed in effect results in the duly appointed and experienced racing experts, namely the Stewards, having to come to the relevant opinion, not the jockey, the trainer, the owner or this Tribunal.”*

The Stewards evaluated the explanation presented by Mr Arnold for his driving tactics and rejected it. From my observation of the video of the race this conclusion was hardly surprising. Mr Arnold was at the vital moment in a position where he was ready to make or already in the process of making a run on the outside to the line. This run could have been achieved quite simply by continuing to widening the arc on which he was already travelling. Instead he chose to change direction abruptly by making a dramatic movement to the inside where the prospect of a clear run was virtually nil. The change in direction was inexplicable. I am satisfied that the Stewards were entitled to reach the conclusion which they did, namely:

*“... to shift to the outside of CHINA VISIT was certainly reasonable and also permissible. In fact you have shifted your mount a lot further inwards than what you had to shift outwards. We believe that you were in a position at the 200m where your mount had the opportunity to be tested and should have been tested but you have failed to do this by shifting inwards behind the wall of horses. We are of the opinion that your riding at that stage was not a simple error in judgement but to be completely unreasonable and the reason NAD AL SHEBA not obtaining its best possible placing in the field.”*

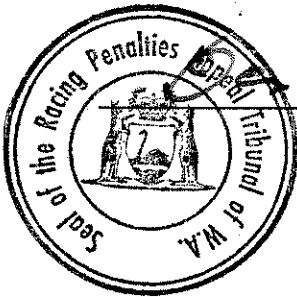
I was entirely satisfied the Stewards had not been in error in their evaluation of the ride, the interpretation and application of the Rule or any aspect of reaching the conclusion to convict.

As to penalty I was presented with a list of the penalties under the relevant provision which had been imposed by the Stewards since January of this year. The list revealed a range from one month to three months suspension. Eight cases were for one month, five were for six weeks, two were for two months and the final two were for three months. This range was not in any way

surprising as it appeared to be consistent with penalties which I was aware of which had been imposed prior to this year.

I was satisfied that the penalty meted out to Mr Arnold was within the proper discretionary range. It was open to the Stewards in the light of all of the circumstances of the matter to impose the eight week suspension based on their judgment of the seriousness of the offence and the range of penalties imposed for like offences. Nothing was presented to demonstrate the Stewards in any way erred in their assessment of the ride and in the factors that led them to reach their conclusion.

It was for these reasons I dismissed the appeal both as to conviction and penalty.



A handwritten signature in cursive script, reading "Mossenson", is written over a horizontal line.

**DAN MOSSENSON, CHAIRPERSON**