

RACING PENALTIES APPEAL TRIBUNAL DETERMINATION

APPELLANT: CHRISTOPHER JAMES PARNHAM

APPLICATION NO: A30/08/826

PANEL: MR PATRICK HOGAN (PRESIDING MEMBER)

DATE OF HEARING: 10 SEPTEMBER 2019

DATE OF

DETERMINATION: 23 SEPTEMBER 2019

IN THE MATTER OF an appeal by CHRISTOPHER JAMES PARNHAM against the determination made by Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 6 August 2019 imposing a 23 day suspension, for breach of Rule 137A of the Australian Rules of Thoroughbred Racing.

Mr T Percy QC represented the appellant

Mr Davies QC with Mr D Borovica represented the respondent

Introduction

1. This is an appeal against penalty. It is the second appeal arising out of the incident.
2. On 3 April 2019, the Appellant was found guilty of an offence of careless riding, contrary

to Rule AR 131(a) of the Rules of Thoroughbred Racing. Rule 131(a) is in the following terms:

“A rider must not, in the opinion of Stewards, engage in careless, reckless, improper, incompetent or foul riding”.

3. The race in question was race 7, the Bull and Bush Tavern Cup, at Bunbury on 24 March 2019. The Stewards inquiry began on 3 April 2019 at the Stewards room at Ascot. The Chairman of Stewards introduced the proceedings that day with the following words:

“Stewards are opening an inquiry from the Bunbury race meeting on Sunday the 24th of March 2019, in Race 7- The Bull and Bush Tavern Cup over 2219m, in relation to an incident, which occurred at the 400m and that incident being that BURGER TIME, ridden by Jockey Clinton Johnston-Porter, fell dislodging Johnston-Porter in the process.”

4. The questions were, in simple terms, (1) what caused the fall, and (2) the punishment to be imposed if any jockey was at fault in causing the fall.
5. The Stewards adjourned, and then resumed on 23 April 2019. They determined that the fall was caused by the actions of the Appellant, and he was therefore liable to punishment. In finding the Appellant guilty, the Stewards said: (T45)

“Mr Mance, who was watching the hawk-eye vision of the incident on the day, gave his reading of the incident at the inquiry on the 3rd of April 2019. Where he was of the opinion that prior to the incident, you had shifted to a three wide position to be behind Shaun McGruddy's mount and that as a result of your shift outwards, DARK MUSKET was carried outwards and at that stage Clint Johnston-Porter was riding BURGER TIME along to the outside of DARK MUSKET and was in a position of where he was to the outside of that runner's hindquarters and as the shift has come out towards Jockey Porter his mount BURGER TIME has blundered and fallen as the movement was being carried out to him. I was of the opinion, after the patrol films that you were on a continual

outward movement from the 600m until the incident occurred at the 400m. Although not abrupt, it has been a continual gradual shift outwards, which has dictated DARK MUSKET outwards causing that runner's hindquarters to bump with BURGER TIME, which has blundered and fell dislodging Jockey Clint Johnston-Porter at the 400m."

6. In imposing penalty, the Chairman said at T47:

"Thanks Mr Parnham. So we've taken some time to consider penalty. We've taken into account the level of carelessness in the incident. We believe that to be at the lower end of the scale, the shifting outwards, however it's only a gradual shift. The level of interference to be at the higher end of the scale. The shift outwards has resulted a runner being bumped and blundering and as a result has fallen dislodging its rider."

7. At T 48, the Chairman said:

".....we believe a suspension of 23 days to be appropriate."

8. The Appellant appealed against the finding of guilty, and against the penalty.
9. On 26 June 19, this Tribunal, differently constituted, dismissed the appeal against the finding of guilty, and allowed the appeal against penalty. In her reasons for allowing the appeal against penalty, the learned chairperson said at paragraph 80 of her reasons:

"Stewards found that the "level of interference" was at the higher end of the scale. I cannot agree with that. Whilst I have found that it was open to the Stewards to find that Mr Parnham's riding was careless in that his horse made contact with or dictated the line of DARK MUSKET, any such interference was minimal at worst. It was the consequences of that interference that were severe- that of BURGER TIME falling. Mr Parnham could have had no intention of, or control of, that being the outcome, and to punish him for that fall without more would be unfair."

10. The learned chairperson remitted the matter of penalty to the Stewards for reconsideration in light of her reasons. The chairperson said at paragraph 81 of her reasons:

"For these reasons, I would determine the Appeal by:

- a) Confirming the finding of careless riding, and therefore dismissing the appeal against that finding.*
- b) Setting aside the penalty imposed of 23 days suspension;*
- c) Referring the consideration of penalty in this matter to RWWA Stewards for Thoroughbred Racing for rehearing in light of the comments made by me in these reasons and the additional relevant information now available."*

11. The additional relevant information referred to in paragraph 81(c) is a reference to the Appellant's personal circumstances in relation to penalty, a matter which did not assume any significance in this appeal.

The second sitting of the inquiry

12. The Stewards convened again on 16 July 2019 in order to reconsider penalty. The Stewards decision was notified to the Appellant by reasons attached to a letter dated 6 August 2019. The Stewards said:

"...your incident has been assessed as the same level of carelessness (low) and interference (high)."

13. The Stewards again imposed a penalty of 23 days suspension from riding.

14. The above is a bare summary of the Stewards findings on penalty at the second sitting of the inquiry, the reasons being quite extensive. However, the finding of a "high" level of interference is what is at the heart of this appeal. At the first sitting of inquiry, the stewards had found the level of interference to be high. The Tribunal on the first appeal disagreed and sent the matter back. At the second sitting of the inquiry, Stewards made the same finding and imposed the same penalty. The Appellant has appealed again.

This appeal

15. The grounds of appeal as set out in the notice dated 9 August 2019 are:

1. *The Stewards erred by failing to conduct a rehearing in accordance with the findings of fact made by the tribunal.*
2. *The Stewards erred by imposing a penalty was based on findings of fact contrary of those made by the Tribunal in allowing the appeal.*

16. In my opinion the appeal is made out.

17. Imposing a penalty involves exercising a discretion. In this case, part of the discretion was taken away from the Stewards by the direction of the Tribunal to the Stewards to take into account that the level of interference was not high. Contrary to that direction, the Stewards found that the level was high. That finding was a significant part of the Stewards' consideration in assessing the penalty again at 23 days.

18. Having found that the sentencing discretion miscarried, it is open for me on appeal to exercise the discretion again.

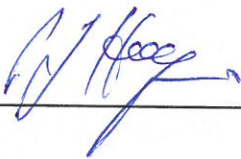
19. At this appeal, the Stewards provided a summary of individual cases of careless riding. This summary is useful in assessing the range of penalties commonly imposed, but for careless riding offences where a rider has been dislodged. They are of no value in assessing an appropriate penalty in this case, because each involved a case of a rider being dislodged. In this case, the learned chairperson said at the first appeal that the appellant was not to be punished for the consequences of his riding. It is not open to me on this the second appeal to find differently.

20. In the end result, I am left with the task of fixing an appropriate penalty for an offence of careless riding simpliciter. Taking into account the range of penalties commonly imposed

for offences of that type, and the personal circumstances of the Appellant (which have never been in dispute), I fix the appropriate penalty at 7 days suspension from riding.

21. The orders I make are:

- a. set aside the penalty of 23 days suspension;
- b. in lieu thereof, impose a penalty of 7 days suspension.



PATRICK HOGAN, PRESIDING MEMBER

