

THE RACING PENALTIES APPEAL TRIBUNAL
REASONS FOR DETERMINATION OF MR J PRIOR
(PRESIDING MEMBER)

APPELLANT: PETER DARREN KNUCKEY
APPLICATION NO: A30/08/407
PANEL: MR J PRIOR (PRESIDING MEMBER)
MS K FARLEY (MEMBER)
MR A MONISSE (MEMBER)
DATE OF HEARING: 1 APRIL 1998
DATE OF DETERMINATION: 20 APRIL 1998

IN THE MATTER OF an Appeal by Mr J D Knuckey against the determination made by Western Australian Turf Club Stewards on 27 February 1998 imposing a 3 month suspension under Rule 135(b) of the Australian Rules of Racing.

Mr T F Percy QC, assisted by Mr D G Price, instructed by D G Price & Co, represented the Appellant.

Mr R J Davies QC represented the Western Australian Turf Club Stewards.

This is an Appeal by Mr Knuckey against the conviction and penalty imposed by the Western Australian Turf Club Stewards in relation to his riding and handling of OLD COBBER in Race 8, the Selangor Turf Club Handicap, run at Ascot Racecourse on 21 February 1998.

After two inquiries before the Stewards, Mr Knuckey was charged with a breach of Rule 135(b). The specifics of the charged were as follows:

“... within the opinion of the Stewards that you failed to take all reasonable, sorry, permissible measures which are also reasonable to ensure that OLD COBBER obtained the best possible place at the finish of the Selangor Turf Club Handicap run at Ascot on the 21st February 1998. Now the particulars of the charge being that when riding OLD COBBER in the straight, you failed to show sufficient vigour and purpose in the riding out of that horse.”

Rule 135(b) states:

“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.”

Rule 135(c) states:

“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.”

Mr Knuckey pleaded not guilty. Some further evidence was given at the second inquiry. The Stewards deliberated and then concluded that Mr Knuckey was guilty as charged and imposed a penalty of 3 months suspension from riding.

It is important to note that pursuant to Rule 135(c), for the Stewards to convict a person for a breach of Rule 135(b), the facts of the alleged breach must be merely in the opinion of the Stewards a breach of the rule. It has been conceded by Counsel for the Appellant and has been stated by this Tribunal on a number of occasions, in order for the Tribunal to interfere with the decision of the Stewards for a breach of this type of rule, we would need to be persuaded that no reasonable Stewards, armed with all the relevant information, could reasonably have formed the opinion which these Stewards did of the incident.

It is also relevant to note that Rule 135(b) requires the rider of a horse to 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. It is therefore important that the rider takes all reasonable and permissible measures during the whole of the race and that he is not just concerned with whether he has taken all reasonable and permissible measures in the relevant parts of the race which could give rise to the horse obtaining a place in the finish of the field where a stake would be received.

I note during the inquiry on 21 February 1998, the Appellant Jockey expressed an opinion that if he had “punished” the horse at best all the horse could have done was perhaps run fifth in the race. Although this comment was couched on the basis that to do so in the Jockey’s opinion would be punishing the horse and may not be taking what is considered reasonable and permissible measures, it is a concession in any event that with the use of other measures perhaps the horse may have improved its final position in the field. The question still remained as to whether, in the opinion of the Stewards, what the Jockey did was not to utilise all reasonable and permissible measures available to him and whether such opinion was unreasonably formed by the Stewards.

The Appellant by leave filed 3 amended Grounds of Appeal and a detailed Outline of Submissions in support of such grounds. I will deal with each ground separately.

GROUND 1 The Stewards erred in convicting the Appellant in that they failed to apply and consider the correct test under Rule 135(b) of the Australian Rules of Racing.

In essence this ground submits that the Stewards inquiring into the matter only considered whether the measures taken by the Appellant Jockey were permissible and not also reasonable. I agree with Counsel for the Appellant that it is necessary in considering a breach of the rule to consider whether the rider of the horse took measures which were both reasonable and permissible.

These inquiries were conducted by senior Stewards of the WA Turf Club, in particular the Chairman and Deputy Chairman, comprised the panel of the Stewards presiding. In those circumstances, it is clear that the persons presiding as Stewards in this matter were well aware of the rules and the relevant rule of which this appellant Jockey was charged.

It is clear from the transcript when charged the Appellant was referred to the fact that in the Stewards' opinion that "he had failed to take permissible measures which are also reasonable". Although both these elements were not articulated in the finding of conviction the Stewards found the Appellant "guilty as charged". In those circumstances I am satisfied they gave ample consideration to whether in fact the measures that the Appellant took in their opinion were both permissible and reasonable. In any event I am satisfied from reading the transcripts of the 2 inquiries into this matter that the questions and evidence given in respect to the measures that were taken or could have been taken by the Jockey in question both focused on the issue of whether the measures would have been permissible and also reasonable.

For these reasons I would dismiss Ground 1 of the appeal.

GROUND 2 The Stewards failed to properly or adequately understand or consider the case put to the Appellant in answer to the charge.

Part of this ground is that the Stewards were effectively side tracked by considering the issue of whether the Appellant at the relevant part of the race where it was alleged that he had breached the rule was "blocked" from moving his horse further forward. It is submitted in considering that matter they failed to give adequate consideration to the nature of the Appellant Jockey's response to the charge.

I am satisfied having reviewed the transcripts of the Stewards' inquiries that the issue as to whether the Appellant was "blocked" or had "daylight" in front of him was still a live issue throughout the inquiries albeit peripheral. I am satisfied that the Stewards' comments in convicting the Appellant of the charge about being blocked in the straight did not indicate that the Stewards failed to consider the most important question whether the Appellant Jockey had taken all reasonable and permissible measures at the relevant part of the race. I am satisfied that the Stewards' comments were merely a comment in handing down their finding of guilty as charged to ensure to advise the Appellant that this issue had also been considered by them in addition to the principal matters for consideration as to whether the rule had been breached, so there could be no suggestion that the Stewards had failed to deal with that issue.

I am satisfied also for the reasons that I have set out with respect to Ground 1 that the Stewards did properly or adequately understand and consider the charge and the case put by the Appellant in answer to the charge.

For these reasons I would dismiss Ground 2 of the appeal.

GROUND 3 The conviction was against the evidence and the weight of the evidence in the case and was one which was not reasonably open in the circumstances.

I am satisfied that there is no merit in this Ground of Appeal. Once again it must be considered that it is only necessary for the Stewards to come to a reasonable opinion on the facts that the relevant Rule 135(b) has been breached.

The particulars and submissions in support of this ground give sufficient weight to opinions of other people other than the Stewards such as the Appellant Jockey, the trainer and the owners. As previously stated, it is the opinion of the Stewards which is of significance in considering whether there has been errors in the finding of a breach of a rule of this nature.

I am satisfied that a rule of this nature has the purpose to ensure that jockeys take appropriate measures both reasonable and permissible throughout the race to ensure that the general public see in an objective sense that a horse is given the full opportunity to obtain the best possible place in the field. On that basis it is important that jockeys continue to take both reasonable and permissible measures to ensure a horse obtains the best possible place in the opinion of the Stewards, irrespective of their opinions that such measures would not lead to any benefit to the jockey, the trainer or the owner. To some extent therefore the performance of the horse and the riding of the jockey in other races is irrelevant. The focus must be on the opinion of the Stewards in that particular part of the race under scrutiny that all the reasonable and permissible measures were taken by the jockey in riding the horse out to obtain the best possible place in the field.

For these reasons I would dismiss Ground 3 of the appeal.

I would therefore dismiss the appeal as to conviction.

PENALTY

In relation to their question of the Appeal against penalty the range of penalty which has been imposed in this State for offences of this nature vary from suspensions of 1 to 3 months. I note that some of the penalties of 3 months have been imposed on jockeys who are second offenders for breach of this Rule. The Chairman of the Stewards in imposing the penalty on the Appellant said the following:

“Mr. Knuckey the Stewards see any change (sic) under this Rule as being serious and that as seen from the betting analysis that OLD COBBER carried a fair weight of public monies, your record does not reflect any previous charges in relation to this particular Rule, however an appraisal of previous penalties under this particular Rule and charge in W.A. over the past seven years show that a spread of Stewards’ penalties range from one month’s suspension from riding in races to a three month suspension from riding in races period. As such in assessing a penalty which the Stewards have taken into consideration the evidence placed before us and indeed what I just said, the Stewards believe that a penalty of three months suspension from riding in races to be appropriate, ...”

The Stewards when imposing the penalty gave no reasons for imposing on a first offender, against this rule, what they described as the maximum penalty that has been imposed to date for offences of this nature. The evidence reveals that there was no serious aggravating factors. The connections of the horse had all suffered as a result of the failure of the horse to run a place. There was no evidence of lack of betting support for the horse. There was evidence in support of the Appellant from the horses connections that irrespective of the riding of the horse in this particular race that they were satisfied with the general handling by the Appellant of this horse in the race in question and in other races where he has ridden the horse.

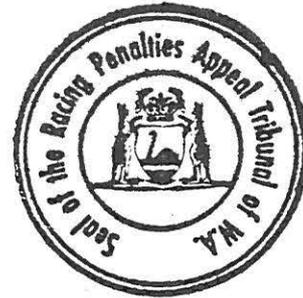
In those circumstances I am satisfied that the Stewards have erred in imposing a penalty of 3 months suspension. The mitigating factors I have described above, in particular the fact that this Appellant was a first offender for a breach of this rule, had not been given adequate weight by the Stewards

and in those circumstances I am satisfied that the appropriate penalty should have been 6 weeks suspension for this offence. I give weight to the fact that this was not a plea of guilty in imposing a period of 6 weeks suspension.

I would allow the appeal against penalty and substitute a penalty of 6 weeks suspension from riding.

John Prior

JOHN PRIOR, PRESIDING MEMBER



THE RACING PENALTIES APPEAL TRIBUNAL
REASONS FOR DETERMINATION OF MR A MONISSE
(MEMBER)

APPELLANT: PETER DARREN KNUCKEY

APPLICATION NO: A30/08/407

PANEL: MR J PRIOR (PRESIDING MEMBER)
MS K FARLEY (MEMBER)
MR A MONISSE (MEMBER)

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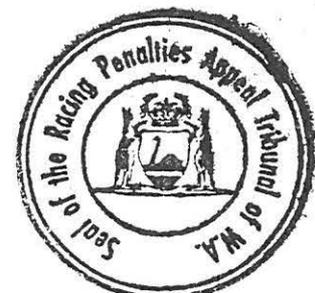
Mr T F Percy QC, assisted by Mr D G Price, instructed by D G Price & Co, represented the Appellant.

Mr R J Davies QC represented the Western Australian Turf Club Stewards.

I have read the draft reasons of Mr J Prior, Presiding Member. I agree with the reasons and the conclusion and have nothing to add.

A E Monisse

ANDREW MONISSE, MEMBER



THE RACING PENALTIES APPEAL TRIBUNAL
REASONS FOR DETERMINATION OF MS K FARLEY
(MEMBER)

APPELLANT: PETER DARREN KNUCKEY
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Mr R J Davies QC represented the Western Australian Turf Club Stewards.

I have read the draft reasons of Mr J Prior, Presiding Member, I agree with the reasons and the conclusion and have nothing to add.

Kare Farley

KAREN FARLEY, MEMBER



DETERMINATION OF
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APPELLANT: PETER DARREN KNUCKEY

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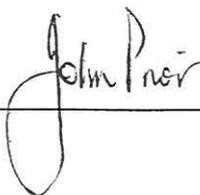
Mr T F Percy QC, assisted by Mr D G Price, instructed by D G Price & Co, represented the Appellant.

Mr R J Davies QC represented the Western Australian Turf Club Stewards.

By a unanimous decision the appeal against conviction is dismissed and the appeal against penalty is allowed. The penalty of 3 months suspension is set aside and a penalty of 6 weeks suspension is substituted.

The suspension of operation of the penalty automatically ceases.

The fee paid on lodgement of the appeal is forfeited.



JOHN PRIOR, PRESIDING MEMBER

