

REASONS FOR DETERMINATION OFMR D MOSSENSON (CHAIRPERSON)THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: PAUL ANTHONY JOHN DYSON

APPLICATION NO: A30/08/434

DATE OF HEARING AND
DETERMINATION: 10 NOVEMBER 1998

IN THE MATTER of an appeal by Mr PAJ Dyson against the determination of the Western Australian Turf Club Stewards imposing a suspension from riding in races for a period of 6 weeks for breach of Australian Rule of Racing 135(b).

Mr TF Percy QC, instructed by DG Price & Co, appeared for the appellant.

Mr R J Davies QC, appeared for the Western Australian Turf Club Stewards.

After viewing the video of the race and taking into account senior counsels' submissions, I concluded that this appeal should fail both as to conviction and penalty. I indicated to the parties I would publish reasons in due course, which I now do.

Mr Dyson as rider of RAESIDE attended a Stewards' inquiry into the running and handling of RAESIDE in Race 7, over 1,200 metres run at Ascot on the 17 October 1998. During the inquiry Mr Dyson explained to the Stewards that he had been instructed by the foreperson for RAESIDE's trainer that the horse had been a disappointment at its last start and if it *'didn't show something today,*

some sort of improvement that she would consider telling the owners that she was going to retire him. Basically the main instruction was that I was not pushing early, hold position and see if I could get the horse to do something which I think he did'.

During the week leading up to the race the trainer had told Mr Dyson that 'the horse is sort of on his last legs, he's got to show something or he's getting to that age where he's probably costing the owners too much money or whatever, just do your best. Hopefully he can improve on what he did the other day'.

In response to a query from the Chairman of the inquiry as to what Mr Dyson did early in the race to try and make the horse go better, Mr Dyson explained that when he went out prior to the race and was contemplating on how he would assist the '...horse rejuvenate its career', his main ambition was to 'have the horse travelling in a sense that he was confident and that he could finish the race off'.

Mr Dyson was also told by the foreperson that because she was not too happy with the horse's off fore tendon she wanted to retire the horse. Despite these comments and explanation towards the end of their inquiry on the 17 October the Stewards indicated that they did have serious concerns regarding the handling of the horse. The inquiry was then adjourned to the 19 October 1998. At that latter date a copy of the film of the race was shown. The Chairman of the inquiry, Mr FJ Powrie, made the following comments:

'My observations of the race at the time are such that after the field jumped from the barriers in the Swan Lager Handicap that RAESIDE appeared to be restrained in the early stages and then running down to about the 650m the horse appeared to be approximately three lengths behind the second last horse. The horse appeared to be taken wide at the turn into the straight and the horse was then appeared to be restrained until well into the straight. It would appear that Mr Dyson waves the whip adjacent to the horse's neck near, about the 175m and then the horse doesn't appear to at any stage to be blocked in the straight when making ground. It also appears that RAESIDE was struck on three occasions by the whip in the right hand of Jockey Dyson over the concluding 40m. Now those are my observations of the race at the time, I'd ask Mr Zucal to give his observations and reading of the Patrol Film.'

Mr Zucal, the Deputy Chairman of Stewards, responded in these terms:

Yes Mr Chairman after viewing the films of Race 7 the Swan Lager Handicap and those cameras include the on-course film, the Stewards Patrol films from the 1200, 600, 400 and head-on, my comments in relation to the running of RAESIDE are as follows. RAESIDE appears to begin fairly reasonably Mr Dyson drops RAESIDE out and shortly after the start is racing in a rearward position, in fact running last. RAESIDE continues to race in this position down the back straight, interesting to note that the horse is approximately six to seven horses off the inside running rail, I must make the observation that at the early stage of the race, that there was no vigour or urgency shown by Mr Dyson in that early stage of the race. I do note at the 650 or approximately the 650 there is slight movement of Mr Dyson's right hand in relation to possibly the use of the whip, but I'd make, also make the comment that it is slight. RAESIDE is still wide on the track at that stage. He continues to trail the field and approaching the home turn is some three to four lengths off the second last horse. Makes the turn into the straight, Mr Dyson from my reading of the film is still sitting quietly. At approximately the 220m Mr Dyson is seen to use the whip, waving the whip, not striking the gelding and then shortly after this angles back to the inside, area of the inside running rail and commences to show some vigour over the final 100m and near the 50m I would say struck RAESIDE at least twice.

Mr Dyson then responded to these various comments and observations as follows:

'Firstly, I, after the horse began fair, that has no relevance to the end result, secondly I angled the horse inwards shortly after the start and from that point on the horse commenced to lay out to the extent that he just laid on the near side rein, wanting to lay outwards. From about the 1000m mark 'til well into the turn into the straight, to the extent that he rolled out on both corners probably, although being perhaps five horses off the fence going out of the back straight into the first corner, he ended up perhaps six to seven horses off the fence 'cos he rolled out. The slight movement of my hand was correct, it was the whip, slapping him to try and help him around the corners. On straightening, once the horse got balanced again, the movement away from his neck with the whip and waving the whip at him was in an endeavour to see if the horse was going to give me anything. I put the whip away again then, because he felt terrible. I angled him back to the inside because the horses in front of me were coming back, anticipating that they were coming back right. Balanced him up again and the horse started to make ground on a tiring bunch of horses and I gave him

three smacks around the bum. That's my knowledge of the race having been the person on top of the horse, the best knowledge you can get of the race. And that's it.'

Dr Symons, the veterinary surgeon gave evidence to the inquiry that he gave the horse a general examination following the running of the race. Dr Symons stated '*...the horse was sound...*' and that he '*... didn't find anything wrong with the horse at the time I examined it*'. At the same time he did acknowledge however, that it is possible for a horse after it has cooled down and gone home or next day when completely cooled down to '*...show things that weren't present at the races*'.

Mr Dyson was charged under Australian Racing Rule 135(b) as follows:

'... in the opinion of the Stewards, that you failed to take all reasonable permissible measures to ensure that RAESIDE obtained the best possible place at the finish of the Swan Lager Handicap run at Ascot on Saturday the 17 October 1998. Now the particulars of the charge being that you failed to take measures to improve your position from shortly after the start until approaching the 200 metre mark and any of those measures would obviously be your (sic) reasonable and permissible.'

Rule 135 states that:

- '(a) Every horse shall be run on its merits.*
- '(b) 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.'*

Mr Dyson pleaded not guilty to the charge. After further inquiry the Stewards retired to consider the matter. Upon reconvening the Chairman of the Stewards made the following pronouncement:

'Mr Dyson in considering the charge, the Stewards have assessed all evidence before us in relation to your evidence, Dr Symons, Mr Williams and Stable Foreperson Ms Mills and indeed your evidence specifically and the other evidence as tended and indeed the video Patrol Films and all the Exhibits. After considering all those the Stewards believe that the post race examination by the experienced Veterinary Surgeon Dr Peter Symons does not suggest any abnormalities or unsoundness's with RAESIDE and further, Trainer Mr Williams has advised that his quote, 'the horse appears all right and it had pulled ok'. The second point is that the Stewards believe that you have had ample opportunity to take measures between shortly after the start of the Swan Lager Handicap and the, approximately the 200m to improve your position on RAESIDE. As such the Stewards find you guilty of the charge Mr Dyson and it remains with us to impose a penalty. Now before we consider the issue of penalty, the Stewards are empowered under Australian Rule of Racing 196 to impose penalties of fines, suspension of licence or part thereof and indeed disqualifications and I'll read you the particular rule. I states that, 'Any person or body authorised by the Rules to punish any person may, unless the contrary provided, do so by disqualification, or suspension and may in addition impose a fine not exceeding \$50,000, or may impose only a fine not exceeding \$50,000'. Now in relation to that empowerment, can you advise us how any one or combination of those penalties would affect you?'

The Stewards then entertained further comments. After retiring again they reconvened the inquiry and announced:

'The Stewards have considered the issue, we have checked the record and it is your first offence related to this charge and that we would, we should stand you in stead. However, the Stewards are conscious of the fact that this a, a serious breach of the Rules and in saying that we refer to the Appeal 407 which was Peter Knuckey in which the Tribunal said they are satisfied, I will quote from page four, 'I am satisfied that a Rule of this nature has the purpose to ensure that Jockeys take off, (sic) 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'. In the case of Stephen Miller that on page 11 in the Determination of Appeal 413 the Tribunal Chairman Mossenson said, 'By referring to the full opportunity it is clear that the Rule', the Rules he refers to is 135(b), 'Requires Jockeys to give their mounts complete and uninhibited prospects both subject to the actions remaining within the bounds of, and consideration, considered appropriate and is otherwise sanctioned by the, the Rules. (sic) And further that in deciding to punish Mr Miller for his

conduct the Stewards have properly guarded the weight of public money and also the reputation of the Sport'. That is a quote from Honan and Supra, now in relation to this, the Stewards are very conscious of the fact of the public image related to horses not being fully tested by way of being ridden without having been full tested by way of proper and permissible measures. Mr Dyson and as such in considering a penalty, we have assessed the previous penalties that have applied to this particular charge in the State of Western Australia and we believe that it runs from one months suspension through to four months suspension. We believe that under the particular set of circumstances, the appropriate penalty would be a suspension from riding in races for a period of six weeks.'

Mr Dyson appeals against the conviction on the ground that it is against the weight of the evidence, and also against the penalty, on the basis that it is excessive. The following particulars of the grounds of appeal were supplied at the appeal hearing:

'A. Conviction

- 1. The conviction was against the evidence and the weight of the evidence in that:*
 - (a) the Stewards failed to consider or give adequate weight to:*
 - (i) the evidence of the horse's pre-existing condition*
 - (ii) the Appellants concern for the horse's condition during the race*
 - (iii) the veterinarian opinion that the Appellant was the best person to judge the horses condition during the race.*
 - (iv) the veterinarian evidence that he could not exclude the possibility that the horse was unsound during the race.*
 - (b) there was no evidence that the horse may have obtained a better place in the field if it had been ridden differently. The Stewards finding that the Appellant failed to take measures to improve the position of the horse in the early stages of the race was insufficient to ground the charge.*

- (c) *the Stewards simply imposed their own view of riding tactics on the appellant ex post facto which was inappropriate in the (sic) all the circumstances of the case.*

B Penalty

- 2. *The penalty imposed was excessive in all the circumstances of the case in that:*
 - (a) *The circumstances of the case are clearly distinguishable from Knuckey and Miller.*
 - (b) *The Stewards considered only the weight of public money and the reputation of the sport but failed to give any or any adequate weight to the welfare of the animal.*
 - (c) *The duty of a jockey to temper his obligations under rule 135(b) with a reasonable degree of care and caution for the well being of the animal.*
 - (d) *Stewards erred in categorizing this offence as a 'serious breach' of the rule whereas it was clearly an offence at the lower end of the scale of breaches of the rule.*

The Stewards at the initial inquiry which they convened on the day of the race put the appellant on notice that they had '*...some serious concerns in relation to the performance of this horse*'. These concerns were explained at the continuation of the inquiry on the 19 October 1998. It was clearly open to the Stewards on the evidence before them to form the opinion that Mr Dyson did not take all reasonable and permissible measures to ensure RAESIDE was given full opportunity. This is despite the rather novel explanation which was offered for the poor riding performance.

On the evidence before them the Stewards were entitled to conclude that Mr Dyson's riding contravened the Rule. It was beneficial for me to have viewed the film of the race in the light of comments of the two senior Stewards whose observations are recorded in the transcript and quoted above. The video clearly revealed a lack of vigour and effort as described. The lack of effort and the other characteristics of the ride justified the description given to it by the Stewards. Nothing that was said by either Steward in relation to their viewing of the film and having seen the race live is inappropriate or unreasonable.

The Stewards were entitled to be influenced by the post race examination of Dr Symons which revealed no abnormalities or unsoundness of RAESIDE. This evidence was not contradicted by the trainer's comments. Nothing has been presented which suggests that the Stewards did not take into account or gave inadequate weight to the state of the horse and the appellant's concerns during the race. Dr Symons' evidence, however, puts things into perspective in this regard.

I am not persuaded that the Stewards erred in relation to any of the matters alleged in the particulars of the appeal relating to the conviction.

I am also not persuaded the Stewards were in breach in regard to the penalty. The penalty was within the range open to the Stewards. The Stewards clearly considered more than the issue of *'the weight of public money'*. The welfare of the animal clearly was not ignored in arriving at their decision.



DAN MOSSENSON, CHAIRPERSON

