

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: JOHN PIERRE CLAITE
APPLICATION NO: A30/08/501
PANEL: MR J PRIOR (PRESIDING MEMBER)
DATE OF HEARING 25 MAY 2000
DATE OF DETERMINATION: 1 JUNE 2000

IN THE MATTER OF an appeal by Mr J P Claite against the determination made by the Western Australian Turf Club Stewards on 2 May 2000 imposing a \$300 fine for breach of Rule 8(e) of the Australian Rules of Racing.

Mr B A Ryan was granted leave to represent the appellant.

Mr S J Carvosso appeared for the Western Australian Turf Club Stewards.

Following a report from the Clerk of Scales, Mr Grigsby, the Stewards opened an inquiry into the reason Jockey Claite weighed out for Race 5 at Pinjarra Park without the girth. Mr Claite was the rider of YOU DO VOODOO.

Mr Grigsby stated:

“Half the field has weighed out for Race 5 and I periodically check saddles that are ready to go out for that next race. I check them because a couple of riders have come in overweight and I’ve been scrutinised about it and I found number 13 to weigh without a girth on, I informed the jockey and asked him to reweigh.”

After hearing evidence from Mr Claite, the Chairman of Stewards advised that a charge would be laid for breach of Rule 8(e).

Rule 8(e) of the Australian Rules of Racing is couched in the following terms:

“8. To assist in the control of racing, Stewards shall be appointed according to the Rules of the respective Principal Clubs with the following powers.

...

- (e) *To punish any person committing a breach of the Rules or refusing to obey, or failing to obey any proper direction of any Official, or whose conduct or negligence has led, or could have led, to a breach of the Rules."*

The specifics of the charge were:

" ... we're charging you under 8(e) with negligence in that you have weighed out for Race 5, the Healthway Provincial Championship Heat, and you had a ride in that race on YOU DO VOODOO. You negligently weighed out without the girth. The Stewards believe that your negligence could have led to a breach of the rules in that this horse would not have carried the weight, or would have carried more weight than it should have, and under that rule, Mr Claite, we will fine you the sum of \$300."

The Chairman of Stewards further stated:

Now Mr Claite, as I said earlier in the Inquiry, I would have thought a rider of your seniority would realise, or would have know (sic) that a girth on a saddle is probably one of the most important pieces of equipment on the saddle, it obviously holds the saddle onto the horse, and that would be one of the first things you'd, you'd check. Now we take it from you that you believe it was an honest mistake, however, as I said, being a senior rider we would have thought you would have, that would have been one of the first things you would have checked to make sure you had your girth on the saddle."

The following exchange then took place:

"CLAITE I, I admit my, my mistake..."

CHAIRMAN Yes. If we thought it was anything more Mr Claite, which we don't, you would be looking at a lot more serious charge, but Mr Claite, it's fairly negligent of you not to weigh with the girth, isn't it?

CLAITE Sir, as I said Sir, it was an honest mistake."

Mr Claite has appealed against both the conviction and the severity of the penalty.

The grounds of appeal are:

"The charge of negligence and the subsequent fine is unjust and excessive."

Having read the Transcript of the Stewards' Inquiry on 2 May 2000 and having heard the submissions by both the Appellant's and Stewards' representatives, the following matters are not in issue:

1. Before riding in Race 4 at Pinjarra on Tuesday, 2 May 2000, the Appellant weighed out in relation to his ride on YOU DO VOODOO in Race 5.
2. When the Appellant weighed out, he weighed out without a girth on the saddle and subsequently was informed by the Clerk of Scales, Mr Grigsby, of his weighing out without a girth and was asked to re-weigh.
3. The girth on a saddle is part of the equipment a jockey must weigh out with.
4. Following Race 4 and before Race 5, the Appellant then re-weighed out with his girth on the saddle.

5. At both times the Appellant weighed out, he made his weight, both with and without the girth on the saddle.
6. Following the second weighing out of the Appellant with the girth on the saddle, the matter was reported by the Clerk of Scales, Mr Grigsby, to the Stewards.
7. As a result of the report of the Clerk of Scales, the Stewards held the Inquiry the subject of this Appeal.
8. It was accepted by the Stewards, throughout their Inquiry and in particular when dealing with the penalty, that the first act by the Appellant of weighing out without the girth on the saddle was an honest mistake.
9. One of the Clerk of Scales' principal duties was to ensure that jockeys weighed out correctly and this included ensuring they had the correct and relevant equipment when they weighed out.

At the hearing of this Appeal, the representative of the Appellant submitted that the conviction should not have been made against the Appellant because usually matters of this nature, which occur on a regular basis, are dealt with without the Clerk of Scales referring them to the Stewards, or if such matters are referred to the Stewards, a formal inquiry is not held and therefore no-one is convicted or penalised for such behaviour.

It has been conceded by the Appellant's representative that the Clerk of Scales is effectively the course policeman with respect to the weighing out of jockeys. It is my view that in carrying out those duties, the Clerk of Scales is at liberty to report to the Stewards any incorrect attempts or acts of weighing out. This has happened previously. (See SIGLEY –Appeal 486).

I accept that both the Clerk of Scales and the Stewards have a discretion as to whether firstly the Clerk of Scales wishes to report a matter to the Stewards and secondly whether the Stewards, having received a report, proceed to an inquiry.

In this matter, I am not satisfied that any error has been demonstrated in the Stewards having received a report by the Clerk of Scales of the incorrect weighing out by the Appellant by proceeding to hold an inquiry. I am satisfied that it would be inappropriate in any event for this Tribunal to interfere with any actions concerning the general discretion of race officials such as the Clerk of Scales to refer a matter to the Stewards or the Stewards themselves to proceed with an inquiry as a result of a report given to them by race officials. In any event I have some doubt whether an appeal ground of this nature is within the jurisdiction of this Tribunal pursuant to S13(1) of the *Racing Penalties (Appeals) Act*.

A submission was made by the Appellant's representative in support of the appeal against conviction that as it was an honest mistake by the Appellant in weighing out without the girth on the saddle, the matter should not have been the subject of a conviction. I am satisfied that Rule 8(e) is wide enough for the Stewards to charge and on the evidence in this matter, convict someone for an honest mistake of weighing out incorrectly. The rule extends to negligent acts which could lead or have led to a breach of the rules.

A further submission was made by the Appellant's representative in support of the appeal against the conviction in this matter that there was no negligent act of weighing out without the girth committed by the Appellant. This submission was put on the basis that once the Clerk of Scales had made the Appellant aware of the fact that he weighed out without his girth on the saddle, he was given further opportunity, prior to Race 5, to weigh out with the girth on the saddle and then weighed out correctly.

The submission is therefore that the only act of weighing out which could be considered by the Stewards is the final second act of weighing out and the first act, to some extent, could only be considered the Appellant as presenting himself to weigh out incorrectly, or given that he did actually weigh out incorrectly, that act was cancelled by the Clerk of Scales giving the Appellant another opportunity to weigh out again correctly, which he in fact did, prior to Race 5.

I am satisfied that the first act of the Appellant's weighing out with a saddle without the girth prior to him riding in Race 4 was an act of weighing out and was in breach of the rules. I am satisfied therefore the Stewards were at liberty to have an inquiry and convict the Appellant for that act alone. To interpret the facts in this matter and rules in another way would almost make it incumbent upon the Clerk of Scales that in the event he does discover a jockey has made an honest mistake in weighing out, to not draw it to the jockey's attention so that they are able to rectify it and immediately refer the matter to the Stewards and therefore make it incumbent on the Stewards to hold an inquiry prior to a race being run. What the Appellant did in weighing out prior to Race 4 was an act of weighing out and therefore I am satisfied that the Stewards, in holding the inquiry and charging and convicting the Appellant, were dealing with his actions in weighing out prior to Race 4 and not his actions prior to Race 5, where he did in fact weigh out correctly.

For these reasons, the Appeal against conviction is dismissed.

With respect to penalty, I am satisfied that there has been an error demonstrated by the Appellant when the Stewards imposed the penalty of a \$300.00 fine for breach of the relevant rule.

There is some limited previous material which suggests that there is a tariff for such offences. That material which has been made available to me at this hearing suggests that the penalty imposed was in excess of the tariff.

In the matter of K Hawkins dealt with by the Stewards for the breach of the same rule on 15 May 2000, a \$100.00 fine was imposed. There has been nothing submitted in this hearing which would suggest that the facts of that matter are less serious than the facts of this Appellant's breach.

I have been advised that other acts of incorrectly weighing out, such as the matters of Staeck (\$500.00 fine) and Fry (\$250.00 fine) have been dealt with by the Stewards by convicting those offenders of different rules. On my interpretation, these were more serious breaches of the rules and factual situations which could not be construed as honest mistakes by the offenders.

Previously when the Appellant has been convicted for breach of Rule 145 for being overweight, he has received penalties ranging from a reprimand to a \$300.00 fine. I fail to see how this offence in the circumstances can be more serious than weighing in overweight.

At the Stewards' Inquiry, very little was said by the Appellant or the Stewards about his personal background. In fact, no submissions were made or requested on penalty. I have been told by the representative of the Appellant that although the Appellant does have some 12 years experience as a jockey, he could be described as a "struggling jockey" and therefore, the imposition of a \$300.00 fine on him will have significant effect.

Considering all the above circumstances of this matter, I am therefore satisfied that the appropriate penalty should be a \$50.00 fine. I set aside the penalty of a \$300.00 fine imposed by the Stewards and substitute a penalty of a \$50.00 fine.

John Prior



JOHN PRIOR, PRESIDING MEMBER