

THE RACING PENALTIES APPEAL TRIBUNAL

**REASONS FOR DETERMINATION OF
MR D MOSSENSON (CHAIRPERSON)**

APPELLANT: SHANE QUILTY

APPEAL NO: A30/08/519

**DATE OF HEARING
AND DETERMINATION:** 19 January 2001

IN THE MATTER of an appeal by Jockey S Quilty against the determination made by the Western Australian Turf Club Stewards on 14 January 2001 imposing a 1 month suspension for breach of Rule 137(a) of the Australian Rules of Racing.

Mr B Ryan was granted leave to represent Mr Quilty.

Mr J Biggs represented the Stewards of the Western Australian Turf Club.

BACKGROUND

By notice dated the 15 January 2001 Mr Quilty appeals against an improper riding conviction which resulted in his licence being suspended for 1 month, on the basis that he was not guilty.

The Stewards inquired into an incident which occurred approaching the 800m in Race 4 at Esperance Bay Turf Club on 14 January 2001. The inquiry which took place following the race was chaired by Mr J Biggs, a Deputy Steward. The transcript of the inquiry indicates at the outset that Mr S Barter and Mr S Jerrard were both present with Mr Biggs. At the beginning of the transcript both Messrs

Barter and Jerrard are described as 'Assistants to the Stewards'. The transcript reveals that they in fact said nothing during the inquiry. Called to the inquiry were Mr Quilty, the rider of NIGHT OF THE FIRE, and Mr S O'Donnell, the rider of KINGSTON ALLEY.

After taking evidence and showing the video the transcript establishes Mr Biggs made the following statement:

'After considering the evidence, Stewards believe you do have a charge to answer to and it's a charge under Australian Rule of Racing 137, "Any rider may be punished if in the opinion of the Stewards, he is guilty of careless, improper, incompetent or foul riding". Stewards are charging you with improper riding under that Rule. The specifics of the charge are that approaching the 800m, you have intentionally shifted out in an endeavour to obtain a racing position, that was to your advance (sic). In doing, you have bumped heavily with KINGSTON ALLEY (S. O'Donnell) on a number of occasions, as a result that horse has become unbalanced. Now do you understand the specifics of the charge?'

Once he acknowledged that he understood the charge Mr Quilty was asked how he pleaded to the charge. He answered 'Is there an in between Sir, between guilty and not guilty?' Mr Quilty went on to explain:

'I have shifted to obtain a position to my advance, yes. In doing so Sir, I at the, at the, at the time, the evidence Jockey O'Donnell gave there was no apparent danger in the move itself or I mean it's just that we, we have bumped heavily in running and like basically I wouldn't really like to plead guilty to the charge, but I wouldn't say I wasn't guilty of the charge...'

Mr Biggs then announced that '...we'll take a plea of not guilty'. Mr Quilty declined the invitation to put further evidence forward. This led the Chairman to conclude after a deliberation in the following terms:

'...Jockey Shane Quilty after considering the matter further, it is the decision to find you guilty of the charge as laid. It now remains on the Stewards to decide on penalty. Now under the Rules of Racing of course we have the right to suspend, disqualify or fine. Now is there anything you wish to put forward in relation to penalty?'

Following some brief further questioning Mr Biggs informed Mr Quilty of the outcome on penalty as follows:

'Jockey Shane Quilty Stewards have considered the matter in relation to penalty. We've taken into consideration the nature of the offence, which is improper riding, which is considered to be a serious offence. It is a charge that is considered to be more serious than a careless riding. We believe that you, the, the move has been an intentional move in an endeavour, to assist, as I said in the charge, to assist your horse's position, chance of winning the race. We've also taken into consideration your record, which as you've stated you've, you haven't previously been charged for an improper riding offence, ...

... After considering all of the, all of the matters, we believe that the, the Stewards believe that the appropriate penalty on this occasion is a suspension of your rider, of your licence from riding in races for period of one month.'

THE APPEAL

At the outset of the appeal Mr Ryan queries the appropriateness of the composition of the Stewards' panel, comprising as it did 1 Deputy Steward and 2 Assistants to the Stewards. Mr Biggs responds by informing me that the Assistants who were present at the inquiry: *'...do not have any voting power. Under the Rules of Racing a quorum is one Steward or Stewards.... They are actually appointed by the Western Australian Turf Club as Assistants to the Stewards but as I say they don't have any voting powers or anything at inquiries and so on. They were just there virtually to assist in the normal running of a race meeting.'* Mr Biggs then refers me to Local Rule 4A, which reads:

- '(a) The Committee may from time to time appoint Stipendiary Stewards to act at meetings within the Metropolitan Area and at such other meetings outside that area as may be directed by the Committee.*
- (b) The Committee may appoint a Chairman and Deputy Chairman of Stewards for the Metropolitan Area and may also appoint a Chairman and Deputy Chairman for the Regional Area or any particular Country Area. The Chairman of any Board of Stewards shall have a casting as well as a deliberative vote in any case of equality of voting.*
- (c) Deputy Stewards, Assistant Stewards and Cadet Stewards may be appointed by the Committee to assist in the conduct of race meetings but Assistant Stewards and Cadet Stewards shall not be entitled to a vote.*
- (d) Stewards appointed under this Rule shall have and may exercise all the powers, duties and authorities conferred upon the Stewards by the Rules.*

- (e) *Provided that where a Stipendiary Steward or Deputy Steward is the sole Steward at a meeting or organised barrier trial he shall have and may exercise all the powers vested in the Stewards under the Rules.'*

After that explanation Mr Ryan began his substantive submissions. He firstly claims that the inquiry was '*completely illegal*' as the Assistants to the Stewards had no authority to be in the room and 1 Steward was not able to decide the matter on his own. Next Mr Ryan forcibly argues that improper riding was the second most serious riding charge and yet, according to him, no interference in fact had been caused. The incident is no more than a legitimate manoeuvre simply designed to win the race. All that was involved basically were a few bumps which were traded which did not cost any ground and amounted merely to a race incident employed to give the jockey a chance to win the race. Therefore Mr Ryan submits it was '*totally unusual*' to have been dealt with in this fashion. It is then asserted that this matter is an embarrassment to the Stewards and '*the whole case is a sham*'. It is simply 1 person's opinion against all of the evidence of both riders. It is impossible to come to this conclusion. It is '*illegal*' as the Rules required '*the Stewards*' to deal with the matter whereas in this case only 1 Steward did so.

Only the conviction is being appealed. The penalty is not being challenged on the basis that Mr Ryan understands that the 1 month suspension is a mandatory penalty. In reply Mr Biggs denies that he was aware that 1 month suspension was the minimum penalty for this offence. Although on previous occasions terms of 1 month have been imposed it was not a requirement under the Rules.

In the case of improper riding Mr Biggs argues the Stewards need to be satisfied that the actions of a jockey were not brought about through accident or ignorance but rather were done with intent. Mr Biggs submits the jockey in this case knew what he was doing. It is argued that the evidence supports the fact that there was intent as he shifted out in an endeavour to ride to instructions. Bumping goes on in all races and it is appropriate to move a horse out of the way in an endeavour to improve one's prospects in a race. In this case, however, the action taken is not an innocent and proper action but rather a deliberate one which proved to be incorrect.

Mr Biggs points out that when asked as to how he pleaded to the charge Mr Quilty indicated that he was equivocal and would not say that he was not guilty. Finally it is put to me that the issue of safety in racing is vital and must to be taken into consideration in a case such as this one. One never knows how a horse will react to this type of behaviour. In this case *'quite a considerable bump occurred'*. This situation is considered to be dangerous and unjustified according to Mr Biggs. The race film was shown. It clearly reveals that quite severe buffeting did occur.

REASONS

Whilst the Rules do require Jockeys to give their mounts best prospects of winning races they may only do so by employing fair and reasonable means. Jockeys may only indulge in tactics which are safe and otherwise within the requirements of the Rules. After seeing the video I am satisfied this is not the case here and Mr Biggs was entitled to form the opinion which he did of the incident. I am also satisfied that reasonable Stewards, viewing this incident and armed with all relevant material, would have come to the same conclusion as Mr Biggs did. It was entirely open to Mr Biggs to have reached the conclusion which he did regarding an improper riding offence, as I would have done had I adjudicated in the first instance.

But the matter is not so simple that it ends there. The unusual argument which Mr Ryan raises regarding the illegality of the handling of the inquiry, with 1 Steward presiding and the 2 Assistants participating, needs to be analysed as well.

It is difficult to accept Mr Biggs' proposition that the decisions to both convict and penalise Mr Quilty in fact were only made by him. The passages quoted earlier from the transcript clearly and consistently reveal the inquiry was being handled by the 'Stewards'. Mr Biggs clearly states *'After considering the evidence, Stewards believe you do have a charge to answer ... Stewards are charging you ...'* and *'... It now remains on the Stewards to decide on penalty'* and *'... Stewards have considered the matter in relation to penalty'*. *'We've taken into consideration ... We believe that ... the Stewards believe that the appropriate penalty ...'*

It is not altogether uncommon for a panel comprising only 1 Steward to be referred to as '*the Stewards*' in view of the way the term is frequently employed and the fact that the Rules of Racing refer to Stewards virtually throughout in the plural. However, the second last paragraph of the definition provision, Rule 1, makes it clear that words importing plural include the singular. The definition of '*Stewards*' includes Deputy Stewards. Further, Australian Rule 8A and Local Rule 4A(e) clearly specify powers which are exercisable only by a single Steward.

By Local Rule 4A(c) the Assistant Stewards are authorised '*...to assist in the conduct of race meetings*'. However, in the same provision they are expressly prohibited from voting. By Local Rule 4A(e) Mr Biggs is empowered to deal with the matter on his own. He should have decided the matter by himself. I have already stated the decision was open to him on the evidence. There was no error in the ultimate decision that was reached. The only problematic aspect relates to the situation where the decision was made by the persons comprising a Deputy Steward and 2 Assistant Stewards. The Assistant Stewards are empowered by the Local Rules to do everything but vote.

Rule 10 empowers the Stewards to '*...deal with any matter in connection with any race meeting or any matter or incident related to racing*'. The Rules have a very wide range of matters which must be attended to as part and parcel of the conduct of a race meeting. Some of the duties of the Stewards clearly precede the holding of the meeting such as handling nominations, entries and acceptances. Others occur before and after each of the races which are part of the meeting. Examples include weighing out and in, ordering down and substituting riders, prohibiting horses from starting and testing for drugs. Others may only take place after a race has been conducted such as objections, complaints, inquiries into and adjudication upon conduct of licensed persons attendant on a horse which has raced.

The Assistant Stewards are expressly authorised by the Rules to help out in the conduct of a meeting. This clearly includes observing races. It must also extend to attending objections hearings and inquiries, reporting their observations, asking questions and doing everything short of actually voting. I can see nothing wrong with Assistant Stewards remaining with the Stewards' panel during deliberations leading to determining guilt or innocence and penalties which flow from

convictions. Everything short of voting is part of the assisting process. In country meetings and at times when only 1 Steward is available the contribution of the Assistants may well be invaluable.

I reject Mr Ryan's argument that the proceedings were rendered a nullity in view of what transpired. I do not consider the proceedings were invalidated by virtue of the 2 Assistants having been present. It is unfortunate Mr Biggs used the plural consistently in referring to the decisions he was making. The 2 Assistant Stewards should not have participated to the point of actually determining to lay a charge, convict or arrive at the penalty. Be that as it may, I am still satisfied that Mr Quilty was properly charged and that he did commit the offence.

In the circumstances of this case I do not think that the role played by the Assistants invalidates Mr Biggs' decisions. Other cases may be different. On this occasion, having concluded as I do that the conviction was fair and reasonable on the evidence, the failure to observe the Local Rule prohibiting voting does not change the quality of the riding in question from having been improper and deserving of punishment. The actual punishment is a different issue, but it not having been challenged the matter ends there. For these reasons the appeal is dismissed.



DAN MOSSENSON, CHAIRPERSON

