

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF
MR D MOSSENSON (CHAIRPERSON)

APPELLANT: LUCAS CAMILLERI

APPEAL NO: A30/08/525

DATE OF HEARING AND
AND DETERMINATION: 8 May 2001

IN THE MATTER of an appeal by apprentice rider Mr L Camilleri against the determination made on 6 April 2001 by the Western Australian Turf Club Stewards imposing a suspension of 1 month for breach of rule 135(b) of the Australian Rules of Racing.

Mr TF Percy QC appeared for Mr Camilleri.

Mr RJ Davies QC appeared for the Stewards of the Western Australian Turf Club.

This appeal was argued on the 8 May 2001. I dismissed it. The suspension of operation of the penalty ceased to operate. I undertook to publish reasons which I now do.

On 4 April 2001 the Stewards of the Western Australian Turf Club began an inquiry into apprentice rider Mr L Camilleri's ride on ADARKA GREY in Race 6 over 1,000 metres at Ascot. The inquiry continued on the 6 April 2001.

At the initial inquiry which was convened immediately after the race the trainer of ADARKA GREY, Mr Enright, told the Stewards he had instructed Mr Camilleri to

jump to the front and let the horse run along. His instructions were 'to lead if possible'. This was consistent with how this horse was usually ridden as it had led on most occasions it had raced. On this occasion it performed in a strong field.

Relatively early in the inquiry the Chairman put to Mr Camilleri that:

'Those horses to your outside had to work to get there. You had the advantage of crossing the three horses on your inside quite easily and you could of easily kept the horses to your outside out if you had of ridden this horse a bit harder in the early stages.'

Mr Enright agreed that 'he could have rode him a little bit harder'. In addition, Mr L Smith, the master of the apprentice rider, acknowledged that Mr Camilleri 'was a bit negative in his first 50 metres'.

Mr Camilleri was charged under Australian Racing Rule 135 which states:

'(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.'

The particulars of the charge were:

'That you failed to make sufficient effort in the early stages to urge ADARKA GREY forward in an endeavour to lead and as such you did not ensure that ADARKA GREY was given full opportunity to win or to obtain the best possible place in Race 6 the Slipper Week Welter run at Ascot on the 4th of April 2001.'

Mr Camilleri pleaded not guilty but was convicted for the following reasons:

'We believe Apprentice Camilleri that you were definitely instructed to lead on ADARKA GREY you were fully aware of your instructions leading into the race. You were also aware that ADARKA GREY races best in that position. It is not evident from film or from your own evidence that you urged ADARKA GREY forward in any attempt to lead. We were unable to see you slap the horse up as you stated or take any other reasonable or permissible measures in the early part of the race to ensure that ADARKA GREY could lead. As such we find you guilty Apprentice Camilleri. It just remains with the Stewards now to impose a penalty on yourself. Do you wish to address the Stewards on a penalty at all Apprentice Camilleri?'

Further questioning took place. Mr Smith participated in the process during which time he became upset and addressed some unseemly comments and threw

some totally uncalled for abuse at the Stewards. Such conduct has no place in any Stewards' inquiry. It was worse in this case because it came from a senior person in the presence of his apprentice.

The Stewards explained that the range of penalties was between 1 – 3 months suspension. They ultimately decided to impose a 1 month suspension. The Stewards summed up their findings on penalty in the following terms:

'...Apprentice Camilleri the rule that you have been charged with is quite a serious infringement of the Rules of Racing. All horses must be ridden in a manner that they are presented with best opportunity to win a race. ADARKA GREY was one of the favourites in a Metropolitan race, Midweek meeting in the city. As such it would have carried considerable investments. It's important then that, when I say important, vital, to the Racing Industry that horses are ridden consistently so that public confidence is maintained within the sport. We have taken into account that aspect of arriving at a penalty.

We have also taken into account your level of your experience Apprentice Camilleri. We see that you're relatively inexperienced given that you have been riding now for less than two years would that be right?

...

Your current circumstances, and that at the moment you are riding with success and you appear to be establishing your career quite well here in Perth. We don't believe Mr Smith that we should fine Apprentice Camilleri, you put forward that the Stewards should perhaps look at a fine, we have perused also the previous penalties under this rule and we note that they do range from three months back to a month. Stewards believe that we should impose a period of suspension of one month...'

Mr Camilleri appealed against the decision and sought a suspension of operation of penalty. This was granted pending hearing of the appeal. In the amended grounds the appeal against the penalty was abandoned. The following are the substitute grounds of appeal:

'A. CONVICTION

1. *The Stewards erred in finding the Appellant guilty of an offence under rule 135(b).*

Particulars

- (a) *The Stewards erred in finding the charge proved on the basis that the Appellant had not made a sufficient attempt to lead on his mount.*

- (b) *The Stewards erred in finding the charge proved on the basis that the Appellant had by failing to allow his mount to lead not ensured that the horse was given full opportunity to win or obtain the best possible placing in the race.*
2. *The Stewards erred in finding the charge proved on the basis that the Appellant had failed to follow instructions to lead on his mount.*

Particulars

- (a) *The Stewards finding that the Appellant was "definitely instructed to lead" (p 44 Transcript) was an error of fact.*
- (b) *The instructions to lead were conditional. The instructions were to lead if possible (pp 2 and 10 Transcript).*
- (c) *The Stewards failed to adequately consider the conditional nature of the instructions and to consider the wider proposition of whether the failure to lead had resulted in the horse not being ridden to its best advantage.*
- (d) *The Stewards erred in failing to consider or find as a fact that on some occasions horses need to be ridden at variance to pre-race instructions in order to obtain the best possible placing in the race.*
3. *The Stewards in considering the charge failed to apply the correct test as to what constitutes an offence under rule 135(b) which requires (even where there is a strong prima facie case) a finding that the rider of a horse took some steps that were objectively unreasonable and in a sense blameworthy in the course that he took.*
4. *The Stewards erred in proceeding to find the Appellant guilty of the offence under rule 135(b) rather than dealing with the matter by way of a reprimand.*

Particulars

- (a) *Notwithstanding that they may have considered the charge to have been made out, the Stewards had the power to impose a reprimand rather than a conviction.*
- (b) *Having regard to the Appellant's age, experience and previous good record, the Stewards ought not to have imposed a conviction in circumstances where such a conviction would have dire consequences for his future, including being an effective prohibition on the ability to ride overseas at any time in his career.*
- (c) *The Stewards in exercising their judgment as to whether to proceed to conviction or deal with the matter by way of reprimand ought to have had regard to the same sort of criteria that a Court of criminal jurisdiction would consider in imposing a Spent Conviction.'*

In support of his contention Mr Percy QC showed a video of 3 of ADARKA GREY's races. The first was of the race 2 weeks prior to the race in question, the second was the subject race and the third a subsequent race 10 days later with a different rider. In each of these races the rider of ADARKA GREY employed different tactics.

The thrust of one of the main arguments of senior counsel was that had Mr Camilleri been engaged in a dog fight in order to lead he would have exhausted his prospects and would have ended up in no better position than he actually did. He started well in a good position but after being tackled he eased his mount and allowed it to trail. In relation the first ground it was argued that riding contrary to instructions was not an offence. The onus was on the Stewards. Mr Camilleri had put forward a reasonable explanation. Senior Counsel relied on a decision of the New South Wales Thoroughbred Racing Appeals Panel on 27 September 1999 in the appeal of jockey RS Dye where the essence of a charge under Rule 135(b) was stated in these terms:

'The proof of that charge depends upon more than establishing a mere error of judgment on the part of the rider who is in charge under that rule. Proof of such a charge requires evidence that satisfies the appeal panel that the rider of a horse took some steps that were objectively unreasonable and, in a sense, blameworthy in the course that he took.'

Mr Percy QC argued with some rigour that the ramifications of the conviction to Mr Camilleri's career were enormous. Even though not prescribed by the Rules a reprimand was possible and appropriate as the conviction was a significant impediment to this young man's future international career.

Mr Davies QC in response argued that the statutory provisions relevant to penalties in the criminal context were irrelevant to the contractual obligations of persons licensed to ride under the Rules of Racing. In response to the argument regarding the adverse impact on Mr Camilleri's career, I was also told that offences of this nature had not impeded the overseas riding careers of a number of other local jockeys.

The Dye decision, according to Mr Davies QC, does not address the appellate role in relation to the Rule and the relevant criteria to be considered. Rather, the local

case of SI Miller (Appeal 413) was of greater assistance. In that appeal I stated that:

'Even although both Mr Justice Perrignon and Judge Goran in those appeals (D LINDON NSW Harness Racing Appeals Tribunal 27/7/90 and W HONAN NSW Harness Racing Appeals Tribunal 26/10/83 respectively) were dealing with the equivalent provisions in the trotting rules their pronouncements are directly on point and assist with the interpretation and application of ARR 135. This Rule of Racing begins with the brief statement which in effect requires that all horses be raced according to their just desserts. The second part of the Rule obliges all jockeys to employ all suitable actions that are both 'reasonable' and at the same time 'permissible'. This obligation applies to all stages of a race. The underlying purpose is to guarantee that every mount being ridden in a race will be given 'full opportunity either to win' or to gain 'the best possible place' in the race. It is clear the Stewards formed the view that Mr Miller, with his level of experience in this particular race, did not fully extend DOCTOR'S ORDERS at all stages in the race so as to demonstrate what the horse was fully capable of achieving in the race. By referring to "full opportunity" it is clear that the Rule requires jockeys to give their mounts complete and uninhibited prospects but subject to their actions remaining within the bounds of what is considered appropriate and is otherwise sanctioned by the rules.

The third part of the Rule gives the Stewards a discretion to punish someone should they form the opinion that the Rule has been breached. As Mr Davies QC argues this opinion is very hard to dislodge. The Rule having been so framed in effect results in the duly appointed and experienced racing experts, namely the Stewards, having to come to the relevant opinion, not the jockey, the trainer, the owner or this Tribunal.'

Senior counsel for the Stewards argued the Stewards are the appointed experts who are qualified to judge all aspects of the riding techniques employed during the course of a race. The Rule called upon their opinion not others. As to the 2 other races which were shown on the video they were quite different from the race in question.

I am satisfied that Mr Davies QC's submissions provided a complete answer to the appellant's case. The Stewards made certain findings regarding Mr Camilleri's efforts which I find unexceptional. The real point of the matter was that the riding employed did not put ADARKA GREY to the test to see whether it could hold off the other horses and maintain the lead as Mr Camilleri was instructed if he could. Whilst those instructions were qualified the quality of the riding did not measure up to the instructions. The case clearly met the description contained in the particulars of a failure to make sufficient effort early to lead. I am satisfied

Mr Camilleri did not persevere at all and in fact did not endeavour to find out. Mr Camilleri gave up too quickly without first employing some urging of his mount. He should have used reasonable endeavours to find that out and not just quit. His horse was not given full opportunity.

It was not demonstrated that an experienced body of Stewards were not entitled to come to the conclusion which these Stewards did in the course of acting reasonably. The opinion arrived at was open to them based with their expert knowledge and experience of racing in all of the circumstances of this matter.

I was not persuaded a reprimand was appropriate even if it were available to the Stewards. Equally I was not persuaded of the appropriateness of a criminal court's approach to sentencing nor that the consequences for the future are anything like as bleak as the picture which was painted.



DAN MOSSENSON, CHAIRPERSON

