APPEAL - 557

DETERMINATION OF

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT:	**CASEY DREDGE**
APPLICATION NO:	**A30/08/557**
PANEL:	**MR P HOGAN (PRESIDING MEMBER)**
DATE OF HEARING:	**13 FEBRUARY 2002**
DATE OF DETERMINATION:	**13 FEBRUARY 2002**

IN THE MATTER OF an appeal by Casey Dredge against the determination made by the Stewards of the Western Australian Turf Club on 19 January 2002 imposing 6 weeks suspension for breach of Rule 135(b) of the Australian Rules of Racing.

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

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

This is an appeal against conviction and severity of penalty.

Following the running of Race 5 at Ascot on Saturday, 19 January 2002 the Stewards opened an inquiry into the riding tactics of Apprentice Dredge over the final 100 metres. Apprentice Dredge finished second on GOLDEN DELICIOUS.

The placings, starting prices and margins were:

1st	LITTLE ROSARY	50/1	
2nd	GOLDEN DELICIOUS	4/5 Favourite	Head
3rd	DOUBLE JEWEL	9/2	$1^1/_4$ Lengths

The Stewards heard evidence from the Appellant, and from Miss P Wagg, the Trainer in Charge of him. They also heard evidence from Mr J Taylor, the Trainer of GOLDEN DELICIOUS. After hearing the evidence, and viewing the race film, the Stewards charged the Appellant as follows:

> *"Apprentice Dredge and Miss Wagg, at this stage of the Inquiry the Stewards have decided to charge you under Australian Rule of Racing 135. I'll read that rule to you. 135(a) states "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." Now you are charged*

under Australian Rule of Racing 135(b) in that when riding GOLDEN DELICIOUS in Race 5 of The Sorrento 1100 metres, you failed to take all reasonable and permissible measures to ensure that GOLDEN DELICIOUS was given full opportunity to win the race. The particulars being that over the concluding 100 metres you failed to ride GOLDEN DELICIOUS with sufficient vigour."

Apprentice Dredge pleaded not guilty. After deliberating the Chairman announced a finding of guilty in these terms:

"The Stewards have considered all the evidence, all that you have placed before us and also considered the charge. The Stewards along with you have viewed the films of this race and viewed two of your previous rides. We're of the opinion that you have failed to ride with sufficient vigour over the concluding 100 metres and therefore have not taken all reasonable and permissible measures to ensure that GOLDEN DELICIOUS was given full opportunity to win the race. Consequently the Stewards find you guilty as charged."

The Stewards then heard a brief submission from both the Appellant and Miss Wagg before adjourning to consider penalty. In announcing penalty the Chairman said:

"The Stewards have taken into account all that you've placed before us and certainly all that you have placed before us Miss Wagg. You pleaded not guilty, you have no prior charge under this Rule. We believe that this is a serious matter, as this was a favourite runner and carried a heavy volume of public money. In our opinion the betting public is entitled to see runners fully tested and ridden with full vigour. For an offence of this nature, the penalty ranges from approximately one month to three months. After considering all of these factors, the Stewards have decided to suspend you from riding in races for a period of 6 weeks to commence midnight the 19th January, 2002 and to expire on midnight the 2nd March 2002."

On 21 January 2002 the Appellant lodged a Notice of Appeal and sought a stay of proceedings. The Chairperson of the Tribunal granted Apprentice Dredge a stay of proceedings until midnight on Thursday, 7 February 2002 or as otherwise ordered. The appeal was listed for hearing on Thursday, 7 February 2002. On that day the instructing solicitors for the Appellant requested that the hearing date be vacated as Senior Counsel was unavailable due to unforseen circumstances. As no request was made to extend the stay of proceedings, the suspension of operation of the penalty ceased at midnight on Thursday, 7 February 2002.

The Amended Grounds of Appeal are:

*"**A. CONVICTION***

1. *The Stewards erred in convicting the Appellant by applying an incorrect test in their interpretation of the provisions of rule 135(b):*

Particulars

(a) *The rule does not attempt to penalise errors of judgment;*
(b) *The rule requires the Stewards to adopt a subjective approach to the rule having regard to the experience and expertise of the rider;*
(c) *The Stewards erred in making no allowance for the fact that the Appellant was an inexperienced 3 kilogram claiming apprentice; and*
(d) *By imposing an objective standard that would apply to experienced senior riders the Stewards erred in convicting the Appellant.*

2. *The Stewards erred in convicting the Appellant for what was effectively a momentary error of judgment.*

Particulars

(a) *The Stewards were entirely satisfied with the quality of the Appellant's riding during the first 1050 m of the 100 m race;*
(b) *The Stewards made it clear that the Appellant was not charged with "not trying";*
(c) *The transgression on the part of the Appellant was assessed as being no more than a "bad mistake"; and*
(d) *Without having the character of something considerably more blameworthy the shortcomings of the Appellant's riding would not constitute an offence for the purposes of the rule, having regard to the correct test referred to in Ground 1 hereof.*

B. PENALTY

4. *The Stewards erred in assessing where the offence fell on the scale of gravity for such offences, and in particular erred in assessing the offence as being more serious on the basis that the horse was a short priced favourite.*

5. *The penalty imposed by the Stewards failed to adequately reflect-*
(a) *the momentary nature of the offence, and*
(b) *the inexperience of the Appellant.*

6. *The penalty imposed was identical to those usually imposed for significantly more serious offences on senior riders for breaches of the same rule and made no allowance for the fact that the Appellant was a 3 kilogram claiming apprentice."*

CONVICTION

Ground 1

The broad thrust of this ground is that the Stewards applied an objective test in applying the evidence to the charge. It is said that they should have applied a subjective test. They should have taken into account the matters mentioned in the particulars.

The question of the proper test to convict under ARR135(b) was considered in the case of Stephen James Miller (Appeal 413 delivered 7 July 1998). In that case, the Chairperson Mr Mossenson said at page 11:

> *"It is clear that 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..."* (emphasis added)

Mr Mossenson went on to say at page 12:

> *"...it was an error of judgement by this experienced jockey which fell outside the permissible limit so as to be unjustified."* (emphasis added)

It is clear then that the Rule requires the Stewards to apply a subjective test. They must take into account the level of experience of the rider. This accords with the accepted view that the Rule does not seek to penalise all errors of judgement. As Mr Mossenson said at page 9 of Miller:

> *"It really becomes a question of whether or not the error falls within permissible limits associated with normal standards of riding competence or outside those limits so as to be unjustified."*

At the hearing of the appeal, consistent with particular (c) of ground 1, counsel for the Appellant submitted that the Appellant's level of inexperience was evidenced by the fact that he is a 3 kg claiming Apprentice. That fact, by itself, is not determinative of the Appellant's level of

inexperience. On its face, it shows that the Appellant has not ridden 20 winners at Metropolitan meetings (LR 59). The level of experience would have been assessed by others with an interest in the subject, in making their different decisions in connection with the race.

The horse's connections take the level of experience into account in deciding whether to place the rider on the horse in the first place. Bookmakers take it into account in setting the price. The betting public takes it into account in deciding the level of support for the horse. The Appellant himself accepted that he had the necessary level of experience by accepting the ride. The Appellant's Master, Miss Wagg, would have taken his level of experience into account in approving the engagement With all of those factors taken into account, GOLDEN DELICIOUS started a short priced favourite. Everybody concerned, including the Appellant himself, expected a standard of riding of an appropriate level. That standard was what was expected of somebody riding a short priced favourite on a Saturday race meeting at Ascot.

Particulars (a), (b), (c) and (d) of ground 1 are not made out. The transcript shows that the Stewards gave brief reasons in finding the charge proved. It is true that they made no mention of the Appellant's level of experience. That is not to say that the Stewards failed to take it into account. It seems to me that the Appellant's level of experience is a fact which would have been well known to them. Logic dictates that this level of experience would have been known to all parties, and taken into account by all parties in making the different decisions, which they did on race day. The Stewards were in no different position.

Ground 2

In support of this ground, the Appellant characterises his mistake as a momentary error of judgement. Implicit in this ground is the acceptance of the fact that the Appellant did in fact make an error. The difference is that the Appellant characterises it as momentary, whereas the Stewards characterised it as something more than that. The Stewards identified the riding in question as something occurring over the last 100 metres. In my view, the Stewards' approach was correct. It would be artificial in the extreme to take one small part of his riding in question, albeit the actual error, and not take into account what led up to it and how it concluded. What went before and after gives the necessary context to what the Appellant did wrongly, and gives the explanation for what might or might not have been an error. The allegation found proved by the Stewards was summarised in the particulars as follows:

> *"...over the concluding 100 metres you failed to ride GOLDEN DELICIOUS with sufficient vigour."* (T15)

The facts in support of that proved allegation were set out earlier in the proceedings, when the Chairman of Stewards gave his observations at T3:

> *"CHAIRMAN* *What I said, that you rode the horse well, you kicked away then backed off. By that I mean that you stopped using the whip, but you also stopped pushing the horse, from what I could see, and then shortly after that you commenced to push the horse along. There was a distance just inside the 100m where you've gone from riding the horse vigorously...*
>
> *CHAIRMAN* *To you dropping off or easing down on the horse and then attempting to fire the horse up again."*

The significance of those three stages can be summarised. The Appellant was riding properly and the horse was leading, meaning that there was nothing untoward which might provide an explanation for what followed. The Appellant then stopped pushing the horse, and that is what the precise mistake was said and found to be. The significance of the attempt to "fire the horse up again" is that it provides evidence that the Appellant knew that he had made the mistake, and indeed had time to try to correct it. Viewed in that way, as a continued piece of riding, there is no justification for seeking to characterise the error as a "momentary error of judgement". On the

appeal, the race film was played as a piece of evidence. In my view, the race film supports the Stewards characterisation of the offending riding having occurred over the last 100 metres.

For the above reasons, ground 2 is not made out in that the characterisation of the piece of riding is not supported by the evidence. That being so, the proper position remains as that set out by the Chairperson of this Tribunal in the case of Miller at page 9. The question for the Stewards was whether the error fell within permissible limits. The Stewards held that it did not. It has not been demonstrated that they were in error in that finding.

The appeal against conviction was therefore dismissed.

PENALTY

Ground 4

The Stewards said that the offence was a serious one. They specifically referred to the fact that GOLDEN DELICIOUS was a favourite and carried a heavy volume of public money. In my view, that was a relevant consideration to take into account. By accepting the ride, the appellant accepted a responsibility commensurate with the fact that the horse was a favourite. The consequences of the horse's placing in the field were greater, and that was a responsibility assumed by the appellant. The consequences were a relevant consideration, and ground 4 is therefore not made out.

Ground 5

For the reasons outlined above in dealing with the appeal against conviction, the offence was not of a momentary nature. Again, for the reasons given above, the inexperience of the appellant (said to arise only out of the fact that he is an apprentice) is countered by the fact that he was placed on the horse, accepted the ride and was supported by the betting public.

For these reasons, ground 5 is not made.

Ground 6

This ground asserts that the penalty imposed was so far out of the range of penalties commonly imposed so as to demonstrate error within itself. I received in evidence on this appeal a print out of penalties imposed in previous cases under Rule 135(b). That shows that the range of penalties is indeed somewhere between one month and three months. One has been less, and one more. Apprentices have often been dealt with at the lower end of the range, that is a period of one month. Here, the appellant was suspended for two weeks more than that commonly imposed minimum. In my view, that penalty is not so far outside the range as to demonstrate error. It is in fact within the range. Further, as explained above, the Stewards were entitled to treat it as a serious matter notwithstanding the fact that the appellant was an apprentice.

For these reasons, the appeal against penalty was dismissed.

PATRICK HOGAN, PRESIDING MEMBER

Seal of the Racing Penalties Appeal Tribunal of W.A.