

REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: Nathan BERRY

APPLICATION NO: A30/08/680

PANEL: MR D MOSSENSON (CHAIRPERSON)

DATE OF HEARING: 9 JANUARY 2008

DATE OF DETERMINATION: 9 JANUARY 2008

IN THE MATTER OF an appeal by Nathan Berry against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 19 December 2007, imposing a 1 month suspension for breaches of Rule 135(b) of the Australian Rules of Thoroughbred Racing.

Mr M Millington appeared for the Appellant.

Mr R.J Davies QC appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

This matter came before me on 9 January 2008. After hearing argument from counsel I dismissed the appeal. I now publish my reasons.

THE STEWARDS' INQUIRY

On 19 December 2007 the Racing and Wagering Western Australia Stewards of Thoroughbred Racing conducted an inquiry into apprentice Nathan Berry's riding of KING OF THE STALLS from the 800 metre mark in Race 5 at Ascot Racecourse.

After hearing evidence from both Apprentice Berry, his licensed trainer, Mr L Luciani, and his licensed host trainer, Mrs K Grantham, the Stewards laid a charge 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.

(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.'*

The particulars of the charge were that Mr Berry:

'... did fail to take all reasonable permissible measures throughout the race to ensure that your horse was given full opportunity to win or to obtain the best possible placing in that between the 800 metre and 600 metre when racing at the rear of the field you did unnecessarily and excessively restrain KING OF THE STALLS resulting in your mount losing ground through that section of the race when it was reasonable (sic) permissible for you to improve your position through that part, through that section of the race.'

Mr Berry pleaded not guilty and in defending the charge argued that he was an apprentice and was only learning. He claimed to have misjudged the pace of the race but had not restrained his horse for '*too much longer*' than was required in the circumstances. Mr Berry was in fact an apprentice in his first year, being a '3 kilogram apprentice', who had not enjoyed many rides.

The Stewards concluded the matter in the following terms:

'... that after setting your mount behind TITCHERMAN passing the 800m you did remain in that position for what we see as too long and we only see that you ride your horse forward, urge it forward from about the 600m mark. We see that as a lack of judgement and initiative through that section. By remaining in your position and not making any effort to improve from approximately the, around the 750m mark and the 600m you've not given your mount full opportunity to win or obtain the best possible placing in the field and a restraint of this amount of time is beyond what the Stewards see as reasonable in all of the circumstances as you should have been more aware that perhaps the field was going to sprint, at that time you should have been making an effort to put your mount into the race. But from about the 750m you let, you let the race slip, got away from you, we would say through that section. We see it as a poor error of judgement and in all of the circumstances we believe that rule captures your riding of KING OF THE STALLS between the relevant sections of the race, so for all those reasons Apprentice Berry we do find you guilty for failing to take all reasonable and permissible measures throughout the race.'

In dealing with penalty the Stewards indicated that the Rule generally attracts substantial suspensions and that each rider's experience is looked at. In their reasons the Stewards concluded that the incident in question was serious. The Stewards noted Mr Berry was riding the favourite which carried a lot of public monies. There was an expectation the horse would be given every opportunity but the quality of the ride impacted adversely on where the horse finished. The Stewards acknowledged that Mr Berry was an apprentice riding in his first year. They also acknowledged there was no intent, but rather just an error in judgment. There was '*a lack of awareness and initiative*'. There were no previous offences under the Rule. The penalty for this type of offence normally ranged from about 1 month through to 3 months. The Stewards concluded the minimum penalty should be imposed, namely 1 month suspension.

THE APPEAL

Mr Berry appealed against both the conviction and the penalty on the basis that the decisions were contrary to the evidence which had established that this was a case of misjudgement by an inexperienced apprentice.

In support of his arguments for Mr Berry, Mr Millington submitted:-

- 1 That clearly the riding tactics were in error.
- 2 Not enough weight was given to Mr Berry's evidence as to his inexperience.
- 3 The video reflected the quality of the ride which was not as bad as the Stewards had made out. Mr Berry rode in accordance with his instructions. Due to his youth Mr Berry lacked strength. The over-restraining occurred due to lack of experience.

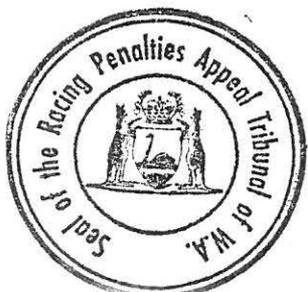
In response Mr Davies argued that the discretion to punish in these types of matters was unique to racing as the relevant provision in Rules was framed *'in the opinion of the Stewards.'* It was submitted if the Rules were any different and other opinions could be substituted it would become unworkable. The appellant was not criticised for his decision but, to go to the back of the field, after taking that position he continued to restrain with the result that the rest of the field ran away from him. There was no suggestion of there being anything deliberate or improper due to an intentional action. The reasons given by the Stewards were entirely consistent with the circumstances. Senior council asserted the Stewards had made an objective assessment which was justified on the evidence before them.

As to the penalty, Mr Millington argued although it was a serious charge with serious ramifications a reprimand may have been appropriate. In response senior counsel pointed out the Stewards were well aware of the inexperience. It was submitted the Stewards had in fact reduced the penalty from a longer suspension as a consequence of inexperience and imposed the minimum penalty. A senior rider would have attracted a 3 month suspension for this type of riding. In other words as much allowance as could have been made was in fact made.

CONCLUSION

I was not persuaded by any aspect of the appellant's arguments. Rather, I preferred and adopted all of the submissions on behalf of the Stewards. It was not demonstrated that the Stewards had been in error in convicting. Clearly it was appropriate to convict in circumstances where, after having placed himself in an awkward position, Mr Berry held back. From the moment he held back Mr Berry failed to ride appropriately and as a consequence he failed to give his horse the best prospects of success.

Bearing in mind in particular such factors as the way in which Mr Berry held back, his age and inexperience, the impact on the favourite horse and the other penalties that have been imposed for this type of offence, the one month suspension was appropriate.



Dan Mossenson

DAN MOSSENSON, CHAIRPERSON