

Appeal decision

Date: 1 October 2013

Code of racing: Thoroughbred

Appeal panel: Judge W Carter (chair), Mr B Miller and Mr P James.

Appearances: Jockey Chris Munce appeared on his own behalf.
Mr D Aurisch, stipendiary steward, appeared on behalf of the stewards.

Decision being appealed: Suspension of jockey Chris Munce's licence for a period of one month – AR137(a).

Appeal result: Appeal upheld. Conviction and penalty set aside.

Extract of proceedings – in the matter of a charge of improper riding in Race 8, the Ormiston College Old Collegians F&M Class 6 Plate over 1350 metres at Doomben on 14 September 2013. Jockey: Chris Munce

THE CHAIRMAN: This appeal which we have heard this morning is a consequence of a stewards' inquiry at Doomben race course on Saturday 14 September 2013, that inquiry having been opened by the stewards subsequent to the running of Race 8 at the race course on that afternoon. The inquiry raised issues concerning the propriety or otherwise of jockey Munce's riding. At the conclusion of the inquiry, the jockey was charged with improper riding in that he altered his riding action after passing the winning post, or close to it, and made deliberate contact with Magic In Motion, which was ridden by Anthony Allen.

As to the particulars of the charge to which I have just referred, clearly it is the stewards' case – and Mr Aurisch confirmed that to us – that the jockey was charged with making deliberate contact, that is, intentionally contacting or using his whip with the intent that his whip would strike either Magic In Motion or jockey Allen.

The jockey's case is that as he approached the winning post he was in a winning position, although he ultimately finished third. He was on the outside of two other runners – the winner, on the inside; Anthony Allen's mount, Magic In Motion, to his immediate inside, and he was, for relevant purposes, the horse on the outside. The jockey's case is that as they approached the winning post, Allen's mount shifted out and whether or not contact was made between the two horses is not conclusive, but it is plain from our assessment of the video evidence that the appellant's mount kept a, for all practical purposes, straight course and that it was the movement of Allen's horse outwards which brought the horses if not into contact then in very close proximity to others.

The stewards' case is that jockey Munce changed his whip action at the last moment and from that they inferred that he intended to strike the horse or rider. It needs to be said that as a matter of law a set of facts may provide other or several inferences which are open on those facts. Legal authority leads clearly to the view that if a person is charged with an offence and intention has to be inferred, then intention must be inferred clearly and persuasively before the tribunal can, in accordance with the appropriate standard of proof which is applicable in these matters, be sufficiently satisfied for that inference rather than any other to be drawn.

This is the point which has troubled this board. We are of the clear view that the state of the evidence, including the video evidence, does not persuade us to the required standard for the inference that his change in whip movement was deliberate and intended for the purpose of striking either the other horse or jockey. We are not prepared ourselves to so conclude and we think it was not open to the stewards on all of the circumstances of this case to come to such a conclusion. Accordingly, we are of the view that the appeal against the conviction for improper riding and the penalty imposed should be set aside.

Further right of appeal information: The appellant and the stewards may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **14 days of the date of this decision**. Information in relation to appeals to QCAT may be obtained by telephone on (07) 3247 3302 or via the Internet at www.qcat.qld.gov.au