

Appeal decision

Date: 25 July 2014

Code of racing: Thoroughbred

Appeal panel: Judge W Carter (chair), Mr P James and Mr G Casey.

Appearances: Mr S Scriven, jockey advocate, appeared for apprentice jockey Rikki Jamieson.

Mr M Knibbs, stipendiary steward, appeared on behalf of the stewards.

Decision being appealed: Suspension of licence to ride in races for a period of one month – AR135(b).

Appeal result: Appeal dismissed.

Extract of proceedings – in the matter of the Coke Zero Benchmark 80 Handicap over 1350 metres at Doomben on 2 July 2014. Apprentice jockey: Rikki Jamieson

THE CHAIRMAN: On 2 July 2014 the appellant Ms Jamieson rode Arms Length for trainer Mr Noel Doyle in Race 6 at Doomben and, after the race, stewards opened an inquiry into the rider's handling of the horse. Mr Doyle was present at the inquiry and when asked by stewards indicated his willingness to represent her. After inquiring the stewards, at an adjourned hearing on 10 July 2014, charged the appellant with a breach of Rule 135(b) which provides -

"The rider of every horse shall take all reasonable and permissible measures throughout a race to ensure the horse is given full opportunity to win or to obtain the best possible place in the field."

The stewards particularised two issues of concern. Firstly, that from the 500 metres she failed to ride her horse forward by following jockey Wiggins on Write Cheek and elected to remain racing inside Triskele, ridden by jockey McMahon, when there was an available and reasonable option for her to significantly advance the position of her horse to the outside. Secondly, from the 350 metres she failed to ride her horse with sufficient vigour at a vital stage of the race when it was reasonable and permissible for her to do so.

At the adjourned inquiry she was represented by her master, Mr Norman, who like Mr Doyle is an experienced and respected trainer. Before being asked to plead, stewards invited the jockey to confer privately with Mr Norman and adjourned for that purpose. On returning to the stewards' room, she admitted her guilt in respect of her failure to show sufficient vigour on the horse but was equivocal in respect of the allegation that she had failed to follow Wiggins' mount to the outside and had remained to the inside where a run was then

unavailable. The chairman indicated that the alleged breach of Rule 135(b) was based on two particulars, which were for all practical purposes related and together formed the basis for the charge.

As appears shortly, the applicant was confused in respect of this and the chairman invited her and Mr Norman to discuss the matter further and adjourned again for that purpose. They again had a private discussion and on returning to the room Mr Norman made it clear that she would plead guilty to the charge but sought an assurance from the chairman that "she is not pleading guilty to not giving the horse a run." This was understood by all to mean that she was not pleading guilty to the more serious breach of Rule 135(a) which requires a jockey to permit the horse to race on its merits. The chairman emphasised that the stewards were "not alleging that" and Mr Norman thereupon pleaded guilty to the breach of Rule 135(b) on behalf of the appellant.

She was suspended for one month, which was a lesser penalty having regard to her plea of guilty.

When she lodged the Notice of Appeal, it was apparent that she sought to appeal against both conviction and penalty. She informed the registrar that Mr Shane Scriven had advised her that she should apply to change her plea. Mr Scriven appeared for her at the appeal and argued strongly that her ride was not in breach of the rule.

The stewards' inquiry was a lengthy one and extended over two settings. A review of the transcript discloses a lengthy debate in which the jockey challenged the stewards' allegations that she should have taken her mount to the outside and follow Wiggins but rather persisted where there was no run then available to the inside. This was the focus of the inquiry for the most part. Indeed Mr Doyle, who was at the initial hearing, also referred to this issue. When asked his view on her ride he replied -

"I didn't rouse at her but I did point out to her that I thought that she should have been getting out from behind horses when she straightened up to give the horse a chance to go forward because all she was doing was looking at backsides."

Again in the initial hearing and during the showing of the film Mr Doyle had interposed -

". . . as the trainer of the horse . . . that was the part of the race that I was quite disappointed in Rikki's ride because as I pointed out earlier before we came in here, she should have been out there following Ryan Wiggins on the winner . . . instead of looking to go up on the inside . . ."

This was precisely the concern of the stewards and the centrepiece of the discussion during most of the inquiry. It was, however, the core of Mr Scriven's submission that, in his view, the appellant was entitled to hold her position and on that account should not have been advised, if she was, to plead guilty.

We viewed the film at some length in the appeal and as Rule 135(b) requires made our objective assessment of the appellant's ride and concluded that, if hers was an error of judgement, it was a culpable and blameworthy error and accordingly a breach of Rule 135(b).

We need to make clear the principles upon which an appellate body must consider a change of plea of guilty to not guilty. It is a matter which has attracted the attention of the most

superior courts. In *Meissner v The Queen* 1995 184 C.L.R 132 Justices Brennan, Toohey and McHugh said -

"A person charged with an offence is at liberty to plead guilty or not guilty to the charge, whether or not the person is in truth guilty or not guilty. An inducement to plead guilty does not necessarily have a tendency to pervert the course of justice for the inducement may be offered simply for the person charged to make a free choice in that person's own interests. A court will act on a plea of guilty when it is entered in open court by a person who is of full age and apparently of sound mind and understanding provided the plea is entered in the exercise of a free choice in the interests of the person entering the plea. There is no miscarriage of justice if a court does act on such a plea, even if the person entering it is not guilty in truth of the offence."

This principle has been applied by racing appeal bodies in this State. (See the appeals by A. Robinson 18.3.2010, and by H. Bowman 17.5.2010.) The fundamental question always is: was there a miscarriage of justice in the plea entered on her behalf by her master Mr Norman?

In our firm view that question should be answered in the negative.

- There was compelling evidence before the stewards that the appellant's ride was a breach of Rule 135(b).
- The mature view of trainer Doyle was that the appellant's ride was blameworthy.
- The appellant is a mature apprentice having ridden in at least 1000 races since July 2011.
- She was represented by her master Mr Norman and the inquiry was adjourned by stewards to ensure his attendance.
- Before concluding the inquiry the stewards adjourned so that the appellant could confer with her master and to obtain whatever assistance or advice she desired.
- Any misunderstanding, if there was one, related to the differences between Rule 135(a) and 135(b) and this was clarified by Mr Norman before her plea was given and accepted.
- When charged with a breach of Rule 135(b) and when advised of the particulars the appellant was asked whether she understood the charge and the particulars and she answered affirmatively.
- The stewards took account of her plea in imposing a reduced penalty.

We are indebted to Mr Scriven for his submissions. It is clear, however, that this application was based on Mr Scriven's own view and the fact that his advice may have differed from that of Mr Norman does not mean that there arises a miscarriage of justice. We say again that we are of the view, having regard to the evidence including that of the film and Mr Doyle, that the appellant was properly charged and her plea of guilty was in no sense the product of a miscarriage of justice.

We have also considered the submissions from Mr Scriven and Mr Knibbs concerning penalty and are of the view that the penalty was not excessive and was properly imposed in view of an acceptable plea by or on her behalf by her master.

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