

## Appeal decision

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**Date:** 8 December 2014

**Code of racing:** Thoroughbred

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**Appeal panel:** Mr B Miller (chair), Mr P James and Mr D Kays.

**Appearances:** Mr C Smith appeared on behalf of apprentice jockey Matthew McGillivray.  
Mr S Fletcher, stipendiary steward, appeared on behalf of the stewards.

**Decision being appealed:** Suspension of licence to ride in races for a period of two weeks  
– AR143(b).

**Appeal result:** Appeal dismissed.

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**Extract of proceedings – in the matter of the Brandons & Associates Benchmark 55 Handicap over 1400 metres at Chinchilla on 8 November 2014. Apprentice jockey: Matthew McGillivray**

THE CHAIRMAN: The panel has considered the matters in question and need to make the following points to outline the reasons for its decision. The circumstances surrounding the charge levelled against apprentice jockey Matthew McGillivray refer to an incident that occurred at the race meeting at Chinchilla when the winner Blue Jest weighed in .58 of a kilogram lighter than the weight allocated to it and the weight with which it was weighed out at the beginning.

The circumstances show that the day in question was a reasonably hot day and that there was a discrepancy of .08 of a kilogram that culminated in the stewards having no option other than to disqualify the horse. Rule 143 identifies that:

"If a horse carries less weight than the weight it should carry –

- (a) it shall be disqualified for the race, provided that a rider shall be allowed by the Clerk of the Scales a half kilogram for the weight of his bridle."

That charge carries with it a penalty that is effectively a strict liability penalty. There is no escaping the issue. If the horse fails to carry the weight then the Rules of Racing demand that that horse be disqualified. That is what happened in the circumstances of the race in question.

Jockey McGillivray was charged under Rule 143(b). That paragraph identifies that a jockey may be penalised in circumstances where no other alternative is identified. In other words, the penalty that is to be imposed on a jockey is not subject to a strict liability rule other than that he shall be afforded half a kilogram for the bridle, and he may be penalised if he fails to

satisfy the stewards on the day in question that there were not reasons why his correct weight was not properly identified.

We have read the transcript and we have listened to the evidence provided by Mr McGillivray and by his master, and we have also read what Mr Johnson, the trainer of the horse in question, had to identify and provide.

The issue is, in the opinion of this board, not whether there was .08 discrepancy. The fact of the matter is that there was a .58 of a kilogram discrepancy and that is an amount that is beyond the capacity of this board to identify that it should interfere with any penalty imposed of a nature which we consider is already a lenient penalty.

We say that because, in the view of this board, more likely than not penalties imposed for similar offences would attract four weeks or more penalty. On this occasion the penalty imposed on Mr McGillivray was a penalty of two weeks.

In the circumstances, the board dismisses the appeal in respect to the penalty.

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](http://www.qcat.qld.gov.au)