

Appeal decision

Hearing Date: 17 May 2016

Decision Date: 17 May 2016

Code of racing: Thoroughbred

Appeal panel: Mr B. Miller (chair) and Mr P. James.

Appearances: Mr J.E. Murdoch appeared on behalf of jockey S. Bogenhuber.
Mr Rion Hitchener stipendiary steward, appeared on behalf of the stewards.

Decision being appealed: Suspension of licence to ride in races for a period of covered by
2 months – AR135(b).

Appeal result: Upheld.

Extract of proceedings – in the matter of the Moore Trailers Dalrello Stakes QTIS 2yo Plate over 1200 metres at Toowoomba on 16 April 2016: Jockey S. Bogenhuber

THE CHAIRMAN: Skye Bogenhuber was the jockey riding Happy Event in a feature race at the Weetwood meeting in Toowoomba, a race meeting that has been given status of a metropolitan meeting by the TAB and corporate bookmakers, and through the course of the event it became apparent to the stewards that her performance aboard the horse Happy Event was less than satisfactory.

The issues are fairly obvious. There are charges levelled against her on the 2 events, one occurring at the 800 metres and the second at the 900-metre mark, both of which the stewards believed raised the inference that the way in which she manoeuvred her mount and the steps that she took offended the rule in question, namely 135 of the Australian Rules of Racing.

This panel has on many occasions considered in its various forms interpretations of that rule. The ride by Skye Bogenhuber, was, as Mr Hitchener said, unsatisfactory. She did miss the start. She was then compelled, in her opinion, to hunt the horse forward, which she did, and did so under the direct instructions of her trainer, John Zielke.

At the start of the race, or before the race started, should I say, a tongue-tie which had been affixed to the horse had been lost. Whether that had any effect on the horse's

performance is not for this Board to determine. The trainer indicated in his evidence that he could see the horse's tongue flapping at certain points. His eyes are better than mine. I couldn't pick that out on any of the views I took of the particular film. But, that of itself, does not bring excuse. The question is whether or not Skye Bogenhuber offended against the rule.

The rule has been considered on a number of occasions by people far more experienced than this Board, although in the matter of Browne - with which the parties here would have been familiar - Jockey Browne was charged under the same rule and suffered a suspension of his licence for a period of 6 weeks. Justice Carter, as he then was, and myself and Mr James were members of that panel, and we had exactly the same tasks as did Tom Hughes QC in the matter of Chris Munce, and the view enunciated by Mr Hughes is no less onerous than that what we face, and, as he said, "The task of administering the rule is not always easy." That, in my opinion, is an understatement. One must keep clearly in mind that in its true interpretation it is not designed to punish a jockey unless on the whole of that evidence indicates to the Tribunal – and in this case the Tribunal is this Board - it considered the charge under the rule and is comfortably satisfied that the person charged was guilty of conduct.

That conduct was enunciated further by Justice Carter in the decision of Browne, when his comment was that the conduct had to be culpable, which brings to mind the question of intent within the jockey's mind: what did she want to do, what did she mean to do, and was it a purposeful act in failing to give that horse every possible chance to win or to obtain the best possible place.

We have viewed the film on a number of occasions. We believe that the stewards were certainly right in questioning the issues that were brought to their attention by the performance of the horse. We are not however convinced the conduct of the jockey was subject to sufficient compliance with the terms as enunciated by both Justice Carter and Mr Hughes.

In our opinion, the appeal should be allowed and the penalty should be dismissed.

Further right of appeal information: The Appellant and the Steward may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **28 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