

DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: LUCAS CAMILLERI
APPLICATION NO: A30/08/587
PANEL: MR P HOGAN (PRESIDING MEMBER)
DATE OF HEARING: 28 JANUARY 2003
DATE OF DETERMINATION: 28 JANUARY 2003

IN THE MATTER OF an appeal by Lucas Camilleri against the determination made by the Stewards of the Western Australian Turf Club on 30 December 2002 imposing 6 weeks suspension for breach of Rule 135(b) of the Australian Rules of Racing.

Mr A Matthews was granted leave to appear for the Appellant.

Mr J A Zucal appeared for the Stewards of the Western Australian Turf Club.

This is an appeal against both conviction and penalty.

Following the running of Race 2 over 1800 metres at Ascot Racecourse on 28 December 2002, the Stewards opened an inquiry into the running and riding of HONAMI which was ridden by Apprentice Camilleri. HONAMI started at odds of 11/2 and finished 14.5 lengths from the winner in ninth place. After brief submissions the inquiry was adjourned to 30 December 2002.

Called to the resumption of the inquiry were:

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| Apprentice L Camilleri | Rider of HONAMI |
| J Price | Host Trainer (Master) of Apprentice Camilleri |
| C Webster | Trainer of HONAMI |
| Jason Brown | Rider of KINGSTON BLAZE |

After hearing evidence given at the inquiry the Chairman of Stewards announced the charge as follows:

"At this stage of the Inquiry the Stewards have decided to charge you under Australian Rule of Racing 135 and I'll read that rule to you Section (a) states

'every horse shall be run on its merits; (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 obtain the best possible place in the field and section (c) any person in

the opinion of the Stewards who has breached or was a party to breaching, any portion of this rule may be punished, and the horse concerned may be disqualified'.

Apprentice Camilleri you're charged under section (b) of this rule for failing to take all reasonable and permissible measures throughout Race Two The Connoisseur Super Premium Ice Cream 1800m run at Ascot Racecourse on Saturday the 28th of December, 2002 to ensure HONAMI was given full opportunity to win or obtain the best possible place in the field. The particulars of the charge being that passing the 1100m you've allowed HONAMI to race forward on the outside of KINGSTON BLAZE when it was reasonable and permissible for you to steady and race behind KINGSTON BLAZE. By doing this you've failed to ensure that HONAMI was given full opportunity to win or obtain the best possible place in the field. Apprentice Camilleri do you understand the nature of the charge?"

The Appellant pleaded not guilty. After hearing further extensive evidence the Stewards convicted Apprentice Camilleri of the charge and announced their findings in these terms:

"Stewards have considered the charge and all the evidence placed before us. We are of the opinion that it was reasonable and permissible for you as the rider of HONAMI to steady HONAMI back behind KINGSTON BLAZE passing the 1100m. By continuing to race outside KINGSTON BLAZE given the fast pace of the race in our opinion has been detrimental to the chances of HONAMI. You've stated throughout this Inquiry that you were conscious of the racing pattern of KINGSTON BLAZE, however in our opinion that does not permit you to ride your mount in a manner detrimental to your mount's chances. We believe this to be a significant error of judgement, one which is outside the acceptable standards of riding. You are the state's leading apprentice and an extremely capable rider. After due consideration we find you guilty as charged. Now Apprentice Camilleri do you wish to address us on penalty or Mr Price?"

After brief submissions as to sentence the Chairman announced the penalty as follows:

"Apprentice Camilleri and Mr Price the Stewards have considered all that you have placed before us in relation to penalty. The Stewards see a breach of this rule as a serious matter. We have considered your record in relation to prior charges under this rule. It shows on the 6th April 2001 you were suspended for a period of one month. Also have taken into account that HONAMI in Race Two on Saturday was a favoured runner and as such carried significant amount of public money. Also you are an Apprentice albeit nearly out of your time but you are an Apprentice. We have taken into the account the circumstances of this case. We believe a penalty of suspension from riding in races for a period of six weeks to be appropriate from midnight the 2nd of January, commencing the 2nd of January, 2003. You have the right of appeal against this decision if you so desire. Mr Camilleri you'd be aware of your appeal rights."

On 2 January 2003 the Appellant lodged a Notice of Appeal and sought a stay of proceedings. The Tribunal Chairperson, Mr Mossenson granted the Appellant a stay of proceedings until midnight on Tuesday, 14 January 2003 or as otherwise ordered. The Chairperson extended the stay until midnight on Tuesday, 28 January 2003 or as otherwise ordered. On 28 January 2003, I heard the appeals against both conviction and penalty. The appeals were dismissed. These are my reasons for dismissing the appeals.

CONVICTION

HONAMI was described as a "wind up" horse. The description was given by the trainer, Mr Webster, and agreed with by Apprentice Camilleri (T4). No specific riding instructions were given, but the clear understanding between Mr Camilleri and Mr Webster was that the horse had to be out and moving by the 700m (T2 and T7). What happened in fact was that the favourite, KINGSTON BLAZE, led and HONAMI went with it. Both horses raced away some lengths, with no other horses around them (T7). About the 650m or leaving the 700m HONAMI commenced to tire markedly and dropped back through the field (T5). All of this was not disputed by Mr Camilleri.

Videos were shown of some of HONAMI's previous races, namely 24 August 2002, 14 December 2002, 19 October 2002, and 5 October 2002.

The difference between the Stewards and Mr Camilleri was in how HONAMI should have been ridden. The Stewards view was put, for example at T7:

"...wouldn't it have been reasonable for you just to come back on HONAMI and take a position behind KINGSTON BLAZE and then at the 700m pressure KINGSTON BLAZE. As it is now just looking at that film HONAMI really is just raced so competitively throughout to the 600m that, that's one of the reasons why I would say it has tired."

Mr Camilleri had a number of reasons for riding HONAMI in the way that he did.

- (1) He was aware that KINGSTON BLAZE puts a few lengths on the field and they haven't been able to run him down. He didn't want to give the horse a soft time in front (T2 and T3). He did not place too much emphasis on KINGSTON BLAZE to the detriment of the chances of his horse (T9).
- (2) It was paramount to stay in touch with KINGSTON BLAZE (T6).
- (3) Jockey Jason Brown on KINGSTON BLAZE dictated the pace. He only sat at the girth of KINGSTON BLAZE (T6). Sitting back at the girth doesn't fire up either horse (T7).
- (4) If the race had been run too fast, KINGSTON BLAZE should have tired as well (T8). In fact KINGSTON BLAZE batted on to run third (T8).

Mr Camilleri gained some support from Mr Webster. He said that Mr Camilleri did tell him in the mounting yard that it was his intention to try to head KINGSTON BLAZE, so that KINGSTON BLAZE would be beaten (T14). The implication of that evidence, taken with Mr Camilleri's evidence, was that Mr Camilleri's riding tactics were properly thought out and researched, but simply did not prove to be correct in the end result. Similar support came from Mr Price, host trainer (master) of Apprentice Camilleri (T16).

Despite his reasons advanced for riding in the manner that he did, Mr Camilleri did admit to an error. He said that he probably made an error in judgement in the pace that HONAMI and KINGSTON BLAZE were going at the relevant time (T12). He went on to qualify that admission by pointing out that this was the first time that HONAMI had raced against KINGSTON BLAZE. In effect, Mr Camilleri maintained that his reasons for keeping at the girth of KINGSTON BLAZE remained valid. Mr Webster also conceded that Apprentice Camilleri had possibly made an error of judgement (T46).

Jockey Jason Brown also gave evidence. He said that KINGSTON BLAZE was hearing HONAMI there, and HONAMI was making KINGSTON BLAZE race (T55). He called to Apprentice Camilleri down the back "what are you doing, how hard are we going" (T57). He was embarrassed to watch the video of the race.

In my opinion, the Stewards heard all the evidence which was relevant to the charge. It is difficult to see that they left anything out of their consideration. It was submitted on the hearing of the appeal that as HONAMI was not checked by a vet at the conclusion of the race, it could not be excluded that something was amiss which had led to it finishing so poorly. It was accepted by the Stewards at the hearing of the appeal that attempts were made to have HONAMI checked, but by the time that was sought the horse had left the track. No doubt in order to explore that possibility as far as possible, the Stewards had asked Mr Webster at the resumption of the inquiry on the Monday 30 December whether the horse had pulled up well. Mr Webster confirmed that it had (T8). This fact, together with the fact that the horse along with all others was subjected to the visual inspection by the veterinary Steward on returning to weigh in, and the other evidence of the manner of the riding, leads me to conclude that there was no relevant evidence that the horse had something amiss.

The proper test to convict for an offence under ARR135(b) was discussed in the case of SJ Miller (Appeal 413). In that case, the Chairperson of the Tribunal said at page 11:

“Even although both Mr Justice Perrignon and Judge Goran in those appeals were dealing with the equivalent provisions in the trotting rules their pronouncements are directly on point and assist with the interpretation and application of ARR135. This Rule of Racing begins with the brief statement which in effect requires that all horses be raced according to their just desserts. The second part of the Rule obliges all jockeys to employ all suitable actions that are both ‘reasonable’ and at the same time ‘permissible’. This obligation applies to all stages of a race. The underlying purpose is to guarantee that every mount being ridden in a race will be given ‘full opportunity either to win’ or to gain ‘the best possible place’ in the race. By referring to ‘full opportunity’ it is clear that the Rule requires jockeys to give their mounts complete and uninhibited prospects but subject to their actions remaining within the bounds of what is considered appropriate and is otherwise sanctioned by the rules.

The third part of the Rule gives the Stewards a discretion to punish someone should they form the opinion that the Rule has been breached. As Mr Davies QC argues this opinion is very hard to dislodge. The Rule having been so framed in effect results in the duly appointed and experienced racing experts, namely the Stewards, having to come to the relevant opinion, not the jockey, the trainer, the owner or this Tribunal.”

I am satisfied from the evidence that the Stewards action in convicting the Appellant was proper. So far as the ground of appeal is framed, it is that the conviction was against the weight of the evidence. There was clearly sufficient evidence for the Stewards to convict, and there is nothing else which would lead me to find that they were in error. All the relevant evidence was considered, and there is nothing to suggest that the Stewards applied the test of conviction wrongly. This was a case in which the trainer Mr Webster, the host trainer (master) Mr Price, the rider of KINGSTON BLAZE, and the Appellant himself all at some stage expressed disquiet about the way in which HONAMI was ridden. Although those persons are not the ones ultimately responsible for forming the opinion on conviction or otherwise, they all had a part to play in the various circumstances which together went to make up the running of the race. The Appellant's part was to choose to ride the race in the way that he did, and that manner of riding fell short of what was considered appropriate by the rules.

PENALTY

The Appellant was suspended from riding for a period of 6 weeks. It was submitted that this penalty was too severe, particularly for the reason that the culpable riding in this case amounted to no more than an error of judgement. In my opinion, this is not an arguable ground of appeal. The conviction itself is one for what amounted to an error of judgement. Nothing more was alleged or proved against the Appellant. Once that is realised, the only other questions are whether the Stewards failed to take into account some relevant circumstance, or whether the penalty was so far outside the range as to demonstrate error. As to mitigating factors, the Stewards heard from Mr Camilleri, and fully appreciated his previous record. Penalties imposed in previous case for a breach of this rule range between 1 and 3 months. The Appellant's penalty was squarely within that range.

CONCLUSION

For the above reasons, the appeals against conviction and penalty were dismissed.



PATRICK HOGAN, PRESIDING MEMBER