

REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

<u>APPELLANT:</u>	DANIEL JURGEN STAECK
<u>APPLICATION NO:</u>	A30/08/612
<u>PANEL:</u>	MR P HOGAN (PRESIDING MEMBER)
<u>DATE OF HEARING:</u>	15 APRIL 2004
<u>DATE OF DETERMINATION:</u>	15 APRIL 2004

IN THE MATTER OF an appeal by Daniel Jurgen Staeck against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 29 March 2004 imposing 6 weeks suspension for breach of Rule 135(b) of the Australian Rules of Racing.

Mr L P Luciani was granted leave to appear for the appellant.

Mr B J Lewis appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

Background

Following the running of Race 1 at Ascot on Saturday, 27 March 2004 the Stewards opened an inquiry into the riding tactics adopted by Jockey Staeck, the rider of SIESTA BAY. That horse, the \$2.80 favourite, finished second and was beaten by a length.

Called to the inquiry were Jockey Staeck and Mr Fred Kersley, the trainer of SIESTA BAY.

The Acting Chairman of Stewards commenced the inquiry by stating:

'Mr Staeck watching the race I just had some concerns with your riding probably from about the 800m onwards in that you appeared to have an opportunity to improve your mount, probably to the outside of HALCYON CHIEF and you appeared to stay in that position and eventually got covered by the winner of the

race MAJOR IMPACT at about the 450m. But just watching the race live that was my initial concern in that you had an opportunity to move, you didn't move, you stayed where you were, your mount was then held up probably between the 500m until about around the 250m mark. But I'd like to hear your explanation as to why you didn't move your horse earlier and put your horse into the race, say from the 700 metres. You might like to tell us your instructions from Mr Kersley in that.'

After hearing evidence from Jockey Staeck and Trainer Kersley, the inquiry was adjourned.

At the resumption of the inquiry on 29 March 2004, further evidence was heard. The Chairman of the inquiry then charged Mr Staeck with a breach of Rule 135(b) of the Australian Rules of Racing. That Rule states:

- "AR.135.** (a) *Every horse shall 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 to obtain the best possible place in the field.*
- (c) *Any person who in the opinion of the Stewards has breached, or was a party to breaching, any portion of this Rule may be punished, and the horse concerned may be disqualified."*

The specifics of the charge were:

"Alright you're charged under that rule, that you as the rider of SIESTA BAY failed to take all reasonable and permissible measures throughout the race to ensure that SIESTA BAY was given full opportunity to win Race One The S.G.S. Australia at Ascot Racecourse on Saturday 27th March, 2004. The specifics of the charge are that approaching the 600m you failed to move SIESTA BAY out behind HALCYON CHIEF (S. McGruddy) in order to give that gelding the opportunity to improve to the outside of HALCYON CHIEF. Do you understand what you've been charged with Mr Staeck?"

Jockey Staeck pleaded not guilty. After further submissions from the appellant the Chairman announced the Stewards' findings as follows:

"Mr Staeck you've put forward to us that SIESTA BAY was an unknown quantity over 1800m, however it had performed in an credible manner being beaten only 3 and a quarter lengths in a listed race over the same distance the Saturday before. Given the composition of the race in question SIESTA BAY was meeting a vastly inferior field and started favourite in this particular race. Not moving your mount out approaching the 600m denied SIESTA BAY the full opportunity to win. By moving your mount out behind HALCYON CHIEF would have clearly demonstrated that SIESTA BAY was then placed in a position where it could be fully tested in an attempt to win the race. It is our opinion that approaching the 600m HALCYON CHIEF was not giving any indication that it was unable to hold its position. Given this we believe that your decision to stay to the inside of HALCYON CHIEF was completely unreasonable. For all those reasons Mr Staeck we find you guilty of the charge and we're now left to look at a penalty. Do you want to say anything to us on penalty?"

After submissions from Mr Staeck the penalty was announced in these terms:

"Mr Staeck a number of things we've had a look at. Previous penalties for this type of offence would range from one month suspension up to three months suspension. We see this as a serious offence. There are a large amount of monies, public monies

invested on metropolitan races. You are a leading rider and expected to ride with a high level of initiative and judgement. We note that you do have a prior record under the same rule. In June 02 that was with DEXIAN. The effects of a suspension are considerable in that you will miss the Karrakatta on April 10 and the Derby on April 12. If this was not the case the Stewards would have imposed a two months suspension. Local Rule 84C empowers the Stewards to defer a penalty for up to five days, so acting under the provisions of that rule the Stewards believe that you should start your suspension which is one of a period of six weeks from this coming Saturday the 3rd of April. That allows you to ride in the Oaks and it's a period of six weeks from that day so that expires midnight the 15th May, 2004. Alright so that's our decision Mr Staeck you may appeal."

Jockey Staeck rode in meetings at Ascot on Wednesday, 31 March and Saturday, 3 April 2004. On 5 April 2004 Mr Staeck lodged Notice of Appeal and sought a stay of proceedings. The Chairperson refused the application for a stay of proceedings but agreed to hear the appeal on Thursday, 8 April 2004. Mr Staeck advised the Registrar that he was not ready to proceed with the appeal on that date.

As a consequence, he was not able to ride at the meetings held at Ascot on Saturday, 10 April and Monday, 12 April 2004. The major race at each of those meetings was the Group II Healthway-Karrakatta Plate (\$300,000) and the Group I W.A.T.C. Derby (\$300,000) respectively.

The ground of appeal is:

"I wish to appeal the conviction believing that I was wrongly charged and convicted."

The Appeal

Mr Luciani, on behalf of the appellant, presented his arguments in a clear and concise manner. He produced videos showing all the runs of SIESTA BAY in this campaign, including a race on 3 April 2004 which can have no bearing on this appeal.

He asserted that the reason Mr Staeck did not to bring his mount around HALCYON CHIEF approaching the 600m was based entirely on Mr Staeck's reading of the race at that time. Any decision to alter position in a race is always a judgement call and must be made safely in a very limited time span.

Mr Lewis in his submissions to the Tribunal today reiterated that the Stewards maintained the opinion that Jockey Staeck had breached the Rule by not moving his mount out approaching the 600m. In their opinion, the result was that both SIESTA BAY and MAJOR IMPACT were not fully tested.

SIESTA BAY is a 3-year-old gelding that had three wins as a 2-year-old, including two listed races. It commenced its 3-year-old campaign with a trial on 16 February 2004 when ridden by the State's leading Jockey, Paul Harvey. It beat only one runner home in that trial. Mr Luciani informed the Tribunal that Jockey Harvey declined to ride SIESTA BAY following that trial. It had raced three times at Ascot this campaign prior to the race in question. The appellant rode the gelding in all those races. The details of those performances are set out below.

Date	Distance/Weight	Class	Result
21.02.2004	1200m (52kg)	Open Sprint	14 th of 16 runners
06.03.2004	1600m (56kg)	3YO Listed	2 nd of 13 runners
20.03.2004	1800m (56kg)	3YO Listed	7 th of 14 runners

The race the subject of this appeal was a Special Conditions Handicap for 3YO and Upwards over 1800m at Ascot.

The Stewards' inquiry focused on the riding tactics adopted by the appellant approaching the 600m. In essence, the Stewards found that Jockey Staeck should have eased his mount around HALCYON CHIEF at that point, thus allowing his mount to have a clear run when straightening for the run home.

That of course did not happen. HALCYON CHIEF did not tire until after entering the home straight. Only then was Jockey Staeck able to secure a clear run for SIESTA BAY, but it was too late. SIESTA BAY proved no match for the eventual winner, MAJOR IMPACT.

Mr Luciani referred me to many passages in the transcript some of which are repeated here.

STAECK *I was racing to the inside of him from the 600m, I was still at his heels and travelling strong and I couldn't really restrain back to come round him and he, he was under the whip as it was, under a lot of pressure. I (inaudible) saving ground and rather than restrain and go back around him, he, he looked like dropping off. (T2)*

CHAIRMAN *All right how far up inside of him were you? (T3)*

STAECK *I mean one stage I, I was three quarters of a length but I mean all the time I was, I was right on its heels, I mean I was racing fiercely for a long time, I was on his heels for the majority of the race. (T3)*

KERSLEY *The reason the horse was in the race was because I thought he was disappointing last week and it was a fall back position to test him again at 1800m. He's got no form better than a mile.(T4)*

The comment on the race is this that you know I would've thought that if Daniel had the opportunity to ride the race again he might have filled the four wide line earlier, before Harvey was able to get round him. But you would do that with the benefit of hindsight and unfortunately in races you don't get that luxury. I think when he found himself in traffic there was little that he could've done other than what he did do. (T4)

STAECK *Mr Kersley said hindsight is a fantastic thing to look back at it now. At the time LEMONADE DASH was travelling very well, and HALCYON CHIEF was going very ordinary. (T7)*

CHAIRMAN *But you know you would've known that HALCYON CHIEF really had no form going into the race, probably being stuck inside it was always going to be ... an awkward spot. (T7)*

KERSLEY *My honest opinion is Danny probably tried to ride it too good. And as far as I take any criticism of the ride is that he just tried to ride it too good and if you'd, it'd worked out you're a clever rider, and if it doesn't work out now you've got to be wrong. (T9)*

- CHAIRMAN** *Even now you've got a chance just pass the 600m. Harvey is just starting to improve to your hindquarter now at about 500m, you're still there. (T12)*
- KERSLEY** *The other thing you talk about Harvey winning the race but he is riding a Class 1 horse that's won at Mt Barker and you've got an Open Class horse leading the field. I think if I was riding it I would be pretty worried about the leader and not so worried about the Class 1 horse that's somewhere behind you. (T12)*
- STAECK** *I think, I think the better horse won on the day. I think it was able to accelerate past, well past SIESTA BAY and beat it convincingly. (T33)*

Rule 135(b) is couched in the term "in the opinion of the Stewards". As this Tribunal has said on many occasions, the task of an appellant in proceedings of this nature is onerous. However, it has also been said that the task is not "mission impossible". For this Tribunal to uphold an appeal against a rule couched in those terms, it has to be satisfied that the opinion formed by the Stewards was unreasonable in all the circumstances.

Reasons

I have had the benefit of the submissions from Mr Luciani and Mr Lewis. I have also perused the transcript of the Stewards' inquiry and viewed the video replays of the race in question, and the previous runs of SIESTA BAY this campaign.

There is little doubt from perusing the video replay of the race in question that Jockey Staeck did have the opportunity to move SIESTA BAY out approaching the 600m. His decision not to do so was based on several facts. These can be summarised as follows:

- HALYCON CHIEF, a maiden runner, was having its 15th race start. Jockey Staeck expected that it would tire well before the home turn.
- SIESTA BAY would then be in a position to move up and around LEMONADE DASH.
- PLEA BARGAIN, the best credentialed runner in the race was leading and had an "easy" run throughout.
- The ground saved by racing one off the fence throughout would ensure a strong finishing run.
- MAJOR IMPACT, the eventual winner, was behind Mr Staeck's mount at all material times.
- LEMONADE DASH had been ridden by Jockey Staeck at its previous start. It was expected to go forward (according to Mr Luciani).

Jockeys are very often than faced with having to make very quick decisions in races, sometimes within seconds or less. In this particular race, Jockey Staeck's tactics were based primarily on the above factors, but the actual decision to not move out was made in a moment. In that moment, Jockey Paul Harvey took the position that SIESTA BAY might have taken.

The fact that HALCYON CHIEF did not tire as expected meant that SIESTA BAY was held up for a run until into the straight. It is acknowledged that the short straight at Ascot generally requires horses to be on the pace at the home turn. In this race, Jockey Harvey riding the

winner, MAJOR IMPACT, was able to keep HALCYON CHIEF tight on the home turn, which had an impact on SIESTA BAY.

The strong finish of MAJOR IMPACT casts considerable doubt on the Stewards' decision. Tactics played an important part in this race and Mr Harvey was clearly the master tactician. The finding by the Stewards that approaching the 600m HALCYON CHIEF was not giving any indication that it was unable to hold its position does not detract from the belief Mr Staeck had at that time in the race. That belief was a reasonable one.

The tactics adopted by Mr Staeck were based on his assessment of all forward runners at the time of the race approaching the 600m. They were reasonable in all the circumstances and could well have resulted in SIESTA BAY winning the race.

The finding by the Stewards that the decision of Mr Staeck approaching the 600m was completely unreasonable is not a finding I could sustain on the evidence and what has been put before me today. In my view, the Stewards' decision to convict was unreasonable.

For the above reasons, the appeal is upheld and the conviction is quashed.



PATRICK HOGAN, PRESIDING MEMBER

