

REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: DION LUCIANI
APPLICATION NO: A30/08/626
PANEL: MR D MOSSENSON (CHAIRPERSON)
DATE OF HEARING: 19 NOVEMBER 2004
DATE OF DETERMINATION: 19 NOVEMBER 2004

IN THE MATTER OF an appeal by Dion Luciani against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 15 November 2004 imposing 12 days suspension for breach of Rule 137(a) of the Australian Rules of Racing.

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

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

After having heard this appeal on 19 November 2004 I confirmed the conviction but reduced the penalty from 12 days suspension to 6 days suspension. I now publish my reasons.

This is an appeal arising out of a Stewards' inquiry which took place following the running of Race 8 at Ascot Racecourse on 13 November 2004. The inquiry was convened to investigate the reason for CROWN PROSECUTOR, ridden by Paul Harvey, being bumped and pressured to the running rail near the 1000 metre mark when MAJOR DEAL ridden by Dion Luciani, shifted inwards in that race. The two riders were called to the inquiry. They both gave evidence in the course of the proceedings on 13 November 2004 and

subsequently on 15 November. In the case of Mr Harvey, his evidence on the latter occasion was by means of conference telephone. No Steward gave evidence of observations of the incident whilst actually viewing the race live. Films of the race were shown during the course of the inquiry.

After hearing from the riders the Chairman of the inquiry announced that the Stewards believed Mr Luciani should be charged with careless riding under Australian Rule of Racing 137(a). Rule 137(a) states:

'Any rider may be punished if, in the opinion of the Stewards,

(a) He is guilty of careless, improper, incompetent or foul riding.'

The charge was specified to be careless riding. The specifics of the charge were:

'The careless riding being that when riding MAJOR DEAL you allowed your mount to shift inwards and bump CROWN PROSECUTOR ridden by Paul Harvey which was pressured inwards near the 1000m in Race 8 The Wynns Coonawarra Estate, a welter over 1600m at Ascot Racecourse on Saturday, November 13.'

Mr Luciani entered a plea not guilty. Further evidence was received by the Stewards again in the form of questions and propositions from the riders and also Mr Luciani Snr. The Stewards ultimately concluded that the charge had been sustained in these terms:

'... Apprentice Luciani, the Stewards have again considered the charge and we also considered again what was put up by your father and Paul Harvey and yourself after the laying of the charge. Stewards see it this way. We believe that CROWN PROSECUTOR had established its racing position behind WHODIDIT prior to the 1000m and Harvey had to shift his mount inwards to relieve that pressure, in doing this Mr Harvey had to forego his preferred racing position. We also say that you were obliged to maintain your three-wide position or stride forward rather than shift into a position was (sic) already taken by CROWN PROSECUTOR. For those reasons, Apprentice Luciani, we do find you guilty.'

The Stewards then dealt with penalty. They entertained an argument regarding the wording of the Rule in question and then concluded that the appropriate penalty was a 14 day suspension. However, in view of the good record, the suspension was reduced to 12 days.

Mr Luciani appealed against both the conviction and the penalty. The grounds of appeal are:

'The decision of the Steward to charge rider with careless riding was not substantiated by the evidence. No penalty should have been imposed as no offence took place.'

In the course of the submissions on behalf of the appellant, I was told in essence the following:

- There was too much weight given by the Stewards to the aspect of the bumping, when in fact, minimal pressure was applied;
- That the riding was not careless;

- That no horse was restrained; and
- That no horse was checked.

In support of those propositions Mr Luciani Snr asserted that the lack of interference was highlighted by the fact that no other riders were called to the inquiry. Both riders in question were targeting the same position. Further, the way Mr Luciani conducted himself in the race amounted to an act of good riding being no more than good tactics and a safe manoeuvre.

On the basis of what was displayed on the film, the evidence of the two jockeys, the lack of checking and the fact that there was no interference, I was told that the charge was unsustainable. It was further submitted that:

- racing is a contest;
- tactics form a major part;
- all riders are expected to give their mounts the best possible chance in the race; and
- racing should not be sanitised.

By way of conclusion, I was told this was a carefully calculated, tactical and safe manoeuvre on the part of a 16 year old apprentice against a past master at the same type of riding. Various passages in the transcript were highlighted including acknowledgements by Mr Harvey in relation to the effect of the riding tactics employed. In the course of giving his evidence, Mr Harvey stated:

'Probably being in Dion's position I would have done the same thing I would expect.'

and

'It's just tactics and riding as there wasn't a rider up inside me so, yeah, obviously he give his horse every chance. It's what he's had to do, I suppose.'

By way of response, Mr Lewis argued that an essential element of racing is the right of jockeys to maintain their racing position but in this particular case, the action was not tactical, but an overstepping of the boundary and was therefore careless. The principles of proper race riding had been abandoned and the Stewards, in their opinion, concluded that the quality of riding simply was not good enough and that this was not an acceptable tactic. It was drawn to my attention that in the course of giving his evidence at the Stewards' inquiry, the appellant had acknowledged that he *'over did it a bit'*. My attention was drawn to a couple of other decisions of this Tribunal dealing with these sorts of incidents. Mr Lewis argued that in fact the riding was *'crude, lacked skill and judgement, that it was not the skilful execution of a manoeuvre'* and that over the space of the 50 metres, which was the relevant distance during which time Mr Luciani's horse's head was turned inwards, amounted to justification for the Stewards reaching the conclusion which they did.

This Tribunal has on many occasions in times past had to consider the interpretation and the application of that provision to the facts and circumstances in relation to a wide variety of cases. As the Tribunal has clearly stated on previous occasions the only opinion that is

relevant for the purposes of the Rule is that of the Stewards and not the opinion of any other person or party, not the jockey, not other riders in the race, nor the person representing the appellant in the course of an appeal. In order for this Tribunal to overturn a decision of the Stewards in relation to this particular Rule and upset a conviction for this type of offence, it must be demonstrated to the reasonable satisfaction of the Tribunal that, armed with all the relevant facts and information, no reasonable body of Stewards could have reached the decision and formed the opinion which the Stewards in question have of the particular racing incident.

I am not persuaded in all of the circumstances of this matter that it has been demonstrated that these Stewards were in error in forming the opinion which they did in relation to this careless riding incident. In other words, I was not persuaded that this was an appropriate case to interfere with that particular exercise of the Stewards' discretion. After all, it is the Stewards who are the experts in relation to the conduct of races and the tactics of riders in terms of the quality of those rides.

It was for those reasons I dismissed the appeal in relation to the conviction.

As to penalty, that is another matter. It was pointed out in the course of this appeal that simply because the Stewards have reached an opinion as to the lack of quality of a ride, there was no automatic obligation on the Stewards to punish. Indeed, I was told that despite that the Rules do not anywhere state this as an express power, on some occasions Stewards have reprimanded riders for the riding tactics employed in races.

I was not persuaded that in the circumstances of this particular matter that the penalty which the Stewards imposed of 12 days suspension was in fact the appropriate penalty to apply to this particular riding incident. In this respect I concluded the Stewards fell into error. Taking into account the arguments that were raised on behalf of the appellant in terms of the facts and circumstances of what actually occurred in the race, I was not moved to reprimand, as I was urged to do on behalf of the appellant, but rather concluded it was appropriate to impose a term of suspension. The penalty in all the circumstances of this matter was a suspension for a period of 6 days.

I therefore upheld the appeal in regard to the penalty and substituted a penalty of 6 days suspension commencing at midnight 20 November 2004.



DAN MOSSENSON, CHAIRPERSON

