



REASONS FOR DETERMINATION OF

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: WILLIAM ANDREW PIKE

APPLICATION NO: A30/08/679

PANEL: MR D MOSSENSON (CHAIRPERSON)

DATE OF HEARING: 6 DECEMBER 2007

DATE OF DETERMINATION: 6 DECEMBER 2007

IN THE MATTER OF an appeal by William Andrew Pike against the determinations made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 16 November 2007, to impose a six weeks and a two month suspension to be served concurrently, for breaches of Rule 137(a) of the Australian Rules of Thoroughbred Racing.

Mr D. Sheales, instructed by Mark Andrews Legal Pty Ltd, appeared for the appellant.

Mr R.J Davies QC appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

This matter came on before me on 6 December 2007. After hearing the argument I dismissed the appeal. I now publish my reasons.

BACKGROUND

Mr William Andrew Pike, rider of DANE SMILE, appealed against both the convictions and penalties arising out of two incidents which occurred in Race 1, at Ascot on 10 November

2007. Following the running of the race the Stewards held an inquiry into the incidents and called in the two jockeys involved. Mr B.W Lewis, Chief Steward, chaired the Stewards' inquiry. At the outset Mr Lewis presented the following evidence to the inquiry:

'Mr Pike Mr Harvey we are inquiring into the race from about the 550m mark in which your mounts seem to race tightly and watching the race live Mr Pike from the main Stewards Tower, I observed your elbow it appeared to be raised in the vicinity of Clint Harvey's, would have been his right arm, and may have even made contact with client Harvey's arm, or body, that was on straightening and shortly after straightening it appeared to me that your arm, your left arm seems to be raised and pointed out towards Clint Harvey and you were racing quite tightly with him at that stage, that's what I saw on straightening.' (T1.6-2.1)

After hearing evidence from both Mr Pike and Mr Harvey and viewing films of the incidents from various angles, the Stewards adjourned the inquiry to 12 November 2007. At the resumption of the hearing the films of the race were replayed and considerable discussion ensued in relation to them. This led to the Stewards laying two charges of improper riding against Mr Pike for breaches of AR 137(a). That Rule states that:

"any rider may be punished if in the opinion of the Stewards he is guilty of careless, reckless, improper, incompetent or foul riding".

The first charge read:

'...when riding DANE SMILE between approximately the 550m and the 450m in an attempt to prevent Jockey C Harvey RICH AND WILD from shifting out and improving his position you did intentionally extend your left arm towards Jockey Harvey with your elbow being extended to within close proximity of that rider.' (T52.7-53.1)

The second charge read:

'...on and shortly after straightening you attempted to impede the progress of RICH AND WILD ridden by C Harvey from shifting out by intentionally extending and raising your left arm towards Jockey Harvey with your elbow making contact with that rider's right arm.' (T53.2)

Mr Pike pleaded not guilty to both charges. Further evidence was then presented after which Mr Pike was granted an adjournment to the following day to enable him to examine overnight a copy of the racing films which the Stewards provided to him. The matter proceeded briefly on 12 November 2007 and was then adjourned again, this time to 16 November 2007 to enable Mr Pike to obtain legal advice. In the interim Mr D Sheales, counsel for Mr Pike, wrote to the Stewards and sought leave to appear. Although the application was refused, leave was given for written submissions to be admitted. Further, Mr Pike sought and was granted permission to show films of a number of rides. At the conclusion of this whole fairly lengthy process, the Chairman of the inquiry in handing down the Stewards' decision, announced the outcome in these terms:

'Mr Pike the Stewards have each considered each of the two improper riding charges separately and because the charges and your defences to them are relatively similar, the following determinations of the Stewards

apart from point 8 are common to them both. Number one as DANE SMILE is a two year old it was examined for shin soreness by the Veterinarian's at Ascot on duty that day prior to the race and no abnormalities were detected. ... number 2 you stated that the reason for the DANE SMILE head being turned inwards in an exaggerated manner and for your left arm being extended and raised was due to the horse placing you in some difficulty as it is laying outwards which is symptomatic of it being shin sore in the race. Importantly this ... advice was not given to the Stewards by you following the race as required by the rules when you had ample time to do so. Also when called to the Stewards inquiry on the day of the race meeting your initial evidence made no mention of this aspect in your defence of the two charges. Trainer Mrs Kelly Grantham did advise Stewards by telephone that DANE SMILE was showing signs of shin soreness several hours after the race. Based on our observations of the manner in which it raced and it's competitive performance Stewards could not definitively determine that the horse was shin sore during the race. It's just as likely that the horse showed no affects of shin soreness in the race and that this condition could only be diagnosed only after it had cooled down some number of hours after the race. In any event simply because a horse is laying out doesn't then give you to use (sic) impermissible actions in some attempt to correct your mount or have it hold its line or racing position and try and prevent another rider from improving their position. Number 3 the turning inwards of your mounts head in the opinion of the panel is due to the pressure you applied to the near side rein to prevent RICH AND WILD from moving out. A crucial aspect of this matter is that the two sections of the race that you have been charged over correlate with Jockey Harvey's attempt to improve his position and you (sic) actions in raising and extending your left arm is a calculated and purposeful movement designed to exert and maintain pressure on RICH AND WILD and Jockey Harvey so as to prevent your mount from being shifted wider on the track. Point number 4. Again it is very significant to the Stewards that after you were able to hold RICH AND WILD at bay between the 550m and 450m marks approximately, your arm returns to a normal position and DANE SMILE head is no longer turned inwards or your arm extended until Jockey Harvey again attempts to secure a clear passage shortly before straightening. We believe Jockey Harvey's evidence vindicates these views as he has resolutely maintained that your actions were an attempt to stop him from improving his position. Point number 5, the Stewards do not accept that DANE SMILE was laying or hanging out outwards to the extent that would cause you, a senior and highly proficient rider, to ride in a style so unusual and contrasting with your normal manner of riding. DANE SMILE certainly raced tractably in the back straight as you were able to position it well and over the final 200m you rode it out very vigorously and it did not show any tendency to lay outwards or shift ground or race greenly and performed very competitively in finishing a close 4th at its first race start. Point 6 Jockey Harvey's evidence from the outset of this inquiry, when considered with the various camera angles of the two sections of the race and my own observations of the race it's vitally important to our determination Jockey Harvey has consistently maintained concern over your actions in the race which he felt were designed to stop him from

improving his position to your inside. Point 7 Stewards find no fault with Jockey Harvey's riding in the race. He did ride competitively but within the bounds of the rules. Race riding offers great rewards for those that are successful at it and as such it is competitive by nature. In our view you entirely overreacted to the circumstances that eventuated throughout the race and your riding overstepped the mark of what is acceptable. Point number 8. This point is relevant to the second charge, we believe that the contact to Jockey Harvey's arm on straightening was caused by yourself in ending and further lifting your arm in an aggressive attempt to hold RICH AND WILD in a pocket. We do not accept that Jockey Harvey himself caused you to lift your arm and find that the contact result for (sic) efforts to repel the outward movements from RICH AND WILD at this crucial time in the race. Point 9 The Stewards have considered the seven race replays where you've shown us and commented upon. Three of these were horses that you had ridden personally and they show that you have had cause to straighten your mounts and in doing so your riding action has been altered to varying degrees. We are of the view that these incidents do not bear sufficient similarity or give justification to your actions in the sections of the race as outlined in the charges. Point 10 in summary. We find that your actions in relation to both charges were aggressive and unwarranted and result out of malice and were completed with the intent of not wanting to relinquish your position or race wider on the track than desired. For all these reasons we find that you rode improperly during the two sections of the race as charged and consequently believe you are guilty of both charges Mr Pike.' (T114.3-117.5).

The Stewards then proceeded to address the question of the penalty. Both the racing carnival and Mr Pike's record were briefly considered. In dealing with penalty the Stewards findings were:

'...we had to consider each particular charge separately and the penalty that should be applied to each and there's a number of points again here Mr Pike that we wish to read to you.

Point A, or 1, improper riding is a serious offence of the rules of racing as it involves intent and can place the safety of other riders in jeopardy. Potentially it is extremely dangerous as serious incidents could arise. Given the inherently dangerous nature of race riding acts of improper riding can only serve to increase the likelihood of danger and all riders must give safety paramount importance. This matter involved two charges of improper riding and the first happening over a period of approximately 100m and the second about 50m and as such was not just one isolated act or a spontaneous action in the heat of the moment. Part B. We find that although we have described Mr Harvey's riding as competitive it was within the bounds of the rules and in no way mitigates your actions. You have stated that Jockey Harvey was riding out towards your mount and was trying to push you out, you both were racing tightly but there was no need in the opinion of the Stewards to use your left arm in the manner you did to hold your position. Consequently we do not believe your actions arose from any degree of provocation by Mr Harvey. We did have a look at the previous penalties Mr Pike and they do show that they range from periods

of about one month suspension riding in races up to three months. Those offences are ... at the lower end of the scale and have attracted the minimum penalty which is generally in the vicinity of one month and we believe that neither of these offences fit that category, due to their nature and their prolongement. Part D. We've taken into account your private record. Our records show that you've been riding for about five years, over five years and you have not breached this particular aspect of AR137(a). Point E. You were the state's leading rider 2006/2007 and are well established in the top bracket of riders in Western Australia. We do realise that any penalty that removes your right to ride in races will have a great financial impact. This is magnified at the current time as we are into the Perth Racing Carnival and feature races are due to be held over the next six weeks. Point F. This is in relation to the second charge, we do find that aggravating circumstances should be applied to this matter in regard and that it did occur some distance after the first which had already progressed over a considerable distance of about 100m and that your actions through this section of the race became more pronounced and initiated actual contact to Jockey Clint Harvey. It's our decision Mr Pike that in relation to the first charge that you be suspended for a period of six weeks, in relation to the second charge for the reasons stated a penalty of two months suspension from riding in races and we have decided to permit you to continue riding until midnight the 24th of November 2007 that allows you to take your rides tomorrow and through the week and also including Railway Stakes Day and we also say that these penalties are to be served concurrently, meaning that you serve six weeks within the two months so the end result from your point of view is a two month suspension from riding in races effective midnight 24th of November.' (T119.3-121.3).

THE GROUNDS OF APPEAL

Mr Pike appealed on the grounds that he was not guilty of either offence and the penalties in relation to both were excessive. As to the convictions, the amended grounds of appeal in summary allege error by the Stewards due to their:

- 1 Having relied on the evidence of Jockey Harvey as to the appellant's state of mind, and
- 2 Failing to find fault with Jockey Harvey's ride.

Regarding the appeal against the penalties, the appellant's amended grounds in summary allege errors in:

- 3 Finding Mr Pike's ride was not a spontaneous action in the heat of the moment.
- 4 Finding Mr Harvey's ride was within the bounds of the Rules and it did not mitigate Mr Pike's actions.
- 5 Categorising the conduct as not being at the lower end of the scale, and
- 6 Failing to reduce the penalties because of the acknowledged great financial impact of the periods of suspension.

THE ARGUMENT AS TO CONVICTION

In the amended grounds of appeal notice the alleged error in relation to Jockey Harvey's evidence (ground one) was couched in the following terms:

"...the Stewards erred in acting on the evidence of Jockey Harvey as to the state of mind of the Appellant at the time of the alleged incidents, the reliance on that evidence being held to be 'vitally important to our determination'."

This was supported in the written outline of argument with the proposition that:

"Error arises in the instant case ... because the Stewards relied on Jockey Harvey's opinion of the intentions/state of mind/mental state of the Appellant and found this opinion to be 'vitally important' to the determination of guilt. (T116.4) It is respectfully submitted that this reasoning process was not open to be undertaken."

Ground one was further supported by oral argument which was presented in conjunction with the playing of the race video. Mr Sheales made representations based on his evaluation of the respective riding tactics which had been employed by the two riders in question. Counsel submitted the video revealed the first charge was not open to the Stewards. Mr Harvey's riding tactics were closely scrutinised and criticised. Submissions were made of the respective rights of two competing riders in a situation where one enjoys the front position, as did Mr Pike, and the other is located immediately behind. In essence counsel submitted the Stewards wrongly attributed fault to Mr Pike when, as was claimed, it could be seen from the video that Mr Harvey in fact rode inappropriately and caused or contributed to the contact and to both incidents generally.

As to ground two it was submitted by Mr Sheales the film left no conclusion open other than Mr Pike attempted to hold his line or position at all times. According to counsel, a jockey is not required to "move out of the way" to enable a clear run for another and is entitled to "pocket" another horse. As the rider of the rear mount Mr Harvey was not permitted to push out and push the appellant wider.

In response Mr Davies QC submitted the appellant's arguments in relation to both grounds were misconceived. Senior Counsel argued a jockey simply cannot employ a forearm to hold in another rider, as occurred in this case, irrespective of where the horses are positioned. Emphasis was placed on the wording of the Rule which authorised Stewards to punish if it was their opinion that a rider had ridden improperly. It was submitted that without the Rule in question specifying 'in the opinion of the Stewards', the operation of the Rules dealing with the quality of riding would be untenable. Further, a decision must be shown to be totally unreasonable on the evidence, for the Tribunal to interfere with it. In this case the evidence to convict in respect of each offence was overwhelming. According to Mr Davies the Stewards had the benefit not only of their own observations of the incidents but also the clear and concise evidence which was given by the victim of the misconduct. It was argued the reasoning process employed by the Stewards was extremely good and the only findings open were improper riding in relation to the two separate incidents. It was said the Stewards were entitled to form the opinions which they did without Mr Harvey's evidence. Clearly the decisions were not just based on the evidence of the other jockey. The other jockey's evidence simply confirmed the conclusions reached by the Stewards.

REASONS FOR CONFIRMING THE CONVICTIONS

I was persuaded by Mr Davies' reasoning. I was satisfied the Stewards had thoroughly analysed the evidence in relation to both incidents. The Stewards had carefully and clearly enunciated in their reasons the matters which influenced them in reaching the conclusions to convict. These matters were clearly relevant and open to them on the evidence to be taken into account. No fault was demonstrated to have occurred in the reasoning process of the Stewards in relation to either offence. Clearly the decisions were not so unreasonable that it could be said the Stewards could not have reasonably reached them in the light of all of the evidence. On the contrary, the Stewards in my opinion were entirely justified in their decision making by the facts and evidence before them. It is true the Stewards had received some assistance in evaluating both incidents based on the assessment of the person who was on the receiving end. The Stewards quite properly took into account Mr Harvey's evidence with the other evidence and balanced it against the party whom they found to be the offender. I agree the Stewards were entitled to reach their opinion in relation to both incidents even without having the benefit of Mr Harvey's evidence. These were not simple cases of 'pocketing'. I was also satisfied that Mr Harvey did not inappropriately push out or in relation to both incidents otherwise ride outside the Rules.

I was satisfied the Stewards were entitled to reach their decisions to convict for improper riding based on a proper evaluation of what transpired and the true intent and purpose behind the appellant's raising of his elbow on each occasion. I could find no fault with the logic and approach employed by the Stewards in reaching their conclusions.

THE PENALTIES

As to the two findings the appellant's ride was not '*a spontaneous action in the heat of the moment*' (ground three) Mr Sheales argued, amongst other things, these conclusions were not reasonably open to be made and that such findings conflicted with earlier findings of the Stewards at T116.6 that the appellant had entirely overacted to the circumstances. I was not persuaded by this approach. Rather, I was satisfied the Stewards were entitled to reach the conclusions they did in relation to this aspect.

Ground four deals with error in the assessment of Mr Harvey's ride which it is claimed should have been treated as outside the Rules and therefore should have had a mitigating effect on Mr Pike's penalty. The finding in relation to Mr Pike's actions it was said was not reasonably open to be made. The video was again called in aid to support the argument that was advanced. Whilst, according to Mr Pike's counsel, the Stewards had wrongly found Mr Pike's motivation was to hold Mr Harvey in a pocket, the video showed Mr Harvey's action of pushing out under the neck of Mr Pike's horse whilst he was behind was within the Rules. I have already made my findings on this aspect clear. I was of the opinion there was no merit in this ground of appeal. Mr Harvey's ride, whilst assertive, was not inappropriate. That ride when properly considered could not in my opinion have had any influence on reducing the length of the two suspensions.

As to fifth ground being the failure to categorise the conduct as being at the lower end of the scale counsel referred me to two of Jockey Harvey's appeal decisions. The earlier one (Appeal 191), which was a case of deliberately taking a horse inwards to interfere with other horses and causing severe interference, attracted a low-range penalty of four weeks.

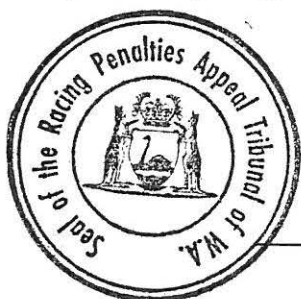
The other, (Appeal 496) concerned a similar elbow raising incident which attracted a one month penalty despite it being a third offence under the rule. It was also argued Mr Pike's actions did not give rise to any discernable risk of danger. Further it was claimed, Mr Pike was simply trying to hold his line in circumstances where the other rider was deliberately pushing his mount out. I was not persuaded by these arguments and could find no fault with the approach adopted by the Stewards. There was clear evidence before the Stewards to support their findings in regard to these aspects.

In relation to ground six alleging failure to reduce the penalty due to the financial impact it was acknowledged the Stewards had identified the range of penalties to be one to three months suspensions. Whilst the seriousness of the offence was not at the lower end of the scale the Stewards did not find it to be at the highest end. It was submitted it was relevant to consider the importance of the races at the time of the year, being the Summer Racing Carnival. As a consequence counsel submitted a reduction of the penalty by one third would have been appropriate (Appeals of Chapman (No 627) at p3 and Nikolic (RADB(VIC) 6.10.05 at p81 L20).

I was satisfied that the Stewards correctly assessed the length of each suspension in the light of all relevant circumstances and in the context of the range of penalties usually imposed for this type of offence. The first infraction continued for some distance ('.. between approximately 550m and 450m ...'). In regard to the second, contact was actually made with Mr Pike's right arm as a consequence of Mr Pike having moved out and extending and raising his left arm. I considered the penalties were not shown to be inappropriate due to the nature of Mr Pike's actions and the respective seriousness of each infraction. I came to that conclusion even after allowing for the importance of the racing calendar at that time of the year and adverse financial consequence to Mr Pike.

CONCLUSION

Overall I found the Stewards' reasoning and findings in relation to all aspects to be clear, cogent, compelling and correct.



Dan Mossenson

DAN MOSSENSON, CHAIRPERSON