

**REASONS FOR DETERMINATION OF MR D MOSSENSON
(CHAIRPERSON)**

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: DANIEL JURGEN STAECK

APPLICATION NO: A30/08/699

PANEL: MR D MOSSENSON (CHAIRPERSON)

DATE OF HEARING: 15 December 2008

DATE OF DETERMINATION: 15 December 2008

IN THE MATTER OF an appeal by Mr Daniel Jurgen STAECK against the determination made by the Racing and Wagering Western Australian Stewards of Thoroughbred Racing on 17 November 2008 imposing a two month suspension from riding for breach of Rule 137(a) of the Australian Rules of Racing.

Mr F Kersley was given leave to appear for Mr Staeck.

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

BACKGROUND

Mr D J Staeck is an experienced jockey who was involved in a riding incident near the 200m in Race three at Ascot on 15 November 2008. Both Mr Staeck and the other rider involved, Mr P Knuckey, were called before the Racing and Wagering Western Australia (RWAA) Stewards. Early in the inquiry Mr Knuckey told the Stewards:

'Well I raced on the inside of Daniel's horse. As we approaching into the straight I started to move my horse out from the two horses in front on mine which are

starting to tire. I made contact with Daniel's horse, slight contact to try and see where I could position ... he turned his horses head in towards my horse, rode inwards, yes that was pretty much, I thought over the top' (p 3 of the transcript).

Mr Staeck stated to the Stewards that Mr Knuckey's horse was travelling quite well and was trying to improve its position but his own horse became unbalanced as they were approaching the 200m and continued to ride and hold his line. Mr Staeck went on to say '*... I think my saddle shifted to the inside and really I just rode, rode my race and worked at holding my line*'. Further, Mr Staeck explained that Mr Knuckey bumped him from behind which turned his hindquarters out. Mr Staeck claimed that when Mr Knuckey's horse bumped him his saddle shifted over to the side. He added:

'I was unbalanced for about four or five strides, and yes I was, I was trying to hold my line but I, I couldn't, I couldn't shift any further in, I was screwed to my horse's turning inwards and I was off balance, but yes I was certainly trying to hold my line' (p3).

Mr Hensler, the Deputy Chief Steward Thoroughbreds gave evidence in the inquiry as follows:

'... I was positioned in the tower past the winning post on the outside of the course proper so it affords me a head on view in the straight and I observed that as the runners came into the, into the straight the top of the straight that Peter Knuckey, on LE BON JEUNE was behind Jarrad Noske on AMIANAN and to LE BON JEUNE's outside was WESTERN FORCE, Daniel Staeck's mount. As the runners progressed down towards the 200m I observed that LE BON JEUNE, Peter Knuckey was edging out to obtain a clear run to the outside of the heels of AMIANAN. I observed that horse brushed Mr Staeck's mount. Watching the race live I thought that Mr Knuckey had shifted out without causing any, any major problems to Mr Staeck's mount although I believe he rode competitively to get out without causing a lot of interference but then I was, I was quite concerned when I observed that after he got to the outside of the heels of AMIANAN, I observed that Mr Staeck, changed his riding pattern by turning his horse's head inwards and he shifted his body weight I observed, and rode to in my opinion to hold Mr Knuckey to get him back to where he had come from, from behind AMIANAN. I believe that it was a dangerous position that Mr Knuckey was put in, he got close to the heels of AMIANAN and I observed after the 200m that he did have to restrain his mount' (p 4).

At the continuation of the hearing on 17 November 2008 Mr Knuckey gave further evidence of the incident although he was less forceful than earlier in his description of the inappropriate riding tactics adopted by Mr Staeck. Despite that the Stewards proceeded to charge Mr Staeck with improper riding in breach of Australian Racing Rule 137(a), the allegation being that:

'... near the 200 m you have deliberately ridden your mount inwards leaned to your left, raised and extended your left arm for the purpose of preventing LE BON JEUNE from obtaining a run, with your mount and LE BON JEUNE buffeting heavily, with LE BON JEUNE becoming unbalanced and restrained inwards' (p22).

The Rule in question states:

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

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

After having pleaded not guilty Mr Staeck neither gave nor called further evidence. Following an adjournment the inquiry was resumed for the Stewards to deliver their findings. The Stewards acknowledged they gave considerable weight to Mr Staeck's explanation that his saddle had moved and affected his ride. The Stewards concluded however the position of the saddle was the same at the top of the straight as at the winning post. The Stewards acknowledged Mr Knuckey had shifted outwards in an attempt to secure a run and in so doing went on the inside of Mr Staeck. They completed their findings in the following terms:

'... the Stewards believe you have ridden improperly by riding your mount inwards, leaning to your left, raising your arm with your mount, making heavy contact with LE BON JEUNE. That gelding becomes unbalanced and then restrains inwards. The purpose of your actions was to prevent P. Knuckey from obtaining clear passage. Stewards acknowledge that race riding is competitive by nature and you're entitled to hold your line, however we believe that in this case you've certainly overstepped that line and ridden improperly. Accordingly we find you guilty as charged' (p23).

As to penalty the Stewards concluded a period of two months suspension should apply. Mr Staeck was already on suspension which was due to expire on 1 December 2008. The Stewards further ordered that the new suspension was to run forthwith and concurrently with the then existing suspension. The suspension for the improper riding was ordered to expire on 17 January 2009.

THE APPEAL

Mr Staeck appealed against his conviction on the ground that *'The amount of factual evidence is too small to support a charge of this nature'*. Mr F Kersley represented Mr Staeck and argued his cause with some force in explaining his own interpretation of the implications of the action and reactions of the two riders involved in the incident. In so doing Mr Kersley put forward a convincing argument on Mr Staeck's behalf why he believed that the Stewards had fallen into error in their approach to the handling of the matter. In Mr Kersley's assessment a dangerous situation was created from the start by Mr Knuckey's ride. The Stewards, according to Mr Kersley, focussed on Mr Staeck as being the offender and failed to take into account the contribution of Mr Knuckey. In support of these propositions Mr Kersley raised the issue of the saddle having moved. This led me to take the unusual step of granting the appellant leave to give evidence to show me the actual saddle which was used in the race.

I was also taken through some of the evidence which was presented to the Stewards and shown a video of the race. Mr Kersley argued that Mr Staeck was entitled to hold his line and maintain his position in the race. It was claimed that Mr Staeck did not ride inwards but rather simply stayed put and was entitled to maintain his position because he was slightly ahead. According to Mr Kersley, it was Mr Knuckey who dangerously shifted position and moved when he had no clear passage. The question was posed whether one is entitled to attempt to take a position that is not there. Mr Kersley told me one cannot force a passage in a race. I was invited to believe that there was no run which presented itself. When I was given a demonstration of the implications of a rider going for the whip,

this was objected to on the basis that it had not been raised during the course of the Stewards' proceedings. I was then shown another incident in another race, which was described by Mr Kersley as being equivalent to that which transpired in the race in question, and was told the Stewards had taken no action in the other race. As to this latter aspect of the argument I did agree with the proposition put by senior counsel for the Stewards that the other film was irrelevant, for the reasons explained by senior counsel.

Not surprisingly senior counsel argued the matter by reference to the introductory provision in the Rule which contains the phrase '*in the opinion of the Stewards*'. Despite Mr Kersley having pressed his own opinion on me with force and conviction, the proper application of Rule 137(a) requires any appellant involved in challenging a riding conviction to satisfy the Tribunal that the decision of the Stewards under appeal was so unreasonable that it could not have been made by any Stewards acting reasonably based on the information which was before the Stewards in question. If the riding infringement Rule were simply left open ended and not conditioned by the introductory words then the ability of the Stewards to adjudicate on and enforce what they consider to be acceptable industry standards would be significantly diminished. Over time this no doubt would reduce the quality of riding and increase the risk to the riders. The particular provision in the Rules is deliberately framed to ensure the assessment by the duly appointed industry experts is maintained save for cases with totally unreasonable outcomes. Without the provision in question, there would be the prospect of every dissatisfied jockey appealing against any riding infraction decision and potentially risk having the Stewards' assessments overturned on appeal simply by presenting more compelling arguments. As the Rule now stands it is not intended that the opinion reached by the Stewards in the first instance be overturned on appeal simply by a more convincing argument second time around.

This Tribunal clearly is not in a position to evaluate the quality of rides and tactics employed by jockeys during races in the same manner as the members who constitute Stewards' panels. The Stewards are employed by RWWA for their knowledge and experience of the racing industry particularly riding techniques, tactics and racing practices. Stewards are appointed for their qualifications and familiarity of many aspects of the industry. This includes their acute understanding of the need to protect the safety and welfare of both horse and rider as well as the public betting implications of how races are conducted and run. The Stewards attend all race meetings affording them the benefit of viewing the races live from various vantage positions around the track. Their bird's eye view is conducive to the proper evaluation process of races. The Stewards are empowered to interview and take evidence from the participants first hand as part of the inquiry process. The Stewards are placed in the best position to judge the demeanour and credibility of those persons who come before them.

The seriousness of the riding infraction in this case was far from apparent to me from merely viewing the side on films of the race in question. However, the argument that Mr Davies QC advanced and observations which he made of the riding tactics during the course of showing the head on and rear view of the incident entirely convinced me that the Stewards had made the correct evaluation in relation to Mr Staack's ride versus Mr Knuckey's ride.

As has been repeatedly stated before in appeals of this nature, the test in all of these types of cases is not what impression members of the Tribunal may form for themselves of the quality of a ride based on any argument which may be pressed for an appellant as supported by the opinion submitted by the rider's counsel or representative. Rather, the

ultimate test in these types of matters is whether the Tribunal has been persuaded that the Stewards have fallen into error in reaching the conclusion which they did on the basis that their decision was so unreasonable that it is untenable and it should be interfered with. Despite the cogency of the argument for Mr Staeck I was not persuaded to that degree or level. In the circumstances I had no alternative but to rule the appeal be dismissed.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

