

**REASONS FOR DETERMINATION OF THE
RACING PENALTIES APPEAL TRIBUNAL**

APPELLANT: DUNCAN MILLER
APPLICATION NO: A30/08/724
PANEL: MR D MOSSENSON (CHAIRPERSON)
DATES OF HEARING: 28 SEPTEMBER 2010
DATE OF DETERMINATION: 28 SEPTEMBER 2010

IN THE MATTER OF appeal by Mr Duncan MILLER against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 18 September 2010 imposing a ten day suspension for breach of Rule 137(c) of the Rules of Thoroughbred Racing.

Mr M Millington appeared for the Appellant.

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

These are my reasons for having dismissed Mr D Miller's appeal against penalty following the hearing on 28 September 2010.

Introduction

Mr Duncan Miller is an apprentice jockey. On 18 September 2010 at Kalgoorlie-Boulder Racing Club during the running of the XXXX Gold-Kalgoorlie Cup Mr Miller gesticulated with his whip just before the winning post. The Racing and Wagering Western Australia ('RWAA') Stewards of Thoroughbred Racing held a very short inquiry chaired by the Chief Steward Thoroughbreds Mr B Lewis. At the outset of the inquiry Mr Lewis indicated that from his observation of the race it looked like Mr Miller had gesticulated or celebrated with his whip a couple of strides before the finishing line. Mr Miller responded that he thought his action in fact occurred '*... right on the post*'. After the film was played the chairman of

the inquiry expressed the opinion it was *'One, two strides'*. Mr Miller claimed it was one stride and then acknowledged that *'it's a bit better than the Hannan's, ...'*. This was a reference to Mr Miller's ride which had resulted in his conviction for gesticulating in a race on 15 September 2010. The Chairman put to Mr Miller that the Rules of Racing need to be followed. Mr Miller's father and trainer who appeared at the hearing responded by referring to the jubilation of winning a major race when one's *'...emotions go through the roof...'*. In response the chairman explained that he and other Stewards had spoken to the apprentice rider before the first race. In the course of doing so they went through his record of recent times which reflected the fact that Mr Miller had been fined consistently. Consequently they told him *'... its gotta stop here and some of those fines that you've got control of that you cannot do to put yourself in that position and one of them was the gesticulation, so we said to apprentice Miller today before the racing began, don't be back in here today. If anything you've got full control of, so here we are now, talking about a gesture, albeit one or two strides...'*

Mr Miller claimed that his action really only amounted to an error of judgment because he thought *'... he was on the line ...'*. Despite that Mr Miller was charged with making *'... a celebratory gesture prior to the winning post when riding SUNRANGE the winner of the XXXX Gold-Kalgoorlie Cup ...'* in breach of Australian Rule 137(c). Australian Racing Rule 137 states:

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

(c) he makes a celebratory gesture prior to his mount passing the winning post.'

Mr Miller refrained from putting in a plea to the charge. The Stewards treated the matter as a not guilty plea. The Stewards went on to convict on the following basis:

'... the rule specifically says prior to his mount passing the winning post. We say that it's certainly prior to that, we're not going to sit here and definitely say it's two strides or one stride but we see that it's prior. You say it's an error of judgment, we don't quite see it like that, not as simplistically as that. We say that it's an unnecessary action that should not have occurred. That celebrations must be saved until after the race for very good and valid reasons. So obviously now you're found guilty, we've got to look at a penalty. You were spoken to as we said earlier, we look at your record overall and avoiding being in this situation.'

In arriving at the penalty the Stewards stated:

'You were put on notice at the start of the day which we've spoken of a number of times. That's was very clear to the Stewards and yourself. Your recent record, you were fined \$500 Hannan's Day, we don't believe that a fine is appropriate Apprentice Miller, as our, our message is clearly not getting through. So we believe a ten day suspension to be appropriate...'

The ten day suspension meant that Apprentice Miller missed two mid-week meetings, one Saturday meeting and two provincial meetings.

Apprentice Miller appealed against the severity of the penalty. Mr Millington argued with some conviction that the suspension was inappropriate and manifestly excessive as:

- the offence is normally dealt with by a reprimand or fine;

- there was no interference to other horses or riders;
- this was the appellant's second conviction for breach of this rule and he did not receive a reprimand the first time;
- the appellant is an 18 year old jockey who recently returned from a lengthy suspension;
- the timing of the celebration was an error in judgment.

The appellant also appealed on the basis that the Stewards erred in considering breaches of other rules of racing. Various fines for breaches of other provisions of the Rules were said to be irrelevant and therefore should not have been considered.

In support of his argument Mr Millington presented both a summary of the penalties which have been imposed for breaches of this particular rule in this State from 2001 as well as a detailed list of breaches from July 2002 through to the current period which was produced by Racing New South Wales.

It is clear from the examples on the lists that the only case of a suspension imposed in this State over that period, was in fact the appellant's. This was despite the fact that jockeys Hall and Staeck had been repeat offenders. In the case of Mr Hall his three offences, which were spread over 25 months, had resulted in fines of \$200 initially and finally \$300. Mr Staeck had offended four times between November 2005 and March 2010 resulting in fines ranging from \$200 to \$1,500.

The ten page print out from Racing New South Wales, I was told, had 153 entries. There were only two suspensions (both coupled with fines) on that list and in both cases they were for one meeting only. Mr Millington pointed out that a number of New South Wales riders of high profile who were repeat offenders were dealt with fines only. In the case of Glen Boss there were in fact some 15 offences, three of which had occurred within the space of five weeks. It is clear from all of the examples of penalties which have been imposed on other riders for breach of AR137(c) that the appellant had received the toughest of penalties.

I viewed videos of the two September Kalgoorlie races in which Mr Miller gesticulated prior to the crossing the finishing line. Whilst a clear breach of the Rules was apparent in the Kalgoorlie Cup the incident was less serious on this second occasion than the first when a \$500 fine was imposed.

The Rule in question is an Australian Rule. As it applies in all Australian jurisdictions it was argued by Mr Millington that there needs to be some parity, particularly for major races.

Reasons

There was no dispute that the Rule in question is designed to address safety issues, avoid the causing of interference during races as well as reducing the possibility of a rider prematurely ceasing to ride out the race. These are the *'good and valid reasons'* which the Stewards were no doubt referring to in their reasons for determination when stating *'The celebrations must be saved until after the race ...'*

Mr Lewis had spoken to Mr Miller before the Kalgoorlie race on 18 September 2010 accompanied by Senior Steward P Criddle, H Taylor and Assistant Riding Master J

Hustwitt. The officials addressed the significant number of recent offences from 1 August 2010 in respect of which Mr Miller had received eight fines totalling \$2,300. Mr Miller was provided with a list of these offences and told that the Stewards were concerned with both the frequency and total amount of the fines incurred. Mr Miller was also told that the Stewards were conscious he was not complying with the rules of racing *'...and that it appeared that fines were not having the necessary deterrent effect. Further, he was advised that offences of a similar nature in the immediate future may be treated in a more serious light with consideration being given to a period of suspension'*. Mr Miller was advised that offences in regard to celebrating prior to the end of a race together with another of his offences were both unnecessary and avoidable. Mr Miller was warned that *'...repeat of such offences may cause the Stewards to consider periods of suspension rather than the imposition of further fines as it appeared that this form of penalty was having little or no effect'*.

I am under the impression Mr Miller is an exciting trainee jockey with a promising future in the industry. Should his career be able to progress appropriately there is every prospect of him enjoying an outstanding career. Having recently come off a lengthy period of suspension and having lead at the finish of such a major race he was entitled to be absolutely delighted with his performance. It was little wonder that he showed his jubilation by celebrating with his whip. However, if Mr Miller is to achieve his potential in racing he clearly must learn to obey the Rules and to comply with the directions given to him by the Stewards. The Stewards are empowered by the Rules and given the responsibility to ensure the Rules are adhered to and proper practice in racing prevails.

I acknowledge that the incident did not result in any adverse consequence to any riders or horses. It is true the outcome of the race was unaffected. Further, this transgression was not as blatant a breach as that which occurred in the previous incident on 15 September 2010 involving exactly the same type of misconduct.

Mr Zucal was at pains to explain in the course of his submissions that horses are unpredictable. Indeed I was shown an example where one of the world's leading riders, Mr Robbie Fradd, fell off his mount after wining the Darwin Cup whilst making a celebratory gesture at the end of the race. The uncertainty element involved in competitive riding and potential for risk are relevant considerations to be taken into account in evaluating the offence and in setting the penalty. Also, I was influenced by the argument presented by the Stewards that monetary penalties were not having an effect on Mr Miller. Due to the trust depositing arrangements applicable to all apprentices, Mr Miller was not personally actually personally paying out his fines from his own direct resources. I was persuaded by the argument in the circumstances of this particular case, in order for the Stewards' message to achieve its desired effect, it was appropriate for a suspension to be imposed. The Stewards under the penalty Rule 196 do have a very wide discretion as to the type of penalty, or combination of penalties, and the severity of any penalty to be imposed.

Mr Millington had argued that there was no parity in the penalties being imposed Australia wide despite the fact that an Australian Rule was involved. Mr Zucal did not balk at this submission and responded this proposition was also evident from the generally tougher approach of Western Australian Stewards to drug offenders. Clearly the racing scene in each State varies considerably in respect of a whole range of factors and there is not one national panel of Stewards which decides on tariffs across the country. The quality of and approach to administration and supervision of racing does vary from place to place. Further, the particular circumstances of each case can be quite different depending on the age and the experience of the rider, the nature of race involved, the betting which has

occurred, the record of the jockey, the reaction of the jockey to directions given to him by the Stewards, the circumstances which have conspired in the race, the then current policies or practices of the Stewards and so on.

The list of offences summarised on the sheets which Mr Millington presented gave no insight into any of the particular surrounding circumstances applicable to the various offences there listed. In light of all of the relevant circumstances in this case I was satisfied that despite the fact that only reprimands or fines were normally imposed for this offence, even by the local Stewards, that a suspension was appropriate. On the assumption that the timing of the whip flourish was indeed an error of judgment on Mr Miller's part, the incident was very much aggravated in view of the specific warning that had been given to him in the clearest of terms a short time before. I was not persuaded that it was particularly relevant that a reprimand was not given for the previous offence. Equally I was unconvinced that the penalty was inappropriate because of the youthfulness of the offender who had only recently returned from a lengthy suspension.

I was satisfied the Stewards were entitled to take into account the nature of the quality of the misbehaviour, which arguably was tantamount to defiance, in the context of the unequivocal and targeted direction given at the outset of the meeting. In the light of Mr Miller's sorry record the action taken by the Stewards in addressing Mr Miller the way they did regarding his offending was quite appropriate. It was necessary in the interests of the industry and for Mr Miller's own benefit. If Mr Miller seriously expects to enjoy a long term and successful racing career, and if he is to progress and realise his potential in years to come, he needs to heed the directions give to him by the racing officials. In order to effectively communicate the message the Stewards were seeking to convey it was necessary for them to refer to Mr Miller's other offences and their penalties. It was an appropriate way to deal with a reoccurring problem. It was a reasonable approach by the Stewards in their attempt to ensure Mr Miller rode properly during this important race.



DAN MOSSENSON, CHAIRPERSON

