REASONS FOR DETERMINATION OF MR D MOSSENSON (CHAIRPERSON)

RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: CLINT KENNETH HARVEY

APPLICATION NO: A30/08/729

PANEL: MR D MOSSENSON (CHAIRPERSON)

DATE OF HEARING: 2 February 2011

DATE OF DETERMINATION: 2 February 2011

IN THE MATTER OF an appeal by Mr Clint Kenneth HARVEY against the determination made by the Racing and Wagering Western Australian Stewards of Thoroughbred Racing on 22 January 2011 imposing a 19 day suspension from riding for breach of Rule 137(a) of the Australian Rules of Racing.

Mr M Millington represented Mr C K Harvey.

Mr D Hensler represented the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

BACKGROUND

As a consequence of an incident which occurred near the 1200 metres during the last race at Ascot on 19 January 2011 the Racing and Wagering Western Australia (RWWA) Stewards of Thoroughbred Racing conducted an inquiry into the matter. Four riders were called. Early in the proceedings Jockey Hill told the Stewards he ran out of room at 1200 metres and had to steady his mount as a consequence. Jockey Parnham, who was on Mr Hill's outside, gave evidence that he was *'... carried in a little bit'* (T2) by Jockey Harvey.

Mr Harvey maintained throughout the inquiry he was just holding his line. Steward Mance gave evidence of his observations in the following terms:

> *'... viewing the race from the 1200-metre stand as they raced near that position I thought Mr Harvey with Aytozed racing to the outside of Prince of Sands had started to shift inwards and prior to crossing Prince of Sands I thought that he caused that horse to shift in onto Buckets, Jessica Hill's mount, and that has caused tightening to Buckets and I thought Mr Hill had to restrain her mount and lost her position.'* (T2)

The final jockey to give evidence, Apprentice McCallum, described the incident in these terms:

> *'I don't believe I put any pressure. My horse has got its head turned out as I've come up outside Clint's horse there and I didn't believe I put any pressure on him.'* (T6)

In contrast to Mr Harvey's assertion that he *'... didn't shift* in' and he *'... couldn't shift out'* but rather he *'... just rode the line I was in being dictated by my inside and outside runners'* (T6) Senior Steward Mance told the inquiry:

> *'... viewing the race I was of the opinion that Mr Harvey was shifting inwards and that Apprentice McCallum – even though on the outside, I thought he just followed Mr Harvey in. I didn't think there was any pressure from Regol Street onto Mr Harvey from my viewing.'* (T 7 & 8)

At Mr Harvey's request the inquiry was adjourned. At the resumption on 22 January 2011 Mr Harvey brought the trainer Mr Luciani along to express his opinion of the incident. Despite Mr Luciani's contribution and the other evidence favourable to Mr Harvey the Stewards reached the following conclusion:

> *'... there's a charge for you to answer and that's under Australian rule 137(a) which reads, "Any rider may be penalised if in the opinion of the stewards he is guilty of careless, reckless, improper, incompetent or foul riding, ' and we specify careless riding, the specifics being that in race 8 when you rode Aytozed at a point approaching the 1200 metres you did permit your mount to shift inwards when insufficiently clear, resulting in Prince of Sands ridden by Brad Parnham being carried inwards causing Buckets ridden by Ms Hill to be tightened for room and restrained. That's the nature of the charge, one of careless riding.'* .(T18 & 19)

After having pleaded not guilty to the charge Mr Harvey gave some brief evidence. The hearing was then suspended. When the inquiry was resumed the Stewards delivered their findings as follows:

> *'... we believe that the charge can be sustained. Our reasons for that are that our viewing of the film and the evidence from Steward Mance don't support your opinion that Apprentice McCallum's mount has pressured you inwards at the relevant time. We do acknowledge that the rail was there to 15 metres and in these circumstances the onus remains on the rider shifting ground in ensuring he is sufficiently clear when you're crossing other runners.*

You had a previous ride in a 1400-metre race which was in the fifth race and you were aware of the layout of the track with the run to the 1200-metre turn with the rail being out of that 15-metre position. We acknowledge that on the evidence there was no calling from inside riders but that did not absolve your responsibility to ensure you were fully clear when shifting in. With regards to the point you made relating to the patrol films, we do acknowledge that there is not a direct head-on view of when the incident occurred but, as is always the case in inquiries, the stewards base their decisions on not only the patrol films but all the evidence of the riders and also the stewards' own live observations and our observations in the films. So for those reasons we do find you guilty or the charge (sic) *...'* (T21).

As to penalty the Stewards reached the following conclusion:

'We believe that a suspension should be imposed in the circumstances. We see the degree of carelessness as mid-scale and the degree of interference is mid. There's one rider who does not have to – is tightened for room and does have to restrain her mount (sic). *We've looked at your record which, as I say, doesn't reflect well on your behalf. It's quite a poor record. We've looked at the meetings coming up and the meetings that you've told us that you wish to ride at and you have engagements for so we believe that in all the circumstances a period of suspension of 19 days is appropriate. ...Looking at that period of suspension, there are two metro meetings, two mid-weeks, three provincial and six country meetings.'* (T 25 and 26)

THE APPEAL

Mr Harvey appealed against his conviction and the penalty on the grounds that:

'1. The conviction was unsafe and not supported by the evidence. Therefore, no reasonable steward could have formed the opinion that Mr Harvey's riding was careless.

PARTICULARS

(a) No direct head-on vision of the incident was available.

(b) The Steward's interpretation of the patrol footage was inconsistent with the film.

(c) Evidence of the witnesses was not taken into account when making the finding of guilt.

(d) The racing manner of 'Buckets' was not taken into account.'

'2. The penalty was excessive in all of the circumstances.

PARTICULARS

(a) The finding of carelessness as mid-scale and degree of interference being mid was incorrect.

(b) *The period of suspension imposed was not consistent with other penalties imposed in recent times.'*

Mr Millington presented various arguments to support the appeal against conviction. These included addressing matters raised in the particulars as well as the fact that the start was close to the corner, the position of the portable rail was such that there was the usual congestion near the start of the race and none of the jockeys could specify who was to blame for the incident.

As Mr Hensler for the Stewards explained, Mr Mance has enjoyed 20 years experience as a Steward and extensive experience of evaluating races from different vantage points around the track. Further, Mr McCallum's evidence did not support Mr Harvey's version of the incident.

As has been stated in these types of appeal many times before, the introductory provision in the Rule contains the significant phrase *'in the opinion of the Stewards'*. 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 which is under review was so unreasonable that it could not have been made by any Stewards acting reasonably in relation to the relevant information which was before the Stewards in question. As I stated in *D J Staeck* (Appeal 699) on page 5:

> *'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.'*

I was not convinced there was any merit in the particulars to ground one. The test in appeals involving inappropriate riding is not answered by the impression which members of the Tribunal may form themselves of the quality of a ride based on any argument which may be pressed for an appellant and as supported by any opinions 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 to be untenable and therefore requiring it to be changed. I was satisfied the decision was reasonably open to the Stewards on evidence before them. It is normal to receive divergent opinions from the riders as to the cause of an incident which has occurred in the course of a race. It is up to the Stewards who hear the evidence live to decide what version to accept or reject. Mr Mance had viewed the incident from a distance through his experienced and dispassionate eyes. His evidence at the Stewards' inquiry was clear and cogent. It was not contradicted by all of the riders. Further, I was satisfied it was not inconsistent with the film. In fact there was nothing persuasive advanced to establish the Stewards had committed any error in convicting Mr Harvey. In the circumstances it was appropriate to rule the appeal be dismissed.

As to penalty I was presented with a list comprising some 38 pages of penalties imposed for breaches of the Rule in question since 12 July 2008 to 8 January 2011 and some other related information. Bearing in mind the Stewards' findings to the effect that carelessness was *'mid-scale'* and interference *'mid'* and after taking into account Mr Harvey's record I was satisfied the penalty was within the range. The penalty imposed on Mr Harvey was not inconsistent with some others and was not excessive. No error was demonstrated as to penalty. I therefore dismissed the appeal as to penalty as well as conviction.

DAN MOSSENSON, CHAIRPERSON

Seal of the Racing Penalties Appeal Tribunal of WA