

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

**APPELLANT:** DANIEL GANDERTON

**APPLICATION NO:** A30/08/759

**PANEL:** MR P HOGAN (ACTING CHAIRPERSON)

**DATE OF HEARING:** 16 JULY 2013

**DATE OF DETERMINATION:** 22 JULY 2013

---

IN THE MATTER OF an appeal by Daniel GANDERTON against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 7 June 2013 imposing a fine of five hundred dollars for breach of Rule137(b) of the Rules of Thoroughbred Racing.

---

Mr Daniel Ganderton appeared in person.

Mr Doug Mead appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

---

The Appellant is a licensed jockey. He was found guilty on 7 June 2013 of a charge that on 2 June 2013, contrary to rule 137(b) of the Rules of Thoroughbred Racing, he failed to ride his horse out. The particulars were put by the Chairman of the Stewards' enquiry at page 19 of the Steward's transcript as:

*"...when riding YOUNBETYA in Race 5 at Kalgoorlie on 2<sup>nd</sup> of the sixth 2013 you have failed to ride that gelding out to the end of the race by taking hold of your mount near the 75 metres"*

The Appellant pleaded not guilty. After a hearing, The Stewards, found him guilty and imposed a fine of five hundred dollars. He now appeals against his conviction. No appeal is made against the penalty.

### **Facts not in contention**

The race in question was over 1600 metres. Mr Ganderton's ride was not under question up until about the 75 metre mark. YOUNBETYA had raced up towards the front. At about 75 metres, the horse was being overrun by others. It was not going to run a place. Mr Ganderton restrained the horse. His action was deliberate and evident. He did not try to disguise his action in restraining the horse. YOUNBETYA continued on to run over the line, but effectively had ceased to have any real part in the race.

### **The issue**

As will become apparent from the transcript of the enquiry, and what was said at the appeal, the issue became whether Mr Ganderton was justified in failing to ride the horse out. Mr Ganderton said that he restrained the horse out of consideration for its welfare, because he thought that there was something wrong with it. The Stewards said that there was nothing wrong with the horse, and that Mr Ganderton had made a mistake as to its condition. The Stewards did not allege any malfeasance on Mr Ganderton's part.

Mr Ganderton's position was that he was the person best placed to judge whether there was anything wrong with the horse, and that what he said should be accepted. The Stewards position was that their enquiries by way of veterinary inspections revealed nothing wrong with the horse, and therefore there was in fact nothing wrong with the horse. Because there was

nothing wrong with the horse, Mr Ganderton was not justified in failing to ride it out it. Therefore, the Stewards found, he was guilty of the offence.

### **The welfare of the horse**

Some offences can be categorised as absolute offences. No justification or excuse will lead to a finding of not guilty. Presentation offences relating to prohibited substances in general fall into that category. This offence is not one of that category of offences. A jockey during a race must ride in the interests of horse welfare, and is required to do so by Rule 92A. Acting in accordance with Rule 92A therefore provides a defence to any charge under the rules.

Rule 92A (4) is in the following terms:

*The Stewards may suspend or limit in any way a rider's permission to ride in races if they find that any aspect of his race riding technique, method or practice may be a hazard to himself or other riders, or may be contrary to the interests of horse welfare or may involve a breach of the rules.*

Mr Ganderton, had to balance the considerations between two rules which can sometimes compete with each other. Mr Ganderton was obliged to ride the horse out. He was also obliged to ride in the interests of horse welfare. The Stewards had to consider those two things in their enquiry.

### **The enquiry**

The enquiry began on the day of the race, Sunday 2 June. It was then concluded on the Friday following, 7 June 2013.



In the Stewards room immediately following the race, Mr Ganderton began by saying that he had pulled the horse up. Because it had been an obvious action, The Stewards had already asked the course vet to look at the horse. By Rule 140, Mr Ganderton had been obliged to report as soon as practicable to the Stewards any condition that may have affected the running of the horse during the race. He had not reported to the Stewards, and said that he had forgotten to do so.

As to the condition of the horse, Mr Ganderton said that he was concerned with its action. He described it as "worse than short...". He went on to say "something feels tragically, drastically wrong with him".

The trainer, Mr Fernie, gave some brief evidence to the Stewards at that first day of the enquiry. Mr Fernie said that his vet had checked YOUBETYA the week before and he was "perfect". Mr Fernie and the Stewards looked at the race film. Mr Fernie and the Chairman both commented to the effect that there did not appear to be any visible sign of anything wrong with the horse's action. Mr Ganderton went on to say that the horse had not actually changed stride, but that "he gave me a very ordinary feel". The course vet, Dr Micke, reported that the horse had pulled up sound.

The enquiry was then adjourned so that YOUBETYA could be vetted properly off course after time had passed. On resumption on Friday, 7 June, not much had changed as between Mr Ganderton and the Stewards. The Stewards had been unable to find any evidence of anything wrong with the horse, and Mr Ganderton still had his reason for pulling the horse up. The veterinarian, Dr Micke, had reported by letter that the horse "vetted out", with no problems.

Mr Ganderton gave a more detailed explanation of how the horse felt under him. He was at pains to point out that he did not sit up on the horse, or stop riding it because of fatigue, but rather "pulled it up". Despite not reporting his concerns immediately to the Stewards, he did say that he reported immediately to the trainer Mr Fernie. The Stewards went on to consider other relevant matters, including the horses form. In the end, the two competing considerations were Mr Ganderton's judgement that something was wrong with the horse, and the available other evidence that nothing wrong could be found.

Mr Ganderton was charged, and pleaded not guilty. What followed was something of an animated defence by Mr Ganderton who protested his innocence in an angry manner. The Stewards found him guilty.

### **Decision**

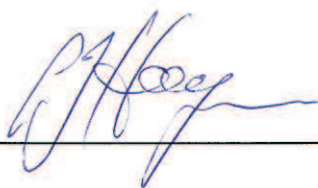
The issue on the appeal here is whether the Stewards made an error in their determination. No questions of lack of fairness in procedure arise, and there is no question of failure to consider the available defence. In fact, the Stewards did all they could to explore the defence raised by Mr Ganderton. No question of Mr Ganderton's credibility arises, because the Stewards did not allege malfeasance and their position has always been (and repeated here on the appeal) that Mr Ganderton was mistaken in his assessment of the horse's condition.

In my opinion, the Stewards did make an error in their determination of this case. The error is that they failed to give sufficient weight to Mr Ganderton's reason for pulling the horse up.

The consequences of a horse being pushed when something is wrong can be catastrophic. A rider faced with the competing considerations of whether to ride the horse out or pull it up

should err on the side of caution. The image of racing should come second to the welfare of horses and riders. If Mr Ganderton made an error of judgement, it was an error he should be entitled to make.

For all of the above reasons, I allow the appeal against conviction

A handwritten signature in blue ink, appearing to read 'P. Hogan', written over a horizontal line.

**PATRICK HOGAN, ACTING CHAIRPERSON**

