

DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: **ALEXANDER HEARN**

APPLICATION NO: **A30/08/760**

PANEL: **MR A E MONISSE**
 (ACTING CHAIRPERSON)

DATE OF HEARING: **7 AUGUST 2013**

DATE OF DETERMINATION: **8 AUGUST 2013**

DATE OF REASONS: **6 JANUARY 2014**

IN THE MATTER OF an appeal by Alexander Patrick Lawrence HEARN against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 25 July 2013 imposing 18 days suspension for breach of Rule 137(a) of the RWWA Rules of Thoroughbred Racing.

Mr Michael Lane appeared for the Appellant.

Mr Brad Lewis appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

The Appellant is an apprentice jockey. On 25 July 2013, following the running of Race 6 over 1600 meters at the Northam Racecourse, the Stewards commenced an inquiry into the manner in which he rode the gelding SHOOT FOR GLORY over the final 200 meters of that race. In the course of this inquiry the Stewards viewed the race footage. Evidence as to what occurred in

the final 200 metres of the race also included that given by: Senior Stipendiary Steward R.J. Mance, who was on duty in the head-on tower; jockey Peter Knuckey and apprentice jockey Raquel Bennett who also competed in Race 6; the Appellant; and Paul Roberts, the trainer of SHOOT FOR GLORY.

After receiving the evidence, the Chairman of the Stewards' inquiry, Stipendiary Steward C.D. Brown informed the Appellant that he had a charge to answer under ARR 137(a) in that, in the opinion of the Stewards, he was guilty of careless riding. The particulars of the charge provided by the Chairman, which named only two other horses affected by that riding, were as follows:

"Passing the 200m you permitted your mount to shift outwards when insufficiently clear of BREEZE ROAD resulting in that mare being carried outwards onto WAYWARD WARRIOR which was tightened and restrained from heels."

The Appellant pleaded "Not guilty" to this charge. After submissions by him and Mr Roberts, the Stewards found the charge proven, stating:

"Apprentice Hearn after considering all evidence Stewards believe the horse that you were riding which was SHOOT FOR GLORY was shifting out just prior to you using your whip and by pulling your whip and riding your mount along you've not made every effort to prevent your horse from shifting outwards which resulted in interference to runners to your outside. So for these reasons Apprentice Hearn we believe the charge should be sustained and we now need to look at the matter of penalty."

The Appellant appeals against the Stewards' decision of careless riding and the penalty imposed for it. His grounds of appeal for them are:

1. *The conviction was unsafe and not supported by the evidence. It is therefore not reasonable that the Stewards could reach a finding of guilt on the evidence available at the time and as submitted.*
2. *The penalty was excessive given the circumstances.*

The Appellant provided detailed particulars in support of both grounds of appeal.

APPEAL AGAINST CONVICTION

For the appeal against a conviction for careless riding to be upheld it must be shown either that:

- a) the opinion was not in accordance with the evidence (*HARVEY*, Appeal 405, 3 March 1998, p 2 and *CLAITE*, Appeal 428, 8 September 1998, p 2);
- b) the Stewards erred in a material particular in coming to their opinion (*HARVEY*, Appeal 452, 18 March 1999, p 1); or
- c) the opinion was unreasonably held in that no reasonable body of Stewards, having considered all of the relevant materials, could reasonably have come to the opinion in question (refer for example to *HARVEY*, Appeal 452, 18 March 1999, p 1, and *LUCIANI*, Appeal 626, 19 November 2004, p 4) *nb.* an opinion of this description has been summarised as one which is clearly unreasonable (*CLAITE*, above).

I am not persuaded that the appeal against conviction has been made out in any of the ways just described. In determining that the appeal against conviction is unsuccessful I have considered all the materials including: the transcript of the Stewards' inquiry; viewing the race

footage; the further evidence received at the hearing of this appeal; and the submissions made at that hearing by the Appellant's representative.

The race footage for instance clearly shows that SHOOT FOR GLORY after passing the 200 metre mark significantly shifted for a considerable distance across from the inside left of the track to the right of it. Steward Mance's evidence of his observations from his tower was consistent with that footage and the charge as particularised in the inquiry.

This is to be contrasted with the concluding evidence given by jockey Knuckey who endorsed the Appellant's riding in question after he viewed the race footage for the first time in the inquiry. However, given what that footage shows and the careless riding alleged against the Appellant, it is reasonable for the Stewards in the final analysis to not rely on that evidence given by jockey Knuckey. Apprentice jockey Bennett gave less evidence than him on what occurred during the running of the race, but it did not favour the Appellant.

The Stewards' criticism of the Appellant's riding was that he failed to take control of SHOOT FOR GLORY by not using both hands on the reins when it began moving outwards after passing the 200 metre mark. In its submissions to the Tribunal, the Stewards advised that apprentice jockeys are instructed to use or take the reins in this manner when their mount begins to shift in order to stop that movement. However, the Appellant elected to first use the whip to try to achieve this, but by doing so lost control of his mount. Had the Appellant elected to use the reins rather than the whip to at least try to address the shifting movement when it began, then it is likely that there would have been no charge for him to answer.

The Stewards further advised that jockeys are obliged when it is required to keep their mount as straight as possible and to try and straighten it when it shifts, to avoid interference with others in the race. Thoroughbred racing is an inherently dangerous sport, so it is not difficult to appreciate this obligation. Not to do so, can result in interference with other runners which, besides having the potential to unfairly affecting the outcome of the race, can have catastrophic consequences for all those immediately involved in it.

As for the loss of control discussed above, I agree with the Stewards' submission that SHOOT FOR GLORY was not an unresponsive horse given how the Appellant controlled it before and after the riding in question when he took the reins. For that reason, I do not consider that the shoe that the horse lost during the race has any bearing on the opinion that the Stewards came to namely, that the Appellant was guilty of careless riding.

I do not consider either that SHOOT FOR GLORY's relevant recent history of shifting had any bearing on that opinion. Whether or not the Appellant was aware of this before Race 6, he should have still been ready to react in the appropriate manner should the horse begin to shift by taking control of it using both hands on the reins. Further, it does not assist the Appellant that he struck the horse only once with the whip in what he claims was done to straighten the horse, because regardless of how many times he did this, it was always the wrong option to take to address the horse's shifting.

For these reasons I dismiss the appeal against conviction.

APPEAL AGAINST PENALTY

For the Appellant's appeal against penalty to be upheld, he must demonstrate that the penalty imposed on him of 18 days suspension was manifestly excessive in all the circumstances. I am not persuaded that this was the case with the penalty that was imposed on the Appellant. In his remarks on penalty the Chairman of the Stewards' inquiry stated:

When we consider penalty we have a look out (sic) the level of interference and carelessness in the incident and we believe the level of carelessness to be in the mid-range, it's a continual shift outwards by yourself Apprentice Hearn and the level of interference to be in the mid-high range. Four runners were interfered with, with one being tightened and restrained. Having a look at your record you've had 47 rides since your last suspension which was on the fifth of June 2013 for seventeen days and previous to that you had a suspension in January, first of January 2013 for fourteen days, so looking at it, it's two suspensions in six months so it's not a good record. So weighing all of that up Apprentice Hearn we believe a suspension to be appropriate and that one of 18 days so you'll be able to take your rides through to Saturday, and it will commence Saturday midnight the 27th July and expire on midnight the 14th August and you'll be back to resume riding on Thursday the 15th at Northam Race meeting so during that time you miss two Saturday meetings, three midweek meetings, two provincial meeting and five Country meetings ..."

The Appellant incorrectly contends that the Stewards' finding that the level of carelessness to be mid-range is incorrect. The fact is that the Appellant elected to use the whip in preference to taking the reins when SHOOT FOR GLORY began to shift after passing the 200 metre mark. Further, he has not demonstrated to the Tribunal that that election constitutes anything other than *mid-range* carelessness.

I agree with the Appellant's assessment that in effect only two runners were interfered with. However, this would still place that level of interference in the mid-range. In any event the race footage clearly shows that's the Appellant's riding in question caused substantial interference with the two horses identified in the particulars of the charge, which arguably allows that interference to be categorised as *mid-high*.

As for SHOOT FOR GLORY losing a shoe during the race, for the same reason given above when dealing with the appeal against conviction, this particular relied upon by the Appellant also has no bearing on the appropriate penalty to be imposed on him for his careless riding.

An imposed penalty is generally considered to be manifestly excessive when it is shown to be outside the range of penalties commonly imposed for a similar breach of the RWWA *Rules of Thoroughbred Racing*, by the same type of offender. Subsequent to the hearing of the appeal the Stewards on 07 August 2013 provided a 33 page document tabling in detail the penalties imposed for careless riding over the preceding 2 years ("the penalty table").

An analysis of the 149 matters in the penalty table collectively shows that the penalty for careless riding was always suspension, and that the length of suspension that the Appellant received was within the range or periods of suspension commonly imposed on apprentice jockeys similar to what he did and with his riding record.

For example, Apprentice J. Azzopardi on 4 May 2013 after a *Not Guilty* plea received 17 days suspension (his third suspension in 11 months) for his riding in a race at Belmont that the stewards considered to involve mid-level carelessness and mid to high level interference.

Further, apprentice J. Mallyon on 17 November 2012 after a *Not Guilty* plea received 21 days suspension (his third suspension since October 2010) for his riding in a Group 3 race at Ascot that the stewards considered to involve mid-level carelessness and low to mid-level interference. Accordingly, the Appellant can consider that his 18 days suspension for his riding towards the end of Race 6 is a fair and consistent penalty compared to what other apprentice jockeys have had imposed on them for careless riding similar to his.

The 18 days suspension the Appellant received on 25 July 2013 was his fourth suspension for careless riding since December 2012. As for his riding the subject of his appeal, his other three *careless riding* offences all involved his mount shifting. Accordingly, his latest suspension also serves to remind the Appellant of his obligation to ride straight when he is required to do this.

At the hearing of his appeal the Appellant provided a report on Race 5 at Pinjarra on 18 July 2013 recording jockey C. Staples receiving a reprimand for careless riding. This lesser penalty was apparently imposed for "permitting his mount to shift outwards when being ridden with the whip over the final 200m resulting in LORD HATRAS (B. Paterson) being carried outwards and impeded near the 200m which further contributed to ACHEATIN' SMILE (N. Faithfull) being disappointed for a clear run. ALWAYS A SMILE continued to shift outwards and again impeded LORD HATRAS over the concluding stages."

Jockey Staples reprimand can only be considered to be an anomalous outcome given that it concerned at least mid-levels of carelessness and interference for his *careless riding* offence on ALWAYS A SMILE as described above, with suspension the usual penalty for such an offence.

The penalty table does not record this instance of careless riding, but it does show that it would be jockey Staples fourth for careless riding since January 2011. This relatively poor record further reinforces the anomalous nature of the penalty he received, with little or no precedent value for offences of careless riding.

Both parties provided to the Tribunal a Stewards' report of a race at Bunbury on 3 April 2013 recording apprentice jockey Kevin Bohorun being reprimanded under ARR 137(a) for allowing SHOOT FOR GLORY to "shift ground outwards uncorrected causing another runner to be crowded." No further detail is known as to why that reprimand was imposed, with the penalty table not directly assisting here as again it does not record that instance of careless riding. The reprimand may perhaps be explained by the apprentice's good riding record, as the penalty table shows his last offence for careless riding to be in November 2011. However without more detail as to the circumstances concerning why the usual penalty of suspension was not imposed, it is unable to assist in determining the merit of the Appellant's appeal against penalty.

For these further reasons I also dismiss the appeal against penalty.

A E Monisse

ANDREW E MONISSE, ACTING CHAIRPERSON

