



APPEAL OF RAYMOND VIGAR: AR 137(a)

Appeal Committee: Mr John Stewart (Chairman), Mr Rob Longuet and Mr Cameron McNally

Date of Hearing: 2 June 2015

Date of Decision: 10 June 2015

REASONS FOR DECISION

Stewards' Inquiry

1. On 16 May 2015 Apprentice Raymond Vigar rode "Maybe Just Maybe" in the Tennant Creek Emporium Handicap over 1450 metres at Tennant Creek.
2. After conducting an inquiry, the Stewards found Apprentice Vigar guilty of careless riding under AR 137(a). The specific charge was that "approaching the 1400m he permitted his mount...to shift in when not sufficiently clear of ONYA DUSTY (T Brummell) causing that gelding to clip heels and blunder."
3. Stewards suspended Apprentice Vigar's permit to ride for 2 race meetings to commence from midnight 16 May until midnight 24 May.
4. Stewards only had the benefit of a video recording from side-on. There was no recording from front-on.
5. In the race "Maybe Just Maybe" started (barrier 5) on the immediate outside of "Onya Dusty" (barrier 4). At the inquiry Jockey Brummell told Stewards that "['Maybe Just Maybe'] come across a bit hard and struck ['Onya Dusty'] under his front feet, tripped him up and brought him down in the front end like that." He added that there was contact between "Onya Dusty" and the heels of "Maybe Just Maybe" and that he called out to Apprentice Vigar who said "Oops, sorry".
6. Mr Westover, Chief Steward, put to Apprentice Vigar that Jockey Brummell "had to take hold and looks like he has clipped heels and lost some ground."

7. Apprentice Vigar responded that his mount “ducked to the inside” as it jumped. He said: “I tried my best to straighten it.” Mr Westover said “a bit hard to tell from the film but it looks like your [*sic*] actually pushing him forward a little bit to me.” Apprentice Vigar did not accept that view: “You can’t really see what my hands are doing sir. You can’t really judge how far.”
8. Jockey Brummell told Apprentice Vigar: “I watched your hands. ... You lay back but were still digging.” He continued: “When you went inside you actually looked over your left shoulder and if you are pulling on a horse to get him out you wouldn’t do that.” He added that Apprentice Vigar should have waited before trying to cross.
9. Apprentice Vigar insisted that his mount “jumped one lane inside me” and “I was just trying to pick him up and hold him straight”.
10. Mr Hensler questioned Apprentice Vigar: “I don’t understand what you are saying, Apprentice Vigar. If it has happened as you have described it then Mr Brummell would have been in trouble sort of two or three strides after the start, not 20 or 30 metres after the start.”
11. Apprentice Vigar suggested that “[‘Onya Dusty’] must have been going inside as well”.
12. Mr Hensler observed that “as [the incident] has happened about 20 or 30 metres after the gates have opened so that would indicate to me, as Mr Brummell’s evidence has said, that you were going forward and you just weren’t fully clear.”
13. Mr Gary Lefoe gave evidence at the Stewards’ inquiry. He officiated as the starter and observed the race from the starting barriers. He said he observed “Raymond’s horse has kept moving out and Jockey Brummell’s horse has been laying out a touch”.
14. Jockey Brummell did not agree that his mount was laying out. He said the horse drawn inside of his was slow so there was room on the inside and he thought his mount was “pretty straight”.
15. Mr Westover put this proposition to Mr Lefoe: “I think what Mr Brummell was saying to Apprentice Vigar that he should have let his horse slip along a bit longer before he actually crossed over and I have said that many a times [*sic*] in inquiries. If you are going to the front easy you may as well let them stride along a little bit longer and cross over comfortably.” Mr Lefoe commented: “He’s moving forward very quick.” It was clear that Mr Lefoe was referring to Apprentice Vigar because Jockey Brummell then said: “I think myself he thought he was further forward than he was.” Mr Lefoe agreed: “Yes.”
16. Mr Westover said this to Apprentice Vigar: “The film does acknowledge what Jockey Brummell has stated in that you did ride forward to get to the lead.” Apprentice Vigar responded: “Yes.” But he felt that he left enough

room for “Onya Dusty” on the inside.

17. Mr Lefoe said: “Just watch Raymond’s horse’s head after Jockey Brummell has dipped. You can’t get a clear shot as he is doing it but you just watch Raymond’s horse’s head; it’s turned outwards when this has happened. Slightly turned outwards. I understand Jockey Brummell is saying and I understand what Raymond is saying. He tried to straighten the horse... .” Mr Westover suggested: “There is no doubt that he did try to straighten it, but after the interference had probably occurred.” Mr Lefoe agreed: “Yes.”
18. When charged Apprentice Vigar offered this explanation: “my horse has burrowed its head at that jump and it’s because my horse is a bit fractious in the gates so I didn’t want to hang onto its head too much.”

Appeal

19. Apprentice Vigar challenged the Stewards’ finding of guilt on these grounds:
- “The evidence against me is inconclusive, and there was pressure from outside horses.”
 - “The footage of the race is minimal.”
20. Apprentice Vigar also appealed against the penalty and applied for a stay of proceedings. The stay was not opposed by Stewards. We granted a stay and it remains in force.
21. At the appeal hearing Apprentice Vigar was supported by his master, trainer John Peacock. Stewards were represented by Mr Hensler, Chairman of Stewards.
22. Apprentice Vigar submitted that “Onya Dusty” was laying out and getting wider and wider before it shifted across the heels of “Maybe Just Maybe”.
23. At Apprentice Vigar’s request we gave leave for Mr Lefoe to supplement his evidence and he did so by telephone. The additional evidence was that in running he saw “Maybe Just Maybe” moving in and “Onya Dusty” moving out. After the race, by reference to the video recording, he noticed that Apprentice Vigar’s head was turned towards the outside rail and so was “Onya Dusty”. He said he heard Jockey Brummell warn other riders that “Onya Dusty” was going to hang out. Mr Lefoe said he didn’t mention that at the Stewards’ inquiry because he thought Jockey Brummell may have mentioned it.
24. Mr Hensler submitted that Apprentice Vigar’s version of the facts was not supported by the video recording or Jockey Brummell’s evidence.
25. Mr Hensler urged us to follow the approach of Mr Mossenson, Chairperson of the Racing Penalties Appeal Tribunal, used in the *Appeal of Clint Kenneth Harvey* (2 February 2011) and adopting what he had previously said in the *Appeal of D J Staeck*:
- “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 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."

Consideration

26. In the above extract Mr Mossenson was referring to AR 137 and the key words "in the opinion of the Stewards":

"AR 137. Any rider may be penalised if, in the opinion of the Stewards,
 (a) He is guilty of careless, reckless, improper, incompetent or foul riding.
 (b)"

27. In the interests of balance it is worthwhile looking at another decision of Mr Mossenson in which he upheld an appeal against the decision of Stewards in a careless riding case. In the *Appeal of Aaron Paul Rogers* (30 January 2012) Mr Mossenson confirmed his approach along the lines of his remarks in the *Harvey* appeal:

"Judging the quality of any ride can clearly be an onerous and technical responsibility. It is entirely appropriate for it to be left to the Stewards under these Rules. Stewards are the best persons equipped to deal with such matters. They do so on a regular basis. They must use their extensive knowledge, apply their training and call on their wide experience. It is an integral part of their

overall responsibility to set and then enforce the standards and qualities applicable to competitive riding by the industry's professional racers. Whether or not a charge should be laid and thereafter a person be convicted of a riding offence is appropriately left largely to their assessment. They are in a unique position to form an opinion and decide the fate of any rider under review. But despite having said all of that regarding their roles and responsibilities the Rule cannot mean that there will never be any basis for challenging their opinion. Even the Stewards are capable of making an error on occasion."

28. Mr Mossenson's remarks deserve respect but we are not bound to uphold them. Our approach should be guided by an understanding of the nature of this appeal and the proper delineation of our powers and duties. In this type of case, differences may arise due to the content of the laws and rules in each jurisdiction. We will briefly examine those applicable in the Northern Territory.
29. Under section 145D of the *Racing and Betting Act* (NT) ("the Act") an appeal lies to the appropriate "appeal committee" (in effect the Board of Thoroughbred Racing NT) or to the Northern Territory Racing Appeals Tribunal depending on the magnitude of the penalty in each case. We are aware of several decisions of the Tribunal (for example, see the *Appeal of Christopher Nash* - 18 March 2013, and the High Court decisions cited) that an appellant against the decision of Stewards bears the onus of persuading the Tribunal that the decision of the Stewards was infected with legal, factual and/or discretionary error on the part of the Stewards. It does not necessarily follow that this appeal is of the same nature.
30. Section 145E of the Act provides that an appeal committee "shall hear and determine an appeal in accordance with the procedures and rules determined from time to time by the appeal committee". The procedures and rules for appeals are set out in the Northern Territory Local Rules of Racing ("Local Rules"). An appeal to the appeal committee (called the "Principal Racing Authority" in the Local Rules) proceeds by way of rehearing of the case before the Stewards and no fresh evidence shall be allowed except by leave: Local Rule 25. Sub-rule 25 (c) gives the Principal Racing Authority wide powers in making its decision including the power to "quash, set aside, alter, vary, increase or add to the punishment imposed by or confirm the decision of the Stewards." Local Rule 21 provides that the decision of the Stewards shall be valid and in force unless otherwise ordered by the Principal Racing Authority.
31. We approach this appeal on the basis that this is an appeal by way of rehearing and that the appellant bears the same onus as has been identified in relation to an appeal to the Tribunal. Recognizing the specialised knowledge and experience that the Stewards bring to the discharge of their duties, we will attach great weight to their opinions and

- findings. However, we also consider that we are bound to conscientiously reconsider their decision and to exercise our independent judgement in determining whether we are persuaded that they fell into error.
32. Both parties to this appeal maintained that front-on vision, if available, would support their version of the facts. Because of the deficiency in the visual record, we have paid close attention to the need to weigh all of the available evidence, including the Stewards' assessment.
33. In short, we are not persuaded that the Stewards were in error. There was ample evidence to justify the finding that the charge was sustained. We note in particular:
- (a) The evidence of Jockey Brummell (see paragraphs 5 and 8 above);
 - (b) The opinions expressed by the Stewards (see paragraphs 6, 7, 12, 16 and 17 above); and
 - (c) The side-on film which clearly reveals that Apprentice Vigar pushed on with "Maybe Just Maybe" to get to the lead and just after passing "Onya Dusty" the latter horse blundered and lost considerable ground.
34. The grounds of appeal did not raise an assertion that contact between the two horses resulted because "Onya Dusty" was moving out. To the contrary, the notice of appeal refers to "pressure from outside horses" which by implication accepts that "Maybe Just Maybe" was moving in. This ground is consistent with the evidence given by Apprentice Vigar at the Stewards' inquiry and can be contrasted with Apprentice Vigar's suggestion on appeal that "Onya Dusty" was laying out. At the Stewards' inquiry Mr Lefoe said that "Onya Dusty" was laying out "a touch" but Jockey Brummell did not accept that proposition (see paragraphs 13 and 14 above). Mr Lefoe also informed us that he saw "Maybe Just Maybe" moving in (paragraph 23 above) and that Apprentice Vigar only appeared to try to straighten his horse after the interference occurred (see paragraph 17). The scenario that the interference was caused by "Onya Dusty" shifting out is not supported by the majority of the evidence.
35. As a matter of convenience, we heard submissions as to penalty to be taken into account in the event that the finding of guilt was confirmed. We ignored those submissions in coming to our decision in relation to the rider's guilt.
36. Mr Hensler produced a document entitled "TRNT Stewards Policy for Careless Riding" (introduced and distributed to local riders in June 2014). The Policy states that it is no substitute for the exercise of discretion but contains guidelines with a view to achieving consistency of outcomes. In this case Stewards informed Apprentice Vigar that they regarded the degree of interference as mid-range and the degree of carelessness as mid-range. Apprentice Vigar informed Stewards that he had been riding in Queensland and had two suspensions in the last 18 months.

37. Apprentice Vigar's record was produced at the hearing of the appeal. It reveals penalties for careless riding on 23.04.14 (reprimand, Ipswich), 18.05.14 (reprimand, Sunshine Coast), 30.05.14 (reprimand, Sunshine Coast), 21.06.14 (suspension, Beaudesert), 05.07.14 (suspension, Toowoomba), 26.07.14 (suspension, Toowoomba) 20.09.14 (reprimand, Toowoomba), 11.10.14 (reprimand, Toowoomba), 18.10.14 (reprimand, Toowoomba), 31.10.14 (reprimand, Kilcoy) and 15.11.14 (suspension, Toowoomba).
38. A review of previous decisions in the Northern Territory indicates that 2 meetings is a standard penalty where a rider with a good record commits a mid-range offence. This was properly characterized as a mid-range offence but Apprentice Vigar does not have a good record. His record is atrocious. The rule against careless riding is designed to safeguard other competitors in the race. Apprentice Vigar's record indicates that it is taking altogether too long for him to consistently take the appropriate standard of care with his riding. As Jockey Brummell mentioned to Apprentice Vigar in succinct terms at the Stewards inquiry: "I go home tonight but you got to be careful."
39. Mr Hensler submitted that because apprentice Vigar gave grossly inaccurate and incomplete details of his record at the Stewards' inquiry, he received a discount on penalty that he was not entitled to receive. We agree with that submission. We have a duty to ensure that the rule is respected and upheld. We have decided that a penalty of suspension for 3 meetings is appropriate.

Decision

40. The appeal is dismissed. We substitute suspension for 3 meetings for the penalty imposed by the Stewards. The appeal deposit will be retained.

Dated 10 June 2015



.....
Chairman