

TRNT Appeals Committee

APPEAL of Apprentice Jockey D Gillett

APPEAL COMMITTEE: Mr P McIntyre (Chair) and Mr S Stirling

DATE of HEARING: 27 June 2023

REASONS FOR DECISION

Appearances

1. At the Appeal:
 - a. Mr D Hensler (in person) in Darwin and David Westover (by video link from Alice Springs) represented the Stewards.
 - b. Mr K Ring represented Apprentice Jockey D Gillett by video link from Tasmania.
 - c. Apprentice Jockey D Gillett was present (in person) in Darwin.
 - d. The Appeal Committee was assisted with video equipment in Darwin by both Mr D Hensler and Ms E Baird.

Materials Relied Upon by the Parties

2. Prior to the hearing of this appeal the Appeals Committee had the benefit of considering:
 - a. The Notice of Appeal filed by Apprentice Jockey D Gillett on 19 June 2023 (Notice of Appeal).
 - b. The transcript of the Stewards Inquiry conducted on 18 June 2023 at the Alice Spring Turf Club (Transcript) into an incident in Race Two that day (Race Two).
 - c. The TRNT Stewards Report dated 18 June 2023 (Report).
 - d. A table entitled 'NT Careless riding penalties from March 20014 (Penalties Table).
 - e. A Table entitled 'Dakota Gillett-Personnel Incidents' (Record).
3. At the hearing of this appeal the Appeals Committee also had the benefit of considering video recordings of Race Two (Video Footage) and both parties took the opportunity to direct the attention of the Appeals Committee to various aspects of the Video Footage.
4. The documents referred to at paragraphs 2 and 3 were accepted into evidence without objection.

Background

5. Apprentice Jockey D Gillett appealed against a conviction imposed by the Stewards on at the conclusion of their Inquiry on a charge under AR 131(a) of engaging in careless riding.
6. The particulars of the breach as disclosed at page 9 of the Transcript as follows:

‘In race two in the program today when you rode Brat you shifted ground uncorrected approaching 250 metre, resulting in LISA (I Luximon) being taken outwards onto the heels of ROCK OF KRYPTONITE (J Philpot). Further resulting in Apprentice Luximon having to take hold and check his mount off heels with Apprentice Luximon becoming severely unbalanced and losing ground.’

7. The penalty imposed upon Apprentice Jockey D Gillett was that her licence to ride in races was suspended for one Alice Springs meeting expiring at midnight 2 July 2023.
8. In her Notice of Appeal Apprentice Jockey D Gillett sought:
 - a. To have the conviction quashed; and
 - b. Alternatively, to establish that the penalty imposed should be set aside as excessive.

Submissions of the Appellant

9. Mr K Ring submitted that the Video Footage supporting evidence before the Stewards and recorded in the Transcript at paragraphs 6-7 and 9-11 that Apprentice Jockey D Gillett was ‘doing everything possible’ to prevent her mount BRAT from shifting ground outwards on the turn; that she was not riding it out but trying to correct it but BRAT was ‘ignoring her commands’.
10. He relied upon vision showing that Apprentice Jockey D Gillett had turned the head of BRAT inwards.
11. He further submitted that Apprentice Jockey D Gillett did ‘everything possible’ but that the incident was ‘unforeseen’ and ‘unavoidable’ and caused not by the acts of Apprentice Jockey D Gillett but by the ‘horse’s manners’.

Submissions of the Stewards

12. Mr D Hensler submitted that the Video Footage clearly showed that shortly prior to the incident Apprentice Jockey D Gillett was ‘working BRAT into the turn’ and then chose to press forward between two other horses when there was an inadequate gap between them.
13. He submitted that the turning of the head of BRAT inwards by Apprentice Jockey D Gillett was not an attempt to restrain her mount.
14. He further submitted that if she had intended to restrain her mount, in circumstances where it was not responding to her commands, she would have stood in the stirrups.

Appellant’s Submissions in Reply

15. During his submissions in reply, Mr K Ring conceded that BRAT had ‘taken control from Apprentice Jockey D Gillett from about the 500 metre mark until straightened after the turn’.
16. We will return to this concession below.

Determination of this Appeal

17. The Appeals Committee concluded that the Video Footage clearly supports the charge and the conviction.
18. The Appeals Committee adopts the submissions of Mr D Hensler referred to in paragraphs 12-14 above and rejects the submissions of Mr K Ring referred to in paragraphs 9-11 above.
19. The Appeals Committee considers that the appeal against conviction was frivolous and without merit.
20. On the 27 June 2023 the Appeals Committee dismissed the appeal against conviction for reasons to be published. These are those reasons.

Submissions of Mr K Ring on Appeal against Penalty

21. Mr K Ring submitted on behalf of Apprentice Jockey D Gillett that the Stewards erred in:
 - a. Imposing a suspension of her licence to ride for one Alice Springs meeting by failing to take into account that such suspension would also prevent her riding in South Australia and accordingly having the effect of a suspension for three race meetings; and
 - b. Failing to take into account that this was her first conviction for careless riding.
22. Mr K Ring submitted that the appropriate penalty that the Stewards should have imposed was one NT race meeting. We return to this submission below at paragraph 40.

Submissions of Mr D Hensler on Appeal against Penalty

23. Mr D Westover submitted by reference to page 10 of the Transcript that the Stewards in considering the penalty clearly did take into consideration:
 - a. The fact that she intended to ride in Port Augusta the following Sunday;
 - b. The fact that she had entered no plea; and
 - c. The fact that this was Apprentice Jockey D Gillett's first conviction for an offence under AR 131a as disclosed in the Record.
24. Mr D Westover submitted that the submission of Mr K Ring concerning inter-state race meetings 'doesn't make sense' in the context of the Stewards role in the regulation of racing in the NT.
25. Mr D Westover further submitted that:
 - a. At the time Apprentice Jockey D Gillett was predominantly riding in Alice Springs.
 - b. The suspension for one Alice Springs meeting was consistent with the lower range of penalties disclosed in the Penalties Table.
 - c. The Stewards commonly do, but in this instance decided, not to also impose a fine, despite the fact that Apprentice Jockey D Gillett went on to win Race Two.

Determination of Appeal against Sentence

26. The Appeals Committee rejects the submissions of Mr K Ring referred to in paragraph 20 above and accepts the submission made by Mr D Hensler referred to in paragraphs 22-24.
27. The Appeals Committee considers that the appeal against conviction was frivolous and without merit.
28. Accordingly, on the 27 June 2023, the Appeals Committee dismissed the appeal against penalty for reasons to be published. These are those reasons.

Admitted fact first raised during these Appeals

29. Page 9 of the Transcript discloses that the Stewards adjourned their Inquiry to afford Apprentice Jockey D Gillett an opportunity to discuss with her father Mr T Gillett who had been present during their Inquiry, what plea and what further submissions Apprentice Jockey D Gillett wished to present to the Stewards Inquiry.
30. In preparation for and during this appeal Apprentice Jockey D Gillett had the benefit of assistance from Mr K Ring.
31. The concession made by Mr K Ring at the hearing of the appeal referred to at paragraph 15 above is an admission of fact not before the Stewards.
32. This admission of fact (the Admission) is both significant and disturbing.
33. It is significant because it provides a potential explanation for why Apprentice Jockey D Gillett to allow (in the words used in the Stewards Report) ‘her mount to shift outwards uncorrected approaching the 300 metre...’.
34. Whether or not Apprentice Jockey D Gillett was (as submitted by Mr K Ring) ‘doing everything possible, to prevent her mount BRAT from shifting ground outwards on the turn’; the admitted fact discloses that Apprentice Jockey D Gillett had ample time and opportunity to cease to (in the words of Mr D Hensler) ‘working BRAT into the turn’.
35. The Video Footage clearly shows that Apprentice Jockey D Gillett apparently chose not to do so.
36. Rather than honestly offering this admission of fact to the Stewards Inquiry, Apprentice Jockey D Gillett (and her advisors) chose to remain silent about the Admission during the Inquiry (as she was entitled to do) and until late in the hearing of this appeal.
37. In the opinion of the Appeals Committee this does not make the late Admission any less disturbing.

38. Of course, had the Admission been made at the Stewards Inquiry, Apprentice Jockey D Gillett may have found herself facing the more serious charge of reckless riding.

39. The Admission raises at least the following questions to which we have provided short answers below:

a. Q. Is the Admission ‘fresh evidence’ and therefore admissible only with leave of the Appeals Committee [NT Rule 23 (b)]?

A. The Admission is a submission rather than evidence.

b. Q. Can the Appeals Committee rely upon the Admission to ‘draw an inference of fact’ [NT Rule 23 (c)]?

A. Before properly drawing a relevant inference of fact about the Admission the Appeals Committee would need to consider the Video Footage from the 500 meter mark and give both parties an opportunity to be heard.

c. Q. Is the hearing of an appeal by the Appeals Committee an appeal ‘de novo’ and what effect does that have upon the powers of the Appeals Committee set out in NT Rule 23 (a)-(c)?

A. No. An appeal ‘de novo’ means a complete re-hearing of evidence and argument. The parties would adduce whatever evidence they require. The existence of NT Rule 23 (b) is inconsistent with an appeal pursuant s 145D and s145E of the Racing and Gaming Act proceeding as an appeal ‘de novo’. As was determined by a differently constituted Appeals Committee in the matter of **Raymond Vigar [See decision dated 10 June 2015 at paragraph 31]** an Appeals Committee will only interfere with the decision of the Stewards if it is ‘persuaded that they fell into error’.

d. Q. Should the Appeals Committee refer this matter back to the Stewards for rehearing and reconsideration in light of the Admission pursuant to NT Rule 23 (a)?

A. No. Even if the Admission were to be found to be correct, this does not point to an error in their consideration of the charge as particularised.

e. Q. Do the stewards have power to investigate the validity of the Admission in a fresh Inquiry concerning whether or not Apprentice Jockey D Gillett committed an offence against AR 131(a) of reckless riding between the 500 metre mark and the turn.

A. Yes. There does not appear to be a regulated time limit upon the relevant power of Stewards to conduct Inquiries.

However, we do not recommend a fresh Inquiry in the circumstances of this matter. Firstly, the Admission may not have been properly considered and merely advanced by Mr K Ring in an overly imaginative moment when trying to explain the actions of Apprentice Jockey D Gillett.

Secondly, Apprentice Jockey D Gillett was apparently not ‘on notice’ of either the Admission nor the potential for a further enquiry when it was made.

Thirdly, we are prepared to draw the inference that the Admission is incorrect given that the Video Footage was examined in detail by the Stewards during their Inquiry and they did not reach the conclusion of fact advanced by Mr K Ring when he made the Admission.

The Submission of Mr K Ring referred to at paragraph 22

40. The submission of Mr K Ring referred to at paragraph 22 is not available except in circumstances where an Appellant persuades the Appeals Committee that the Stewards ‘fell into error’. We refer to what has been said in paragraph 39 (c) above and in paragraph 43 below.

Appeals Frivolous and Without Merit

41. The Appeals Committee does not interpret NT 23 (c) (nor the AR) as providing any power pursuant to which the Appeals Committee could impose a penalty upon those who pursue frivolous appeals or appeals lacking any reasonable or arguable merit and considers that to be unfortunate.

42. Pursuit of such appeals needlessly increases the administrative costs associated with the promotion of welfare and safety within the NT racing industry.

43. For the benefit of jockeys and trainers, their representatives before the Appeal Committee, others involved in the racing industry and the public that supports it; we provide a non-exclusive list at paragraph 45 below; of matters that can be properly the subject of submissions that support an assertion that the Stewards ‘fell into error’. Unless an Appellant is able to establish such an error the Appeals Committee has no power to overturn the Stewards’ decision.

44. The Appeals Committee provides the below list in the hope that it assists prospective appellants and their advisors and mentors in determining whether to institute an appeal or proceed with one.

45. Non-exclusive list of potential ‘errors’ that may PROPERLY found an appeal.

1. A breach of procedural fairness/natural justice occurred.
2. Decision-making procedures were not observed.
3. The Stewards did not have the jurisdiction to make the decision.
4. The decision was not authorised by the Australian or NT Rules of Racing or the Racing and Betting Act.
5. The Stewards acted in error of law.
6. The decision was induced or affected by fraud, dishonesty, misleading or deceptive conduct.
7. There was no evidence to justify the decision.
8. The decision was otherwise contrary to law.
9. The decision was an improper exercise or otherwise an abuse of power.
10. The following are examples of an improper exercise or otherwise an abuse of power.
 - i. Taking into account irrelevant considerations.
 - ii. Disregarding relevant considerations.
 - iii. Exercising a power for an unauthorised purpose.
 - iv. Ignoring a conflict of interest in persons involved in the exercise of a power.
 - v. Exercising a discretionary power in bad faith.

- vi. Exercising a discretionary power at the direction or on behalf of another person.
- vii. Exercising a power by applying a rule or policy without considering the merits of the case.
- viii. Exercising a power in a way that is so unreasonable that no reasonable person could have exercised it that way.
- ix. Exercising a power that produces an uncertain result.

46. Further assistance in applying the above to the circumstances of a particular Stewards' decision can be readily found by searching any of the above example errors on the internet.

47. Finally, and in the interests of prospective appellants, the Appeals Committee points out that in any case in which a relevant error is established; NT 23 provides that the Appeals Committee may among other things 'quash, set aside, alter, vary, increase or add to the punishment imposed by or confirm the decision of the Stewards'.

Dated the 22nd day of August, 2023



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P F McIntyre (Chair)



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Mr S Stirling