

TRNT Appeals Committee

**APPEAL of Jockey W Davis**

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

DATE of HEARING: 4 July 2023

REASONS FOR DECISION

**Appearances**

1. At the Appeal;
  - a. Mr D Hensler represented the Stewards by video from Alice Springs.
  - b. Mr K Ring represented Jockey W Davis by video from Tasmania.
  - c. Jockey W Davis was present.

**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 Jockey W Davis on 27 June 2023.
  - b. The transcript of the Stewards Inquiry conducted on 24 June 2023 into the running of Race 7 that day at the Darwin Turf Club (the Transcript).
  - c. TRNT Stewards Report dated 24 June 2023 (the Report).
  - d. A table entitled Wayne Davis Personnel Incidents (the Jockey's Record).
3. At the hearing of this appeal the Appeals Committee also had the benefit of considering further documents provided by Mr D Hensler as follows:
  - a. A table entitled 'NT Careless riding penalties from March 2014 (24 pages) (the Penalties Table).
  - b. Video recordings of Race 7 from three different cameras (the Video Footage).
4. The documents referred to at paragraphs 2 and 3 were accepted into evidence without objection.

## **Background**

5. Jockey W Davis appealed against the severity of the penalty imposed by the Stewards on 24 June 2023 on a charge under AR 131(a) of engaging in careless riding.
6. The particulars of the breach as disclosed in the Transcript were as follows:

‘That near the 250 metres you angled your mount outwards to improve when on terms with LADY TUCAN ridden by Sonja Wiseman resulting in that runner being bumped heavily and unbalanced which in turn resulted in Adam Nicholls mount, ALL HARD WOOD being hampered from heels.’<sup>1</sup>
7. The penalty imposed upon Jockey W Davis was that:
  - a. His licence to ride in races was suspended for 3 NT race meetings; and
  - b. a fine was imposed of \$750.00.
8. Jockey W Davis relied upon two grounds of appeal alleging that:
  - a. The Stewards failed to consider the Jockey’s Record.
  - b. The Stewards erred in assessing the degree of carelessness as high when it should have been assessed as mid-range.

## **Submissions of the Appellant**

9. In making his submissions relating to the ground of appeal set out at paragraph 8. b. above, Mr K Ring asserted the following as facts:
  - a. Jockey W Davis ‘had to bump out to protect himself’.
  - b. The incident was not all the fault of Jockey W Davis but was contributed to by Jockey A Nicholls moving his mount ALL HARD WOOD inwards when Jockey W Davis had already committed his mount TUBTHUMPER to shift outwards.
10. Mr K Ring proceeded to submit that in light of the matters set out in paragraph 9.a.-9.b. the Stewards should have determined the degree of carelessness of jockey W Davis as in the mid to high range rather than in the high range.

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<sup>1</sup> See Transcript at top of page 10.

11. Mr K Ring submitted in relation to the ground of appeal set out at paragraph 8.a. above that the penalty was excessive in light of the Jockey's Record and his reputation 'as a highly respected, competitive but safe rider'.

### **Submissions of the Stewards**

12. Mr D Hensler submitted that Jockey W Davis was given ample opportunity to present his version of the incident at the Inquiry and neither he nor any witness gave any evidence at the Inquiry that would support either of the two assertions of fact now put forward by Mr K Ring.

13. He further submitted that the Video Footage did not support those two assertions of fact and the Appellant should not be permitted to rely on such assertion when they were not raised at the Inquiry.

14. Mr D Hensler drew the attention of the Appeal Committee to page 9 of the Transcript where it records that the Stewards informed Jockey W Davis that the Stewards had considered bringing a charge of reckless riding in light of the degree of carelessness apparent in the Video Footage, but ultimately decided upon a charge of careless riding, considering that what happened appeared out of character and inconsistent with Jockey W Davis' reputation and record.

15. Mr D Hensler submitted that because the Stewards considered that the degree of carelessness bordered on recklessness also supports the determination that the degree of carelessness was high.

16. Mr D Hensler submitted that the penalty imposed was well within the usual range of similar penalties apparent from consideration of the Penalties Table;

- a. As to suspension, the usual range being between a reprimand and a 5 meeting suspension.
- b. As to fine, the usual range being between \$300-\$1000.

17. Mr Hensler drew to the attention of the Appeal Committee the content of pages 9-10 that record that the Stewards considered the Jockey's Record and in fact discussed this with Jockey W Davis and gave him an opportunity to speak further to it. He rejected the submission that the Stewards did not take the Jockey's Record into account.

18. Mr Hensler drew the attention of the Appeal Committee to a passage from an earlier decision of the Appeal Committee in the matter of Jockey S Fawke (3 August 2018) (the Fawke Decision) as follows:

*‘The notion of consistency in the application of sentencing principles is concerned with ensuring that similar penalties for similar offences bear an apparent consistency in range. It does not mean that penalties should be precisely the same. Indeed, it is unlikely that any offender or offending will be precisely the same as another.*

*The appellant, in this case Jockey Fawke, has the burden of persuading us that the penalty imposed was demonstrably outside of the usual range of penalties for offences of this sort.*

*We consider that all the penalties set out in the Penalties Schedule, including that the subject of this appeal, fall within a generally consistent range.’<sup>2</sup>*

19. In concluding, Mr Hensler submitted that Mr K Ring had not discharged the burden referred to in paragraph 30 of the Fawke Decision.

### **Submissions of Mr K Ring in Reply**

20. In his Reply Mr K Ring made the following two further submissions:

- a. The Appellant is entitled to raise new matters at the Appeal not raised at the Inquiry.
- b. Whilst the Stewards may have mentioned Jockey W Davis’ good record during the Inquiry, he (Mr K Ring) did not believe that they actually did take it into consideration.

### **Consideration of Submissions**

21. Contrary to the submission of Mr K Ring referred to at paragraph 20. a. above, there is no entitlement for an appellant to introduce new evidence at the Appeal not raised at the Inquiry. Whatever may be the case in other jurisdictions, NT Rule 23 (b) provides as follows:

*‘Except by leave of the Principal Racing Authority no fresh evidence shall be allowed at the hearing of any appeal’.*

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<sup>2</sup> Fawke decision at paragraphs 29-31.

22. Mr K Ring did not seek and was not granted leave to adduce new evidence at the appeal.

23. Neither was any explanation offered to explain the failure of Jockey W Davis to give evidence to the Inquiry of the matters referred to at paragraphs 9. (a) and 9. (b). above.

24. The following extracts from the Transcript bear upon this issue:

a. 'Mr Hensler Okay, alright. Mr Davis anything you want to put to us?

W Davis No more evidence from me sir.

Mr Hensler Alright. Just looking at the film there Mr Davis it doesn't on the lateral shot, it doesn't appear at any stage that you are clear of the runner on your outside to shift out. You're on, virtually terms with that runner, when you shift out.

W Davis I would agree sir.<sup>3</sup>

b. The passage from the Transcript following immediately upon Mr Hensler reading to Jockey W Davis the particulars of the charge<sup>4</sup>.

W Davis Yes sir. Yeah, totally understand. Yes sir.

Mr Hensler We ask you to enter a plea.

W Davis Guilty.

c. Following the discussion he had with Mr Hensler concerning the Jockey's Record, the following is said by Jockey W Davis<sup>5</sup>

W Davis 'Yes sir. But other, otherwise I don't wish to proceed with any, any more contributing factors, sir. But I plead guilty thank you sir.'

25. The Transcript discloses that Jockey W Davis did not dispute either the accusation set out at paragraph 24. a. above nor the particulars of the charge.

26. The Appeal Committee agrees with the submission of Mr D Hensler referred to in paragraph 13 above.

27. There is nothing of substance in the Appellant's submissions supportive of the ground of appeal set out at paragraph 8. b. above.

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<sup>3</sup> Transcript page 8 line 21-29.

<sup>4</sup> Transcript page 10 line 10-12.

<sup>5</sup> Transcript page 11 line 9.

28. Neither is there anything of substance in the Appellant's submissions supportive of the ground of appeal set out at paragraph 8.a. above.
29. The Transcript reveals numerous occasions when the Jockey's record formed part of discussions between him and Mr D Hensler.<sup>6</sup>
30. The Appeal Committee agrees with the submission of Mr D Hensler referred to in paragraph 19 above.
31. Mr K Ring did not submit that the Stewards 'fell into error' in any of the recognised ways that are capable of providing a proper basis for an appeal from their decision.<sup>7</sup>
32. On 4 July 2023 the Appeals Committee dismissed the Appeal for reasons to be published.
33. These are those reasons.

### **Frivolous Appeals and Improper Submissions**

34. The Appeal Committee takes this opportunity to express its disappointment that it was required to deal with another frivolous appeal.
35. In this case it was also confronted by what was apparently, a belated attempt to construct a narrative disconnected from the factual admissions made by the Appellant at the Stewards' Inquiry.
36. The submission of Mr K Ring referred to at paragraph 20. b. above was unhelpful, ill-considered and irrelevant. That Mr K Ring thought it appropriate to make such an unwarranted attack upon the integrity of the Stewards is disappointing in the extreme. Such remarks bring the regulation of the Thoroughbred Racing Industry into disrepute.

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<sup>6</sup> See Transcript page 9 line 25, page 10 line 15 and page 11 lines 1-8.

<sup>7</sup> See the discussion concerning appealable errors in the recent Appeal Committee's decision in the matter of Apprentice Jockey D Gillett dated 22 August 2023

Dated the 4<sup>th</sup> day of September 2023



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P F McIntyre (Chair)



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Mr S Stirling