

TRNT Appeals Committee

APPEAL of Apprentice Jockey M Kennedy

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

DATE of HEARING: 20 February 2024

REASONS FOR DECISION

Appearances

1. At the Appeal:
 - a. Mr D Hensler represented the Stewards.
 - b. Mr J Murdoch represented Apprentice Jockey M Kennedy both of whom were present by video link from Queensland.
 - c. 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 the following documents (the Documents):
 - a. The Notice of Appeal filed by Apprentice Jockey M Kennedy on 12 February 2024 (Notice of Appeal).
 - b. The transcript of the Stewards Inquiry conducted on 9 February 2024 at the Darwin Turf Club (Transcript) into an incident in Race Two that day (Race Two).
 - c. The TRNT Stewards Report dated 9 February 2024 (Report).
 - d. A table entitled 'NT Careless riding penalties from March 2014 (Penalties Table).
 - e. A memorandum entitled 'TRNT Stewards Guidelines for Careless Riding (the Guidelines).
 - f. A Table entitled 'Minonette Kenney-Personnel Incidents' (Record).
 - g. A decision of the Queensland Racing Appeals Panel in the matter of jockey Mr Kyle Wilson-Taylor dated 8 February 2024 provided by Mr J Murdoch (QRAP Decision).
 - h. A Sunshine Coast Turf Club Stewards Report dated 18 February 2024 also provided by Mr J Murdoch (SCTC Stewards Report).
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 M Kennedy appealed against the severity of the penalty imposed by the Stewards 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 10 of the Transcript as follows:
‘when you rode Gotta Beat in race two, that you failed to make sufficient effort to prevent your mount from shifting inwards near the seven hundred metres resulting in Apprentice Lines mount Whitten being crowded inwards onto Wayne Davis’s mount Gelata, which was tightened for room and severely checked by its rider.’
7. The penalty imposed upon Apprentice Jockey M Kennedy was that her licence to ride in races was suspended for three Queensland meetings which would be Doomben, Ipswich and Rockhampton.
8. In her Notice of Appeal Apprentice Jockey M Kennedy sought
 - a. A stay of proceedings pending the hearing of the appeal (Stay Application); and
 - b. To establish that the penalty imposed should be set aside as excessive.
9. The Stay Application was not resisted by the Stewards and was granted by the Appeals Committee on the afternoon of 13 February 2024.
10. Notice of the grant of the Stay Application was provided to Queensland stewards by telephone on 14 February and sent by email from Andrew O’Toole TRNT Chief Executive to Neil Hocking on the morning of the 15 February 2024 but not otherwise given to Apprentice Jockey M Kennedy.
11. Having perused the Documents, the Appeals Committee arranged for the parties to be informed by email from the Chief Executive of the Thoroughbred Racing NT dated 19 February 2024 as follows:
‘The Appeals Committee intends to give the parties an opportunity to be heard on the following issues:
 1. Do the NT Stewards have authority to impose a penalty of suspension on jockeys riding at NT race meetings for a period of time, (days/weeks etc.) instead of by reference to an identified number of race meetings?
 2. Do the NT Stewards have authority to suspend an interstate apprentice jockey from riding at Queensland race meetings?’

Submissions of the Appellant

12. Mr J Murdoch made the following submissions on behalf of Apprentice Jockey M Kennedy:

- a. The Stewards erred in determining that the penalty to be imposed could not be ‘less than one NT meeting’.¹
- b. The Stewards erred in failing to consider other penalty options that were available pursuant to AR 283 (1).
- c. The Stewards erred in determining that the degree of interference was in ‘the high range’² as
 - i. There was a slight movement that was immediately corrected³;
 - ii. Apprentice Jockey M Kennedy was not riding tight but wide most of the race and was not trying to cross inwards.
 - iii. There was no contact between her mount Gotta Beat and Whitten ridden by Apprentice Jockey E Lines.
 - iv. The interference with Jockey Davis’ mount Gelata was not caused by Apprentice Jockey M Kennedy but rather by an overreaction by Gotta Beat described by Apprentice Jockey E Lines as having ‘balked a bit’⁴ and to ‘balk inwards’⁵. This is supported by the evidence of P Cole as follows:

‘My horse that Emma Lines rode is a sort of, probably you know, over-reacted probably a little bit more than probably what it needed to but yeah, just at the point of that corner it didn’t need to be quite as tight as they were.’⁶
- d. The Stewards should have determined that the degree of interference was in the low range.
- e. In any event the ‘degree of interference’ is not a criterion to determine penalties of itself as the purpose of civil penalties is not punishment or retribution but rather imposing a discipline toward improvement of the future conduct of the jockey.
- f. The Guidelines are neither enshrined in either the Australian Rules of Racing or the NT Local Rules of Racing nor do they impose upon the Stewards a mandatory minimum penalty.
- g. It was common ground that the degree of carelessness was ‘in the low range because you only shift marginally’⁷.

¹ See line 30 on page 13 of the Transcript.

² See line 11 on page 14 of the Transcript.

³ See line 8 on page 4 of the Transcript.

⁴ See line 12 on page 3 of the Transcript.

⁵ See line 7 on page 4 of the Transcript.

⁶ See line 26 on page 9 of the Transcript.

⁷ See line 14 on page 14 of the Transcript.

- h. The Penalties Table discloses that the Stewards imposed a reprimand as a penalty for a similar breach of AR 131A on 1 July 2017⁸.
- i. Both the QRAP⁹ Decision and the SCTC Stewards Report¹⁰ provide examples of the imposition of a reprimand for a breach of AR 131A in Queensland.
- j. There is no reasonable equivalency between a one NT race meeting penalty and a three Queensland race meeting penalty.
- k. As to the question posed at paragraph 11.1 above, he agreed with Mr Hensler that AR 266 provides authority to the Stewards to impose suspensions by reference to a period of time or to a number of race meetings.
- l. As to the question posed at paragraph 11.2 above, he submitted:
 - i. That the Australian Rules of Racing (AR) provide for the various Australian Racing Authorities to observe penalties imposed by other Australian Racing Authorities¹¹;
 - ii. There is no provision in the AR nor in the NT Local Rules of Racing (NTRLR) or any legislation of which he is aware authorising the NT Stewards to suspend an interstate apprentice jockey from riding at Queensland race meetings.
- m. Because of the delay in informing Apprentice Jockey M Kennedy of the grant of the stay she suffered the loss of opportunity to hassle in advance for a ride at Doomben (14.2.24) and Ipswich (15.2.24); thereby suffering two thirds on the penalty imposed.
- n. Should the Appeal Committee uphold the appeal it should impose a penalty of reprimand rather than referring the matter back to the Stewards.

Submissions of the Stewards

13. Mr Hensler made the following submissions on behalf of the Stewards:
- a. As can be seen from the head-on view on camera three, Apprentice Jockey M Kennedy made an effort to stay in the three deep lane as she took the turn, but that effort was insufficient and taken too late.
 - b. Her failure to meet her responsibilities in that regard constitutes careless riding.
 - c. The Stewards concede that Apprentice Jockey M Kennedy had a very good record.
 - d. That is the tightest turn on the Fannie Bay racetrack and perhaps Apprentice Jockey M Kennedy was not as familiar with it as local jockeys.
 - e. The Stewards also concede that Apprentice Jockey M Kennedy only shifted marginally and quickly resumed her position.
 - f. The Stewards determined that the degree of carelessness was in the low range¹².

⁸ See page 13 of the Penalties table.

⁹ See paragraph 32

¹⁰ See towards the bottom of page 3.

¹¹ See for example AR 3, AR 4(1), AR260, AR 266 (1) and AR 270A.

¹² See line 13 on page 14 of the Transcript.

- g. Jockey Davis described the interference suffered by his mount as follows:
 'I wasn't kicking up where there was no room. Then all of a sudden, I just got shunted over [to] the fence'.
- h. The Video Footage supports his description of the interference and clearly shows that the interference was very significant.
- i. There is ample evidence to support the Stewards conclusion that the degree of interference was high.
- j. The degree of interference is highly relevant in assisting the Stewards to determine penalty.
- k. The Guidelines provides a transparent mechanism that assists:
 - i. The Stewards to ensure that the penalties that they impose for careless riding offences pursuant to AR 131 (a) are reasonably consistent and fair, and.
 - ii. In the education and discipline of NT jockeys and others involved in the NT Thoroughbred Racing industry.
- l. The Guidelines make it clear that the Stewards consideration of the degree of interference is only one of nine criteria usually considered by the Stewards who nevertheless maintain their discretion to consider all of the circumstances of the offending.
- m. Given that the degree of interference was high this penalty was well within the usual range of penalties shown in the Penalties Table.
- n. To have imposed only a reprimand in the circumstances would have reflected badly on NT Thoroughbred racing.
- o. The Stewards were also conscious of the fact that a penalty of one NT race would have a disproportionate impact on Apprentice Jockey M Kennedy because it would:
 - i. Involve her being suspended until 16 February 2024 and therefore missing more than 1 Queensland race; and
 - ii. Impose a greater financial burden upon her than if she was resident in the NT.
- p. The Stewards intent was to ensure that Apprentice Jockey M Kennedy did not suffer a financial burden greater than if she was resident in the NT¹³.
- q. As to the question posed at paragraph 11.1 above, Mr Hensler submitted that AR 266 provides authority to the Stewards to impose suspensions by reference to a period of time or to a number of race meetings.
- r. As to the question posed at paragraph 11.2 above, Mr Hensler conceded that he had to agree with the submission of Mr J Murdoch set out at paragraph 12. 1. 11. above there is no provision in the AR or in NTLR or in any legislation of which he is aware authorising the NT Stewards to suspend an interstate apprentice jockey from riding at Queensland race meetings.

¹³ See discussion at line 30 on page 13 and over of the Transcript.

Determination of this Appeal

14. The Appeals Committee concluded that the NT Stewards had no authority to suspend an interstate apprentice jockey from riding at Queensland race meetings¹⁴ and on this basis alone the appeal is upheld.
15. Even if the Appeals Committee is wrong about what is said in paragraph 14 above, the Appeals Committee also concluded that there is no reasonable equivalence between a suspension from riding in one NT race and a suspension from riding in three Queensland races¹⁵ and would have upheld the appeal on this basis.
16. Although the Appeals Committee was not persuaded that the conclusion of the Stewards that the offending involved a high degree of interference was particularly sound, the Appeals Committee would not have interfered with that conclusion on the evidence before it.
17. The Appeal Committee agrees with and adopts the Appellant's submissions referred to at paragraphs 12. e. and 12. f. above.
18. The Appeal Committee also agrees with and adopts the submissions of the Stewards referred to at paragraph 13. k. and 13.l. above.
19. The submissions referred to in paragraphs 17. and 18. above are compatible.
20. One benefit afforded by recognising that NT Stewards have no authority to suspend an interstate apprentice jockey from riding at Queensland race meetings is that effect is thus given to the unique guidelines that inform Queensland Stewards in their consideration of penalties for careless riding in Queensland.
21. The Queensland Racing Appeals Panel observed in the QRAP Decision as follows:

‘In determining penalty, the Stewards applied the Careless Riding Template. In late September 2023, an industry notice was sent to Thoroughbred participants advising of the implementation of that template. The Careless Riding Template was introduced, it is said, to provide Stewards with a framework to determine a penalty calculation for careless riding, by categorising the incident based on a set of criteria, those being the grade of the charge. The rider's previous record and feature meeting loading.’
22. For NT Stewards to impose (or purport to impose) a penalty for careless riding in Queensland without reference to the Queensland Careless Riding Template would bring the Thoroughbred Racing Industry into disrepute, both in Queensland and in the NT.

¹⁴ This was common ground between the parties.

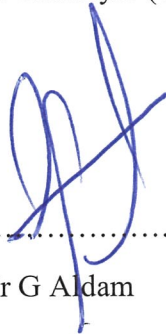
¹⁵ Adopting the Appellant's submission described at paragraph 12. J. above.

23. Given that so many interstate jockeys ride in the NT, it is of concern to the Appeals Committee that there is a lack of consistency between the various Principal Racing Authorities about how penalties for careless riding are calculated.
24. The Appeals Committee notes that in the ultimate paragraph of the Guidelines reference is made to 'high level careless riding' without any explanation of what that phrase means.
25. On 20 February 2024, the Appeals Committee upheld the Appeal for reasons to be published.
26. These are those reasons.

Dated the 12th day of April 2024



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P F McIntyre (Chair)



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Mr G Aldam