

Appeal decision

Date: 3 October 2013

Code of racing: Thoroughbred

Appeal panel: Judge W Carter (chair), Mr B Miller and Mr N Thomson.

Appearances: Jockey Bobby El-Issa appeared on his own behalf.
Mr D Aurisch, stipendiary steward, appeared on behalf of the stewards.

Decision being appealed: Suspension of jockey Bobby El-Issa's licence for a period of one month – AR137(a).

Appeal result: Appeal dismissed.

Extract of proceedings – in the matter of the AE Smith Airconditioning Benchmark 70 Handicap over 1100 metres at Townsville on 10 September 2013. Jockey: Bobby El-Issa

THE CHAIRMAN: The appellant, jockey El-Issa, was charged by the stewards at an inquiry in respect of a race at the Mackay Turf Club on 20 August with a breach of Rule 137(a). He was charged that in Race 6 on that day he rode improperly in that at approximately the 50 metre mark he extended his right elbow, making contact with jockey Dykes, the rider of Tyson Rules. The case for the appellant was a little complicated by the fact that he seems to have pleaded guilty in somewhat equivocal terms when he was called on to plead.

For instance, he said on one occasion at page 13 of the transcript - and there are others: "I believe I have done wrong by lifting my elbow but I couldn't plead guilty to improper because improper is actually making contact." We were concerned because of what appeared to us to be a qualified plea, that we should proceed to consider the appellant's appeal on the basis that a plea in those terms might not have been properly unaccepted.

Accordingly, we have considered all of the circumstances of the case. We have had a comprehensive submission by the jockey, the details of which I will mention in a moment, and submissions from the stewards. In the result, the stewards concluded that the riding in the relevant respect was improper and he was suspended for one month.

The appellant's submission is that in the race in question, not only at the relevant point in the race but prior to that, that jockey Dykes had so ridden his mount as to hamper the appellant when riding his horse, and that is readily apparent to us on the film. That is not to say that we accept the appellant's submission that the interference by that rider was necessarily as serious as he alleges, but that is a matter about which we need not make any further

comment. There is no question but that the other rider did in fact hamper the appellant, both at the earlier part of the race and at times during it and subsequently at the relevant point.

The appellant's submission is that on that account he found himself in a position where he was concerned for his own safety and effectively was forced into a position of taking protective action which he did by raising his elbow as against the opposing rider. We do not accept that the jockey was unable to take other measures to seek relief from Dykes' riding.

We are satisfied - and indeed it is admitted - that the jockey did take that action. It is apparent on the film. On the other hand, there is a dispute in relation to where the contact was made. In that respect we refer to jockey Dykes' evidence. When first asked Dykes indicated that he believed that there had been no contact. After the film had been shown in the stewards' room, Dykes was asked, "Did jockey El-Issa make contact with you?", and Dykes replied, "I would have to - once you have viewed the film." And further on page 7, "After viewing the film, do you believe that he has made contact with you?", to which Dykes replied, "Yes".

Jockey El-Issa himself at page 8 when asked, "So you did make contact with jockey Dykes?" The appellant replied, "Yes, I would have just touched him." In the stewards' inquiry when asked whether that was an appropriate action to take, the jockey said, "No, it is not an appropriate action, but like I said there was nothing improper about it." And again the jockey replied at page 9 of the transcript, "I can't sort of stress more than that because like looking back at it, sir, I wouldn't do it again", and further, "It was a reaction. I wouldn't do that again."

The stewards' case therefore was that as a result of the interference and when in fact Dykes' mount was again hampering the mount of the appellant that the appellant improperly raised his right elbow in respect of Dykes and that that made contact. The stewards' case briefly put is that the appellant improperly took matters into his own hands and failed to take other avoiding action which he could have taken and which he didn't.

We wish to emphasise that any jockey making deliberate and intentional physical contact with another jockey in a race by elbowing or otherwise can expect to be dealt with for improper riding. It is well understood that jockeys ride competitively, but there is a line beyond which competitive riding will become improper riding. Fairness and safety in the course of a race are the paramount considerations.

In our view, considering it on the basis that the jockey had pleaded not guilty, we are of the view that his conduct as alleged was improper. He will insist that it was simply a reaction. In this case we do not accept that as an acceptable proposition. Rather we are of the view that what he did was done out of some level of frustration because of the riding of the other horse, but that, in our view, is not a satisfactory defence to the charge in question, given all of the relevant circumstances.

Accordingly, we are of the view after having given the matter due consideration that the appellant's conviction is properly recorded. At the same time we are of the view that it is not unreasonable that any jockey who attempts to physically interfere with another jockey in the course of a race can expect a significant penalty, and in this case we are of the view that the penalty of one month suspension was appropriate.

Accordingly, we dismiss the appeal.

Further right of appeal information: The appellant and the stewards may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **14 days of the date of this decision**. Information in relation to appeals to QCAT may be obtained by telephone on (07) 3247 3302 or via the Internet at www.qcat.qld.gov.au