

## **RACING APPEALS TRIBUNAL**

### **QUEENSLAND**

#### **NOTICE OF DECISION**

**APPEAL NO:** RT002-08 (Amended)

**DATE:** 25 February 2008

**APPELLANT:** Ms Mandy Sue Radecker

**RESPONDENT:** Queensland Racing

**APPEAL FROM:** Decision of the First Level Appeals Committee dismissing an appeal from the Stewards of Queensland Racing for a breach of AR135(b) and the imposition of a suspension period of 4 weeks. Appeal on finding and penalty.

**BREACH OF RULE:** AR135(b)

**DECISION:** Appeal upheld

**APPEARANCES:** JE Murdoch SC appeared as Counsel for the Appellant.  
Mr Norm Torpey Senior Steward appeared on behalf of the Respondent.

#### **REASONS FOR TRIBUNAL'S DECISION**

Mr Dennis Standfield - Member

This Appeal by Apprentice Mandy Radecker concerns her ride on Classic Force in Race 3 being The Zeditave Handicap a maiden race over 1200m at the Queensland Turf Club Meeting of 11 January 2008.

Immediately after the running of the race the Stewards opened an inquiry concerning the Appellant's ride which was adjourned because of a pending race and recommenced later that day when it was further adjourned and reconvened on 22 January 2008. At the reconvened inquiry the Stewards issued a charge against the Appellant under AR135(b) which reads:

*“The rider of every horse shall take all reasonable and permissible measures throughout the race to ensure that his horse is given full opportunity to win or to obtain the best possible place in the field.”*

The imposition of a penalty is pursuant to AR135(c) which provides:

*“Any person who in the opinion of the Stewards has breached or was a party to breaching any portion of this rule may be punished and the horse concerned may be disqualified.”*

The particulars provided to the Appellant of the charge were stated (at page 53 from line 22 of the Stewards Inquiry Transcript) as:

“The particulars are that you, apprentice Radecker, the rider of Classic Force in race 3, the Maiden for 3-year-olds and up, 1200 metres - which was a program included on the Queensland Turf Club meeting on Friday, 11 January 2008 - failed to take all reasonable and permissible measures from shortly after the start until approaching the 600 metres by failing to apply sufficient pressure to Classic Force to maintain a position closer to the second-last horse when in fact your failure to apply sufficient pressure resulted in that gelding, namely Classic Force, losing ground from the second-last horse, namely Spark Of Magic, which was ridden by apprentice Matthew Palmer. This, in the stewards’ opinion, failed to give Classic Force full opportunity to win or to obtain the best possible place in the field.

We further particularise that between the 400 metres and the 50 metres that you failed to place Classic Force under sufficient vigour when it was also reasonable and permissible for you to do so to ensure that you had given Classic Force the full opportunity to win or to obtain the best possible place in the field.”

The Appellant pleaded not guilty and after hearing further evidence found the Appellant guilty. When delivering their decision the Stewards (at page 92 from line 6 of the Stewards Inquiry Transcript) stated:

“The Stewards have considered all the evidence that has been put before us, obviously both verbal and oral, from all parties. We have considered the audio and visual evidence, that being the videos of the day in question and the horse’s previous two varrier trials, and they being from Doomben on 18 December 2007, and Deagon on the 7<sup>th</sup> of

the 12<sup>th</sup>, 2007, and any evidence that was taken from the day, that being Friday, 11 January 2008.

Apprentice Radecker, we have considered the charge that was levelled against you under Australian Rules of Racing 135, Sub-Sections (b) and (c). We do believe that in the early stages of the race or shortly after the start until a point approaching the 600 metres, you failed to apply sufficient pressure to Classic Force to allow that horse to make up any ground on the second last horse, that being Spark of Magic.

We are also satisfied that the second particular of the charge can be sustained, in that it was reasonable and permissible for you to be more vigorous on Classic Force between the 400 metres and 50-metre mark, so to give that horse full opportunity to win or to obtain the best possible place in the field.

We believe that the charge as levelled against you can be sustained. We believe that the charge can be found and we formally find you guilty as charged.”

The Stewards then considered submissions on penalty and imposed a period of six weeks suspension on the Appellant. When delivering their decision on penalty the Stewards (at page 96 from line 30 of the Stewards Inquiry Transcript) stated:

“THE CHAIRMAN: Thank you, Mr Duff and apprentice Radecker. The stewards have given consideration to the matter of penalty relating to the charge under Australian Rules of Racing 135(b) and (c) being sustained and formally find you guilty, apprentice Radecker.

We have taken into consideration your submissions regarding the matter of penalty, and as your master, Mr Duff, has pleaded with us. We have considered every consideration there is regarding the matter of penalty. As you would be probably well aware, breaches of the rules of this nature generally incur a penalty of higher standing - somewhere in the area between 2 and 6 months - of recent times is a standard penalty for a breach under this rule.

This rule obviously is quite broad. It captures a multitude of reasons why the charge has been levelled against riders. We have also taken into account, apprentice Radecker, your standing as a very senior apprentice within the riding ranks. No doubt - and I have heard there are junior female apprentices riding in Queensland that look up to you. You have ridden 155 winners, you've ridden 40 I think it is - or near enough- metropolitan winners. You were very close to winning the premiership had not it been for an unfortunate accident. I have no doubt that you would have clearly won the metropolitan premiership last season. You represented Queensland. On the advice obviously from stewards interstate - in very high regard when you rode in South Australia just recently during the equine influenza, and you have never had any precedents for a charge of this nature.

We have also taken into account obviously the severity of the charge, the - and all the other matters that have been considered here today, and we believe that the appropriate penalty is a suspension of your licence to ride in races for a period covered by 6 weeks, and that will commence at midnight on - this Sunday, if you have rides at Caloundra that being 27<sup>th</sup> of January 2008.”

The Appellant appealed to the First Level Appeals Committee with her appeal being heard on 6 February 2008. At the First Level Appeals Committee the Appellant was represented by Mr Murdoch but her appeal as to the Stewards finding was dismissed with the First Level Appeals Committee (at page 31 from line 20 of the First Level Appeals Committee Transcript) stating:

“THE CHAIRMAN: Apprentice Radecker, Mr Murdoch and Mr Torpey, obviously we have given very serious thought to this matter in view of the severe – or the serious nature of the charge. After considering it, the Committee has decided that the appeal is unanimously dismissed.

The Committee’s reasons for dismissing the appeal are that apprentice Radecker did not take all reasonable and permissible measures throughout the race to ensure that Classic Force was given full opportunity to win or to obtain the best possible place in the field.

The Committee is of the opinion that at no time during the race did apprentice Radecker attempt to ride the horse more vigorously with hands and heels or to give the horse one or more cuts with the whip or be more vigorous in slapping the horse on the shoulder with the whip.

The Committee is of the opinion that after the jump at the commencement of the race, apprentice Radecker did little more than steer the horse around the course.

It is not for this Committee to decide whether the actions which the Committee feels could have been used by apprentice Radecker would have had any beneficial effect or not, but rather it is the responsibility of the jockey to take those measures to give the horse the full opportunity to win or obtain the best possible place in the field.

The fact that the horse was subsequently found to have a respiratory problem was not known to any of the interested parties, including the jockey, prior to or during the race. If the apprentice jockey felt there was something significantly wrong with the horse, then at the end of the race it was her responsibility to report the matter to the stewards and then the trainer.

The Committee notes from the transcript that apprentice Radecker is an experienced rider and had been runner-up in the Brisbane

premiership and ridden approximately 150 winners, and also ridden with some success in South Australia.”

The First Level Appeals Committee did however vary the suspension period to an effective period of four weeks.

It is from those decisions which the Appellant appeals to the Tribunal.

The grounds of the Appeal as stated by the Appellant in her Notice of Appeal lodged on 8 February 2008 were:

“The available evidence did not support the decision.

The penalty did not reflect the findings and/or the circumstances surrounding this particular horse.”

Both Mr Murdoch and Mr Torpey in their respective submissions reiterated the submissions made to the First Level Appeals Committee which is recorded in the transcript of 6 February 2008.

The issues to be decided when considering whether a rider has breached AR135(b) were articulated by Mr T.E.F. Hughes AC QC - Principal Member of the Appeal Panel of Racing NSW in a decision involving Jockey Chris Munce published 11 June 2003 when Mr Hughes stated:

“The task of administering this rule is not always easy. One must keep it clearly in mind that on its true interpretation it is not designed to punish a jockey unless on the whole of the evidence in the case the Tribunal considering a charge under the rule is comfortably satisfied that the person charged was guilty of conduct that in all the relevant circumstances fell below the level of objective judgment reasonably to be expected of a jockey in the position of the person charged in relation to the particular race.

The relevant circumstances in such a case may be numerous; they include the seniority and experience of the person charge.

They include the competitive pressure under which the person charged was riding in the particular race.

They include any practical necessity for the person charged to make a sudden decision between alternative courses of action.

The rule is not designed to punish jockeys who make errors of judgment unless those errors are culpable by reference to the criteria that I have described.”

At the commencement of the Stewards Inquiry on 11 January 2008 the Appellant was asked to take the Stewards through her ride and her response (page 2 from line 38 of the Stewards Inquiry Transcript) was:

“APP. JOCKEY RADECKER: On jumping away, he was probably half a length, maybe a length slow away. He really didn't want to get up and travel after that. I sort of tried to encourage him to get on the bit and travel a little bit but he really wasn't happy to. I just tried to keep him happy where he was without getting too far back in the field.

He tried to come into the race coming to the 600-metre mark. He came out off the rail trying to get a little bit of firm ground. That was about it. Coming to the 200, he was starting to stoke up a little bit. The horse in front of me - I think apprentice Cunningham was on it - it was sort shifting ground. He is not a real big horse to grab and pull up real quick so I have had had to ease him and then come back to her inside and get going again.”

The Appellant's Master and Trainer of the horse is Mr Pat Duff and Mr Duff at the Inquiry accepted the Appellant's ride on the horse stating that the horse is an awkward horse to ride being a horse that (page 5 line 20 of the Stewards Inquiry Transcript) “... travels better on the bit than when you let him off the bit than when you let him off the bit ...”

Furthermore he stated (page 5 from line 26 of the Stewards Inquiry Transcript) “He's the sort of a horse if you started hustling him up he would be all over the show.”

The horse is obviously a “big” horse as this was mentioned repeatedly by Mr Duff throughout the Stewards Inquiry and indeed from Mr Duff’s evidence the horse was disappointing and cause for frustration.

At the Inquiry the Stewards gave their observation of the race with the Chairman of the Inquiry Chief Steward Mr Reid Sanders essentially stating that throughout the race the Appellant was content to allow the horse to run on its own and not put the horse under any pressure. This view was supported by Stewards Ireland and Fletcher who both commented on the lack of urgency of the Appellant during the ride. Mr Torpey was also a Steward on the day concurred with the observations of the other Stewards and also (page 7 from line 40 of the Stewards Inquiry Transcript) stated:

“MR TORPEY: Initially, Mr Duff, it was so far back in the early stages of the race the concern was as to whether there was something amiss with the horse.”

Mr Torpey went onto say (page 7 from line 47 of the Stewards Inquiry Transcript):

“MR TORPEY: So that’s the initial concern. But as they came around past my stand, the horse was significantly from the second-last horse, where there was - appeared to be some small effort made by the apprentice Radecker to make up some ground. I felt if the horse was to be put into a challenging position that more urgency would have been shown from that point onwards, but I didn’t see any significant endeavours to continue with that pushing forward of the horse going around the turn from my tower (inaudible) in the front straight, but I could clearly see there was no - the horse was not placed under the whip at any stage from what I could see in the front straight.”

As has already been stated in the decision of the First Level Appeals Committee the Members of that Committee viewed the Appellant’s ride similar to the Stewards and dismissed the Appellant’s appeal.

The Tribunal has viewed the video of the race from the various angles and from an objective standard it is not a ride which would have been expected from a rider with the Appellant's experience or indeed a rider even with far less experience. There appears to the Tribunal to be a total lack of vigour both during the early stages of the race and also in the later stages as has been particularised by the Stewards when they laid the charge.

The question that has to be considered is whether there is any proper explanations for the Appellant's ride.

While much of the blame by both the Appellant and Mr Duff has been placed on the awkwardness of the horse and the state of the track, the Tribunal does not accept those explanations from its viewing of the race video. Certainly the horse is a "big" horse but throughout the stages in the race when the Appellant did put some vigour into her riding the horse did respond although its run in the straight was hampered by another runner. At the start of the race the Appellant has referred to a bump received when the horse jumped but that bump was only minor and it does appear to the Tribunal that the position in which the Appellant found herself at that stage was because she did not take action to ride the horse with any real urgency. Some explanation for this is her response to the Chairman of the Stewards of Inquiry when asked did she endeavour to "tack onto" the other horses and she (page 3 from line 16 of the Stewards Inquiry Transcript) stated:

"APP. JOCKEY RADECKER: No, sir. I didn't realise I was actually the last runner. I was just trying to get him - try and concentrate on getting him on the bit and travelling. As I said, he is a big horse. He doesn't muster speed very well or very quickly. The moment he started to travel I tried to bring him in as soon as I could."

During the showing of the video the Appellant did explain that pressure was put on the horse by the action of her whip when moving her hands forward and while these actions are noted it was not during this stage of the race on which the Stewards have based their charges but at the beginning and before the concluding stages of the race. The Appellant in her submissions also mentioned the state of the track and that as her horse was a big awkward horse she was concerned with putting pressure on the horse around the turns due to the possibility that the horse may not be able to handle the turn. Indeed in the prior race Rider K Banks rode the horse Cattleman which was stated from the Stewards Report of the race to have "bolted in the going on the home turn and became unbalanced." The Appellant advised that Rider Banks had advised her of this as did Mr Duff. The Tribunal cannot see how the state of the track was an acceptable reason.

One matter which the Tribunal is concerned with is the subsequent examination resulting in treatment of the horse when a left laryngoplasty tie back was performed on 24 January 2008. After the race the horse was vetted by Dr Lenz who was the veterinary surgeon on duty and his report is Exhibit 1 at the Stewards Inquiry. The report showed no abnormality but Dr Lenz did comment to the stable hand handling the horse that the horse was "making a bit of a whistling noise" and enquired whether the horse had been scoped. The horse was scoped on 15 January 2007 and Exhibit 2 at the Stewards Inquiry is the Scope Report. The result of the Scope Report was:

"Result: the above horse was endoscopically examined today following a poor performance in a race on Friday 11/1/08. The exam revealed left laryngeal hemiplegia (paresis or paralysis of the left arytenoid cartilage) which manifests itself as exercise intolerance and inspiratory respiratory noise during exercise. The race course vet indicated to the trainer his observation of increased respiratory noise following examination post race.

Recommended treatment is prosthetic laryngoplasty (laryngeal tie-back) which is the only treatment to satisfactorily reduce the impertinence of inspiratory airflow".

Though Dr Lenz was presented with the Scope Report and advised that if a horse was a severe “Roarer” it would have an effect on the horse’s future performance he stated when the horse presented to him after the race it was not in respiratory distress. This aspect of the matter was dealt with Mr Torpey in his submission at the First Level Appeals Committee hearing and is from (page 20 line 36 of that transcript) being:

“In relation to the veterinary evidence, I believe the evidence has all been discussed – that Dr Lenz made the statement throughout the transcript that he felt if it was a Grade 4 rating – that was seen on this report – that he would have found the horse in a more distressed condition. There is no comment from apprentice Radecker, there is no comment from the trainer about the horse’s condition immediately after the race. It is only when this incident comes to light in the second part of the matter.

We believe that the horse - and I think Mr Duff has made the comment in the transcript that if a horse has a wind problem it will suffer as a result of the pressure over the final stages of the event. Obviously that is when it is going to be under more pressure. We have always had an initial statement from apprentice Radecker that the horse was starting to stoke up over the last 200 metre.

We believe that the veterinary report and the finding from Dr Lenz that he found no significant abnormalities after the race is an indication of the lack of pressure that the horse was placed under during the event. The horse wasn’t pushed out to that degree.”

In the Appeal by Jockey GJ Baker before the Racing Appeals Authority on 7 May 1998 under this same rule the horse in question was examined by a veterinary surgeon after the race and had an elevated respiratory rate which may or may not have been caused by stress from pain in the horse’s back. The Authority considered the submissions by the Appellant as to whether this would affect the horse’s performance as follows:

“Dr Jeffries’s commentary was hypothetical when one has regard to the various questions and answers in a transcript. The evidence discloses that he did not feel it necessary to further treat the horse - he is also

Wallace's preferred stable veterinarian - and there was no further evidence about the horse's muscular problems."

In this Appeal Classic Force did as soon as practicably possible after the race have a Scope Report and received treatment. Dr Lenz did state that such condition would affect a horse's performance though it is unknown to what degree particularly when there is no pressure put on the horse.

Mr Torpey states that it would only be when the horse was under pressure that its performance would be effected and this was not done by the Appellant nor had it been previously raised in any of the horse's performances. It is noted that the horse had only one previous race run being on 16 May 2007 as a 2 year old. The video of that race run was shown and there certainly was more pressure put on the horse in that run than the Appellant did during her ride. However there is no evidence of the condition of the horse when it returned from its first race run and whether there was a "slight whistling" noise or "heaving" noise. As there was only one previous race run that is not a basis for establishing what the "normal" performance of the horse would be in a race or when pressure is applied to the horse. It was mentioned at the Stewards Inquiry that the horse had a trial but no video of the trial was produced to gauge the performance of the horse . The fact remains that Dr Lenz did make a comment which resulted in the horse being scoped and its roaring condition was detected. While Dr Lenz stated that he did not actually see the scope he did in answer to Mr Pat Duff (page 71 from line 40 of the Stewards Inquiry Transcript) states "... a severe roarer, that's likely to have an effect on the horse's future performance."

While it is accepted that the horse did not appear to have respiratory distress the Appellant did state in answer to a question from Mr Duff that she was not happy with the action of the horse (page 74 line 18 of the Stewards Inquiry Transcript). Further

Dr Lenz did state (page 74 line 38 of the Stewards Inquiry Transcript) that he would have “pushed a lot harder” if he had further evidence that the horse had a problem when answering a question from Mr Duff that if he had the advantage of a scope and would have scoped the horse he may have given a different opinion in his veterinary report. While this is not conceded by either the Stewards or Dr Lenz the fact remains that the horse has been found to have a problem and this problem may have been the cause of the Appellant making statements such as:

- “... he really didn’t want to get up and travel ... “ (page 2 line 39 of the Stewards Inquiry Transcript).
- “... he really wasn’t happy to ...” (page 2 line 41 of the Stewards Inquiry Transcript).
- “the few times I have given him a shove earlier his head dips down like he is losing his feet” ( page 11 line 17 of the Stewards Inquiry Transcript).
- “... You see a few times where I do pull him - go to push him a little too much for what he is comfortable for and he dips his head” (page 11 line 24 of the Stewards Inquiry Transcript).

It is difficult for the Tribunal to speculate on what would have occurred if the Appellant had rode the horse with more vigour and whether it would have developed respiratory stress, but the fact is that the Appellant stated she was not happy with the action of the horse. While there were valid criticisms of her ride from the viewing of the video it cannot be discarded that the subsequent ascertaining that the horse was a roarer could have had some effect on the action of the horse which was why the

Appellant did not put pressure or vigour into her ride. While the Appellant is a very experienced apprentice she is still an apprentice and the subsequent ascertaining that the horse has a roaring condition cannot be discarded as at least being a contributing factor to the horse's performance and as an explanation for the Appellant's ride. This is a serious charge and any explanation provided by a rider under this charge needs to be fully canvassed and considered before it can be considered as not being relevant. While the Appellant may have considered the horse as being "big", "awkward" or "goofy" this may not have been the only cause of why the Appellant was not happy with the horse's actions and it may well have been because it was a roarer.

The Tribunal is not satisfied that the onus required to uphold a breach of the rule has been obtained.

The Appeal is upheld and the Appeal deposit fee is to be refunded.

While the Appeal has been ~~dismissed~~ upheld this matter was also an appeal on penalty and while it is not necessary to advise on penalty the Tribunal would have confirmed the four weeks suspension period imposed on the Appellant as an appropriate penalty.

Mr Dennis Standfield  
Member

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