

## **RACING APPEALS TRIBUNAL**

### **QUEENSLAND**

#### **NOTICE OF DECISION**

**APPEAL NO:** RT008-08

**DATE:** 14 May 2008

**APPELLANT:** Sheree Ann Drake

**RESPONDENT:** Queensland Racing

**APPEAL FROM:** Decision of the First Level Appeals Committee to dismiss the Appellant's Appeal both on finding and penalty for breach of AR137(a) and the imposition of an 15 meeting suspension and a \$500 fine.

**BREACHES OF RULE:** AR137(a)

**DECISION:**

1. Appeal against finding dismissed.
2. Appeal against penalty upheld
3. Penalty varied to 9 meetings suspension and \$500 fine.
4. The penalty to be served concurrently with penalties in RT010-08 and RT009-08.

**APPEARANCES:** JE Murdoch SC appeared on behalf of the Appellant.

Mr Norm Torpey Senior Steward appeared on behalf of the Respondent.

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

Mr Dennis Standfield - Member

This Appeal is related to Appeals No. RT010-08 and RT009-08 heard prior to this Appeal and I refer to the reasons for decision in those Appeals with this matter being referred to as it was in both the Stewards Inquiry and the First Level Appeals Committee transcripts as "the Third Charge".

This Third Charge concerns the Appellant's ride in the XXXX Gold Toowoomba Cup over 2050m held at Toowoomba Turf Club on Thursday 10 April 2008.

The Appellant was the rider of Ostras and was charged with careless riding under AR137(a) with the particulars at the Inquiry held after the race being stated by the Stewards (at page 4 line 33 of the Stewards Inquiry Third Charge Transcript ("SITCT")) as:

"We stipulate careless riding, the careless riding being that a point near the 1700 metres in race 7, you allowed your mount Ostras to shift in when insufficiently clear of Intheway, which in turn was taken in and tightened the running of Little Stranger, which as a result was severely crowded and had to be checked by its rider, apprentice Michael Palmer, and lost its position."

At the Stewards Inquiry the Appellant accepted that her horse did move in on Jockey Calkin's mount Intheway stating (at page 3 line 17 of the SITCT)):

"APP. JOCKEY DRAKE: Yes. Right on the point of that turn there, sir, it - we had a little bit of rain and the reins were a little bit slippery and I intended to go forward and I was trying to ease it, and he did sort of slip and the rein did slip, and I - yes, he did take a stride in."

The Appellant reserved her plea when being charged by the Stewards and when asked to put in any defence stated (at page 5 line 22 of the SITCT):

"APP. JOCKEY DRAKE: Yes, sir. Just that - like, it was right on that point of the turn, and as I said to you, the track was a bit slippery and the reins slipped. He stepped in for a half - I'm not denying that he didn't step in for a half - but I relieved the pressure straight away."

In finding the charge proven the Stewards stated (at page 5 line 45 SITCT):

“THE CHAIRMAN: Apprentice Drake, with regard to the charge levelled against you following your ride on Ostras in the Toowoomba Cup at a point near the 1700 metres, we again believe that that charge can be sustained and find you guilty. We are of the opinion that at a point near the 1700 metres you were steadying back to obtain a position close to the fence. You steadied back out o the front line to take – as I said, to take a position behind the leaders. You come back. You allow your mount to shift in. You are not clear of Intheway, which was ridden by apprentice Calkin.

That horse is then taken in, severely crowding the running of Little Stranger. That horse has to be checked by its rider and loses considerable ground as a result of the crowding caused by your mount, Ostras, shifting in and taking Intheway in on to Little Stranger, and as I said, we formally find you guilty.”

At the First Level Appeal hearing on 28 April 2008 there was presented a letter dated 24 April 2008 from the Veterinary Surgeon Dr Stephen Rayner stating that the right knee of the Appellant’s mount Ostras was radiographed which revealed two fragments in the horse’s right knee which were removed on 23 April 2008. Dr Rayner further stated “... these changes may have influenced the stride pattern of the gelding during racing”. It is taken that “these changes” refer to the fragments in the horse’s right knee.

The First Level Appeals Committee considered Dr Rayner’s report but attributed little weight to it as the examination was 8 days after the running of the Toowoomba Cup and that the video of the race does not indicate a change in the horse’s actions.

The First Level considered the other evidence and dismissed the Appellant’s Appeal on the Stewards finding and stated in the Information Notice:

“In relation to the rest of the evidence, it is acknowledged by Apprentice Drake that she has shifted in just after the winning

post at approximately 1700m mark and she accepts the Chairman of Stewards version on page 3 lines 21 to 28.

We find that the appellant is guilty of careless riding under rule 137(a) and further find that she allowed her mount to shift when not sufficiently clear of Intheway ridden by Jockey Calkin. This caused crowding to Little Stranger and Little Stranger had to be checked by its rider and lost considerable ground. The appeal is dismissed.”

At the Tribunal Hearing there was provided a supplementary report from Dr Rayner dated 6 May 2008. That report stated that the fragments in Ostras’s right knee may have influenced the horse’s striding pattern “... particularly when the leg is loaded during turning”. While the horse did get on the fence soon after this incident and there may not have been the opportunity for its leg to be “loaded” there is nothing from the viewing of the video both before and after the 1700 metre incident which causes me to believe that this contributed to the horse’s inward movement.

From the video it is clear that the Appellant did move into Jockey Calkin’s horse causing it to move in and crowd Apprentice Palmer’s horse which was markedly affected. It is however also clear that the Appellant did not continue to run and straighten it. While the Appellant has been consistent in stating the reins were slippery and from the video it can clearly be seen that the rain was falling I do not accept that as a defence to the charge. Although the Appellant is still an Apprentice Jockey she is an experienced rider and allowance should have been made for the reins being wet. The Appellant’s Appeal against finding is dismissed.

With respect to penalty the Stewards imposed a 15 meeting suspension and a \$500 fine. Mr Murdoch did present to the hearing the Stewards Report which

referred to Jockey Wolfgram also being charged with careless riding in the Toowoomba Cup and receiving a 7 meeting suspension and a \$500 fine.

Notwithstanding that the 15 meetings suspension is disproportionate to Jockey Wolfgram's penalty the Stewards contend that it is the proper penalty and accordingly it is appropriate to set out in full Mr Sanders's submissions at the First Level Appeal hearing being (at page 12 line 14 from the First Level Appeal Third Charge Transcript):

"Regarding the interference in the third penalty of 15 meetings, the stewards again given that we intended to make the suspensions concurrent and not as the rules provide - cumulatively - we don't believe that a further 3 meetings on top of the second suspension is in any way excessive, and I urge the Tribunal to see that way when the reconsider the matter of penalty.

The interference suffered to Little Stranger, Mr Murdoch submitted it is not on the higher scale. The stewards would disagree with that notion. It is severe interference. Little Stranger, in my submission, is very lucky to stay on its feet. Now, that was the only horse to put a foot wrong in the whole race - the race that viewed anyway and it's lost all its footing at that point of the race. The horse has become very unbalanced and lucky to stay on its feet, and I believe the interference suffered in that is one that we would deem severe - severe interference - and again it was senseless interference caused to a runner approaching the first turn in the Toowoomba Cup.

The Toowoomba Cup may not be time honoured as it once was to some people in racing, but you ask the people that live on the Darling Downs. It is one of their feature races and they - that or the Weetwood is one of the two - 4 races that they would highly like to win over and above anything else, and it's a listed race. It has got Black Type. It's not just the - and keep harping on this fact and for some reason the jockeys and other people don't seem to think it matters, but it's not only the prize money purse that is on offer to the connections, it's the Black Type that is on offer.

Horses that win Black Type races - and we all know with the buying power of some big owners at the moment - just to get a Black Type win beside a gelding - sorry, an entire or a mare or a filly adds a fair bit of money to the value of that horse off the

track. I don't think that any owner that puts a horse in a race should have that entitlement taken from them as well as any prizemoney purse.

That's one of the reasons why the stewards do take a tougher stance in Black Type and Listed races, not only because of the higher percentage of money wagered on those races, but it is also the value to the horses on and off the track, and that was why we deemed the 15-meeting penalty was appropriate. The severity of the interference suffered to Little Stranger. It's a listed race. It was senseless interference. A Black Type event. And yes, in addition we also imposed a monetary penalty, that being \$500, and that is our minimum when we are dealing with listed races.

But, in my submissions to the Tribunal, the penalties issued are appropriate and given that the stewards ordered effectively they be served concurrently, that Miss Drake, in my submissions, has been fairly dealt with and in no way is a harsh penalty given that had we ordered the benchmark or thereabouts on either of those going forward and not ordered as 196(2) allows and allowed it to be served cumulatively, there would be some 24 odd meetings that would be imposed if we just applied the straight benchmark to all 3 of those.

So, in my submission, Miss Drake has been fairly dealt with and the penalty - even though you have to consider it in its entirety - is not manifestly excessive."

In summarising Mr Sanders submission the 15 meetings suspension appears to have been imposed because of:

1. The loading of 3 weeks on the Second Charge penalty because the suspensions are not concurrent.
2. The interference was severe.
3. The importance of the Toowoomba Cup.

Hopefully the occasions when riders find themselves with more than one charge of careless riding during the same race (or even the same day) are few and far

between but as this has occurred it is important to address the matters raised by Mr Sanders.

The first matter is the issue of "loading". While it is of course appropriate to take into account the disciplinary history of a rider I do not think it is entirely fair to consider there should be a "loading" for incidents in the same day. If this occurs this is in effect imposing cumulative penalties. Each incident has to be considered and a penalty imposed which is considered appropriate. This comment does not mean that if riders do breach the rule then its "open slather" for the rest of the meeting. If they take that cause of action it may well be other charges under AR 137(a) which they will find themselves to address. Careless riding requires the actions of the rider to be considered as "mistakes" of what would have been expected of that rider bearing in mind the circumstances the rider found him or herself in and considering the degree of experience of that rider. It should be with this in mind that the Stewards consider what penalty is appropriate.

The second matter is the degree of interference which careless riding causes. This is only partly relevant. In this particular incident I would agree with Mr Sanders that it was severe interference. However, as I have already commented the horse did not continue to move in and the Appellant straightened it when she could. In considering this incident and also considering the Appellant's disciplinary history which was tendered to the Tribunal a 9 meeting suspension would be a more appropriate penalty.

With respect to the importance of the race, again I accept Mr Sanders's submissions that the Toowoomba Cup is a time honoured race and the

consideration of its Black Type is important. As has already been commented on Jockey Wolfgram was an addition to the 7 meeting suspension fined \$500 and I agree with Mr Murdoch that the fine of \$500 which was imposed by the Stewards on the Appellant as well as Jockey Wolfgram is the acknowledgement that the race was the Toowoomba Cup.

The Appellant's Appeal against penalty is allowed and the penalty is varied to 9 meetings suspension and a \$500 fine.

The orders of the Tribunal are:

1. Appeal against finding dismissed.
2. Appeal against penalty upheld
3. Penalty varied to 9 meetings suspension and \$500 fine.
4. The penalty to be served concurrently with penalties in Appeals RT010-08 and RT009-08.

Mr Dennis Standfield .....  
Member