

RACING APPEALS TRIBUNAL

QUEENSLAND

NOTICE OF DECISION

APPEAL NO: RT023-08

DATE: 8 August 2008

APPELLANT: Mr Reid Sanders, Chief Steward for and on behalf of the Stewards of Queensland Racing

RESPONDENT: Mr Adam Best

APPEAL FROM: Decision of the First Level Appeals Committee to uphold an Appeal by Jockey Adam Best of improper riding under AR137(a)

BREACH OF RULE: AR137(a) - improper riding

DECISION: Appeal dismissed.

APPEARANCES: Mr Norm Torpey appeared on behalf of the Appellant.

Mr Bill Millican Solicitor of Collas Moro Ross appeared on behalf of the Respondent.

REASONS FOR TRIBUNAL'S DECISION

Mr Dennis Standfield - Member

On 14 June 2008 the Stewards at the Toowoomba Turf Club Meeting held an inquiry concerning an incident which occurred at about the 900 metre mark of Race 8 a Maiden Plate over 1630 metres which involved the Respondent as the rider of Second Calling and Jockey Kristy Banks as the rider of Sagarmatha.

At the Stewards Inquiry the incident was reported by Steward Mr Childs as (Stewards Inquiry Transcript ("SIT") page 3 from line 9):

“MR CHILDS: I did report the incident sir. I was stationed on the stand near the 800 metres. Just from my observation, Kristy Banks on Sagarmatha was racing on the fence to the inside of Second Calling, ridden by Adam Best. As Kristy Banks stated, that horse – they backed off the pace a bit and Sagarmatha was racing a bit keenly at that stage, and just from my observation it did appear that Adam Best was racing in a fairly loose 2-wide position, and it did appear that Kristy Banks started to come off the fence at that stage.

Just from my observation it did appear that Adam Best then tried - he observed Kristy Banks coming off the fence and then tried to hold Kristy Banks in there, and as he – it did appear as he steered in, I thought his saddle must have slipped or something because – I didn't observe the bump between the 2 horses but Adam Best has gone down the off-side of the horse and almost come off the horse. My first thought was that either the saddle had slipped or he's lost his off-side iron. But, as I said, I didn't actually observe the bump between the 2 horses.”

The Respondent's response to the incident after viewing the film at the Stewards

Inquiry is (SIT page 3 from line 38):

“JOCKEY BEST: Yes. Well, I'm racing in the one-off position. I'm entitled to be racing in that one-off position, and the inside horse has wanted that one-off position. I can't see how you can't see there was a touch of horses there. It is only minor. I wouldn't say it's a big bump. It's enough to put me off balance. It's right on the point of the turn. I nearly come off. I don't know how I stayed on. I was entitled to stay in that one-off position.”

and Jockey Banks evidence after viewing the film was (SIT page 4 from line 4):

“JOCKEY BANKS: Well, there was a horse in front like coming back and that's why like I've come off the fence, and I think - well, it looks like Adam has tried to like elbow me - drive me back in. He just - he couldn't possibly do it sir, and he's got off balance in doing so. That was my view of the film, sir.”

The Stewards charged Jockey Best under AR137(a) which reads:

“AR137(a)

Any rider may be punished if in the opinion of the stewards:

- (a) They are found to be guilty of careless, reckless improper, incompetent or foul riding.”

The Stewards stated that the charge related to improper riding and stated the particulars as (SIT page 6 from line 25):

“... says the particulars of the charge being that you, during the running of race 8 here today at the Toowoomba Turf Club on 14 June, whilst riding Second Calling at a point near the 900 metres when attempting to hold Miss Banks aboard Sagarmatha in a position on the fence, did extend your right arm in an attempt to make contact with Miss Banks, and in doings you have made contact with Miss Banks, and you have then become unbalanced when your horse has shifted out away from Miss Bank’s mount, Sagarmatha. We don’t feel there was any contact made between the horses at that point.”

After Jockey Best pleaded not guilty there was an exchange between himself and Steward Williamson who was the Chairman of the Stewards Inquiry in the following terms (SIT page 7-8 from line 30):

“JOCKEY BEST: Through the running of the race, Kristy Banks has come out, made contact with me. That’s when I got off balance. Her horse’s head – my horse’s head is in to try and hold her in. So obviously that’s when – if you’re sitting like this, you go in, you’re elbow does come out. So you’re saying my arm has come out?

THE CHAIRMAN: You’re arm has come out at that point of the race.

JOCKEY BEST: My arm? Not my elbow?

THE CHAIRMAN: Your arm has come out at a ----

JOCKEY BEST: So I’ve taken my hands off the reins; I’ve pulled the reins out like that, have I?

THE CHAIRMAN: You’ve raised your right arm in an attempt to make contact with Miss Banks.

JOCKEY BEST: Wouldn't it say raise my right arm to allow pressure on the inside rein to hold my ground?

THE CHAIRMAN: If that's what your defence is at this stage ----

JOCKEY BEST: That is my defence. All I'm trying to do is hold my ground. I was entitled to be situated one off the fence. I was denied by her for some unknown reason. I don't see her horse pulling. She just wanted to get off the fence. I could see that happening. She's come from a length behind me, got up inside me and then decide to come off. All I've done is try and hold my ground. So that's where the elbow goes out, and I'm just trying to hold my ground when I'm - I'm a horse that's about 15 hands high."

It is noted that the responses by Jockey Best are conflicting. The first statement refers to him being off balance, while the second infers that he is trying to hold his ground.

The Stewards considered the matter and found Jockey Best had breached the rule stating that they did not agree that there had been contact between the horses and that they believed that Jockey Best's arm was extended towards Jockey Banks prior to Jockey Best's horse moving away from her mount.

The Stewards imposed a suspension of two months commenting that it was at the low end of the scale and that some riders have been given six months suspension.

The Respondent appealed to the First Level Appeals Committee (First Level) with the appeal being heard on 25 June 2008. At the First Level Hearing the Respondent was represented by Mr Millican and Steward Williamson represented the Stewards.

After hearing submissions the First Level upheld Jockey Best's appeal stating that it was a difficult decision and stated (First Level Transcript page 16-17 from line 41):

“... Despite the request from stewards that we infer intent from the factual circumstances - namely, the Forrester appeal - the Committee is unable to infer such intent.

This due to the fact that the factual circumstances of this case, being a loss of balance of jockey Best and the timing of the loss of balance and the timing of the arm going out, cloud the factual circumstances sufficiently to negate any inferring intent. Had the surrounding circumstances of loss of balance by jockey Best not occurred, the inference of intent might have been available.

In these circumstances, there is sufficient doubt to give jockey Best the benefit of the doubt considering the seriousness of the charge and resultant penalty.”

The reference to the Forrester Appeal is the decision of the Racing Penalties Appeal Tribunal of Western Australia concerning Jockey Kevin Forrester of 12 March 2002.

At the hearing before me the film of the incident was shown and indeed on the first viewing of the film the actions of the Respondent in extending his right arm towards Jockey Banks mount is alarming. The first impression of that movement is that it was some sort of retaliation because Jockey Banks was endeavouring to move her horse out. However, as I have said this was my first impression but on the second and subsequent viewings it can be seen that Jockey Best did become severely unbalanced.

At the First Level there was considerable discussion whether the movement of his arm caused him to unbalance or whether it was action taken by him because he was losing balance. While Mr Millican submits the latter, Mr Torpey submits the

former stating that there was no contact. Mr Torpey further submits that on the basis of the film not showing contact and the conflicting evidence given by Jockey Best at the Stewards Inquiry that the Stewards have satisfied the evidentiary tests required to sustain a breach of AR137(a) for improper riding.

At the First Level the Chairman did refer to a lack of any “motive” by Jockey Best as for his actions (First Level transcript page 12 from line 29). Mr Torpey submitted that there was no need to find any motive to find the intent necessary for a breach of the rule and I am in agreement with Mr Torpey with that submission. Mr Torpey did state that a reason for the Appellants may be ascertained from the disciplinary record in which there are a number of misconduct breaches of the rules. While that was intended to infer that Jockey Best is a “hot head” and lashed out at Jockey Banks mount, I do not find that assists me when considering whether the evidence presented is sufficient to sustain a breach of the rule.

This is a serious offence and indeed if proven the two months suspension penalty imposed would be at the low end of the scale. It is my view after considering the film evidence and the transcripts that it is not able to be properly shown that the actions of Jockey Best in extending his arm is in itself sufficient to satisfy the evidence required to sustain a breach of the rule for improper riding. The fact that Jockey Best did become severely unbalanced has to be taken into account and the possibility of this being a reason for his actions cannot be disregarded.

The Appeal is dismissed.

At the Hearing Mr Millican made a submission for costs. The basis of his submission was that the Stewards in bringing this Appeal somehow wanted to punish the Respondent. The Tribunal rejects that submission. The Stewards like any licensee are entitled to bring an appeal to the Tribunal. I see nothing improper in the Stewards presenting this Appeal and there is nothing “unjust” which entitles an order for costs to be made pursuant to Section 185(2) of the *Racing Act 2002*.

Mr Dennis Standfield
Member

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