



## APPEAL of BRENDON DAVIS

Appeal Committee: Mr P McIntyre (Chair) and Mr R Longuet and Mr C McNally

Date of Hearing: 4 August 2017

### REASONS FOR DECISION

#### Background

1. Jockey Brendon Davis appealed against a decision of the Stewards made on 2 August 2017 relating to his ride in Race 2, the HK Holistic Health Klub 0-58 Handicap. He was found guilty of careless riding under AR137(a) and his license to ride was suspended for 1 NT meeting to commence after 5 August 2017 and he was also fined the sum of \$500.00.
2. The decision of the Stewards' is set out at page 2 of the Stewards' Report of the Darwin Turf Club dated Wednesday 2 August 2017 (Stewards' Report) as follows:

“On inquiry jockey B Davis (MARBEL DUKE) was found guilty of a charge of careless riding under AR137(a) with the specifics being that approaching the 550m he permitted his mount to shift inwards when not clear, placing pressure on CHOICE APPROACH (Richie Oakford), which then bumped with THE DARK PASSENGER (Kayla Cross) and as a result both these runners suffered interference.”
3. Jockey Davis filed a Notice of Appeal on 4 August 2017 seeking;
  - a. A stay of the proceedings pending the hearing of the appeal;
  - b. An order setting aside the finding of guilt; and
  - c. An order setting aside the penalty as excessive.
4. At the hearing Jockey Davis abandoned the application for a stay.
5. At the hearing we were provided with copies of:
  - a. A document headed ‘TRNT Stewards Guidelines for Careless Riding’ (Stewards’ Guidelines);
  - b. A document headed ‘NT careless riding penalties from March 2014’ (Penalties Table); and
  - c. A copy of the Reasons for Decision of the Appeal Committee in the hearing of an appeal by Jockey Jan Cameron on 15 May 2014 (Cameron Decision).

#### Orders

6. On 4 August 2017 we dismissed both the appeal against guilt and the appeal against penalty and confirmed the suspension and fine. These are our reasons for those decisions.

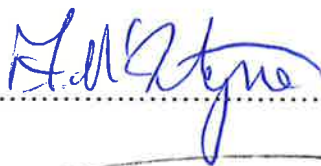
## Reasons

7. Prior to the hearing we were provided with copies of:
  - a. The Notice of Appeal of Jockey Davis dated 4 August 2017;
  - b. The Stewards' Report;
  - c. Confidential transcript of proceedings of the Stewards' inquiry into the actions of Jockey Davis during Race 2, the HK Holisitc Health Klub 0-58 Handicap on 2 August 2017 (Confidential Transcript)
8. At the Appeal Mr D Hensler, Chairman of Stewards, appeared with Mr D Westover (Alice Springs Chairman of Stewards). Jockey Davis appeared with his representative Mr G Clarke. We observed vision of the race on a number of occasions and both Mr Hensler and Mr Clarke commented upon various aspects of the vision in support of their respective positions.
9. Mr Hensler submitted that the vision clearly supported both;
  - a. the decision of the Stewards' set out in paragraph 2 above; and
  - b. the decision of the Stewards' (recorded on page 6 of the Confidential Transcript) that both the degree of carelessness and the degree of interference were in the 'mid' range for the purpose of their consideration of penalty.
10. Mr Clarke submitted that the vision supported an alternative conclusion that the interference to CHOICE APPROACH had been contributed to by the actions of THE DARK PASSENGER. This submission did not involve a denial of contribution also by Jockey Davis.
11. Mr Clarke submitted that the evidence of both Jockey Oakford and of Jockey Cross recorded in the Confidential Transcript provided support for his alternative conclusion.
12. Having viewed the vision a number of times we were satisfied that the submission of Mr Hensler referred to in paragraph 8(a) is correct.
13. We were satisfied that even if we had been persuaded to accept the alternative conclusion advanced by Mr Clarke (which we had not), such a conclusion provided no basis to support the appeal against the Stewards' finding of guilt.
14. As to penalty, Mr Hensler submitted that the remarks of the Appeal Committee set out in paragraphs 10 and 16 of the Cameron Decision are relevant and applicable to this matter. We agree and take this opportunity to repeat those remarks as follows;
  - a. 'Careless riding is viewed as a particularly serious offence. It threatens the aim of conducting each race as truly and as safely as possible. A period of suspension is generally warranted, reflecting the gravity of the offence and the value of deterrence.'
  - b. 'It is always desirable to achieve consistent penalty for the same offence committed in similar circumstances. As noted above, the offence of careless riding generally merits a suspension of licence.'
15. By reference to the document described at paragraph 5(b) above Mr Hensler submitted that the penalty imposed upon Jockey Davis by the Stewards was consistent with penalties imposed since March 2014 for similar offences and indeed consistent with penalties imposed by Stewards on Jockey Davis for careless riding on 14 June 2014, 4 May 2015, 9 January 2016, 21 May 2016, 16 July 2016 and 19 July 2017.

16. By reference to the document described at paragraph 5(a) above Mr Hensler submitted that the Stewards' decision as to penalty properly had regard to the following matters set out therein;
  - a. 'the level of prize money for race and/or status of race meeting'
  - b. 'calibre of race meeting during the suspension period'
  - c. 'Poor record – multiple suspensions in the last 12 months'
  - d. '..Stewards will give consideration to issuing a fine in addition to an increased term of suspension for cases of high level careless riding and during feature race meetings'.
17. Mr Hensler submitted that the matters referred to in paragraphs 16a, 16c and 16d above were relevant because the relevant race was conducted on the Wednesday of the final week of the Darwin Cup carnival. He submitted that the matters referred to in paragraph 16c were relevant because of the high number of times that Jockey Davis had been convicted of careless riding (three times in the previous 12 months).
18. In response to these submissions Mr Clarke submitted that;
  - a. The relevant race was not a race properly described as having high prize money, status or calibre nor was it a feature race meeting.
19. Further Mr Clarke submitted that we should not accept that Jockey Davis has a 'poor record-multiple suspensions in the last 12 months' by reference only to the actual number of such suspensions, but rather by reference to the number of rides per suspension that he has had imposed over that period. Mr Clarke submitted that Jockey Davis had in fact ridden in approximately 200 races in the past 12 months and that accordingly, he has a low percentage rate of offending. We are not persuaded of the merit of this submission.
20. Mr Clarke submitted that the penalty imposed was excessive given that it will mean that Jockey Davis may lose;
  - a. Income potentially exceeding ten thousand dollars;
  - b. The opportunity to win the Darwin Cup on Monday 7 August 2017; and
  - c. The opportunity to win the prize as leading Jockey of this year's Darwin Cup Carnival.
21. Whilst those consequences may flow from his licence suspension, we are not persuaded to conclude that therefore the penalty imposed was excessive.
22. It is apparent from page 6 of the Confidential Transcript that the Stewards did in fact take into account, in favour of Jockey Davis, the loss (that would be caused by his licence suspension), of his ability to ride in a feature race. Otherwise his suspension may have been longer. As is clear from pages 5 and 6 of the Confidential Transcript, the timing and length of the suspension permitted Jockey Davis to ride either on Saturday 5 August 2017 or on Monday 7 August 2017.
23. Finally, Mr Clarke submitted that we should consider that an appropriate penalty, in all of the circumstances, should be a penalty consisting of a larger fine and no licence suspension.
24. Mr Hensler countered that were we to agree to Mr Clarke's final submission that we would create a dangerous precedent likely to seriously undermine the safety of racing. We agree. It would also be contrary to the passages quoted from the Cameron Decision which we have affirmed and set out in paragraph 14 above.

25. For these reasons, we conclude that far from being excessive, the penalty imposed by the Stewards was toward the lower end of the spectrum and could not properly be considered excessive. It is also consistent with the Stewards' Guidelines.
26. In the interests of Jockeys and their advisors and indeed also of Stewards, we take this opportunity to address two further matters.
27. It was common ground that the Stewards' Guidelines were issued by the Chairman of Stewards as effective since June 2014 and have been well publicised among the Jockeys riding at the Darwin Turf Club. It was also common ground that the Stewards' Guidelines are in fact just guidelines and do not have effect as rules or regulations and are not binding upon either the Stewards or this Appeal Committee.
28. Nevertheless, we consider that it is appropriate for us to take this opportunity to state that the Stewards' Guidelines provide a sensible and plainly worded summary of considerations in relation to penalties not inconsistent with our task in this and other likely appeals. They deserve respect.
29. The importance of deterrence in consideration of penalty should not be underestimated. Nor should the value of the expression of genuine remorse and admission of guilt in such consideration. We note that the Appeal Committee in the Cameron Reasons took the trouble to record that Jockey Cameron pleaded guilty in that matter. In this matter, neither the Stewards were, nor are we, able to take into account, to the benefit of Jockey Davis, either a plea of guilty not any expression of remorse.
30. An examination of the Penalties Table reveals that on none of the six occasions mentioned in paragraph 15 above, has Jockey Davis entered a plea of guilty. That is not a matter that we take into account here against his interests. However, we take this opportunity to bring to his attention and to the attention of those who may from time to time advise him, and other Jockeys, that a failure to enter a guilty plea, may in an appropriate case, lead Stewards and indeed this Appeal Committee, to conclude either that the relevant Jockey does not understand what constitutes carelessness or does not give due respect either to the rules of racing and/or the penalties imposed for their breach.

Dated: 17<sup>th</sup> August 2017



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**P McIntyre**  
Chair

  
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**R Longuet**  
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**C McNally**