



**APPEAL of MICHAEL MCDUFF: AR 135(b)**

**Appeal Committee: Mr John Stewart (Chairman) and Mr Charles Burkitt**

**Date of Hearing: 4 November 2011**

**REASONS FOR DECISION**

Jockey McDuff rode "Against the Day" into fourth place in the Dreamedia Events Handicap at Fannie Bay Racecourse on 15 October 2011. After conducting an inquiry, Stewards found him guilty of breaching AR 135(b) and suspended his permit to ride for 2 months.

Jockey McDuff has appealed against the finding of guilt and, in the alternative, against the severity of the penalty. He has been granted a stay pending the outcome of this appeal.

AR 135 provides:

"(a) Every horse shall be run on its merits.

(b) 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.

(c) Any person who in the opinion of the Stewards has breached, or was a party to breaching, any portion of this Rule may be penalised, and the horse concerned may be disqualified."

The charge against Jockey McDuff was in these terms:

"failing to take all reasonable and permissible measures to win or obtain the best possible place in the field, the details being that shortly after the start until approximately the 600 metres you failed to ride your mount with sufficient endeavour or vigor so as to encourage your mount to obtain a more forward position in the race also rounding the turn you failed to attempt to save

ground by shifting in towards the fence where there was ample opportunity to do so.”

In an appeal by Jockey Chris Munce (heard 5 June 2003) the Racing NSW Appeal Panel chaired by Mr T. E. F. Hughes AC QC explained how the rule operates:

“The task of administering this rule is not always easy. One must keep 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 charged.

They include the competitive pressure under which a 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.”

The Appeal Panel concluded that Jockey Munce made an error of judgment but were not satisfied that it was in all the circumstances unreasonable. That appeal was successful. We note that Jockey McDuff did not offer “error of judgement” as his explanation in this case but we accept the need to be “comfortably satisfied” if the finding of guilt is to be confirmed.

At the Stewards’ Inquiry Jockey McDuff presented his explanation in a nutshell (transcript page 24):

“I dug the horse up and the horse didn’t improve when I dug him up did he so why keep scrubbing the ears off if the horse is not going to improve?”

At the hearing of the appeal, we admitted the transcript of the Stewards’ Inquiry, viewed the video images of the race and received a small amount of additional evidence including evidence from the trainer of the horse, Mr Louis Paech.

Jockey McDuff told the Stewards that the horse blundered at the start and the field got away from him. He gave the horse a couple of slaps down the shoulder and “was clicking him up and half growled at him but he wasn’t going forward at all” (transcript page 2). He added, by way of a variation of the same theme, that he was “Urging him along and clicking him up and just sticking my hands into his neck” (transcript page 3).

Chairman of Stewards Mr Lane commented that the horse was 10 lengths or more behind the field and it didn’t look as if Jockey McDuff was doing enough.

Jockey McDuff said that he “Probably, maybe could have done a little more, but I did do something.”(transcript page 5).

Mr Paech told the Stewards: “He’s never begun well in any of his starts. He does have a chest – issue with his chest where he began to stretch out for the first hundred or 200 metres, as you would have seen in his previous – I suppose five runs in Darwin, even when he’s won, he’s been numerous lengths last” and “I think Michael did endeavour to do everything” (transcript page 6).

Jockey McDuff told the Stewards that with the benefit of previous experience on the horse Jockey Carl Spry gave him this advice: “You ride the ears off him and you won’t get any improvement” (transcript page 7).

Mr Paech said he instructed Jockey McDuff: “He won’t begin. When he starts to stretch out, don’t bring him anywhere near the fence because he doesn’t like the dirt being thrown back in his face” (transcript page 7). At the Inquiry he added: “I’m more than happy and I can speak on behalf of the owners. They were satisfied with the ride as well” (transcript page 11).

At the appeal hearing Mr Lane submitted that the horse was 13 lengths from the leader at the 800 metres mark, was ridden 4 or 5 wide around the 600 metre bend and then finished off well being beaten by about 4 lengths. The horse would have had a better opportunity if ridden with more vigour or closer to the inside rail.

We observed video recordings of the horse’s efforts in several other races (all at Fannie Bay, apart from the meeting on 20.08.11 which was at Adelaide River):

- The first two (27.07.11 and 13.08.11) were unremarkable.
- On 20 August 2011 in a 0-58 race at Adelaide River the horse ran well behind the field and was beaten easily.
- On 27 August 2011 the horse was last but stayed in touch with the field and eventually finished well on the outside and won.
- Moving up to a 0-64 race on 17 September 2011 at Fannie Bay the horse was at or near the rear throughout and was eventually unplaced, beaten by almost 11 lengths.
- On 1 November 2011 the horse was slowly away and beaten by 30 lengths after being eased down. The jockey (G Hoobin) reported to Stewards that the horse refused to race and appeared to be sore.

Mr Paech confirmed his evidence at the Stewards’ Inquiry. He told us that he felt that the horse’s physical issues were getting worse.

Mr Lane objected to evidence of the race on 1 November being received. He said that race was after the race in question and was not relevant to our determination. We decided to view the recording leaving admissibility for later consideration. In the end we have found the recording of assistance because to our mind Jockey Hoobin's experience on 1 November tends to confirm Jockey McDuff's evidence. Of course, the Stewards weren't to know that when they held their inquiry.

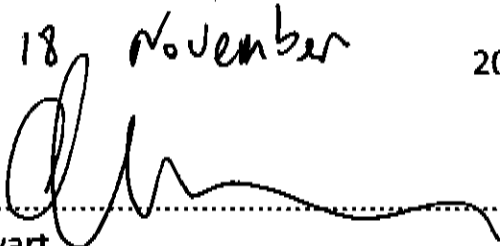
Mr Lane submitted that Jockey McDuff only made a half-hearted effort. He said the racing and punting public expect a greater effort.

Although there was evidence to support Mr Lane's submission in the end we have decided to accept the explanations which Jockey McDuff and Mr Paech have supplied. Jockey McDuff's efforts were not very vigorous but, as he said, there was some effort. There was reason to believe that greater effort may not have produced improved performance and may even have harmed the horse. Although there is evidence that the horse has taken a position in the field in other races there is also video evidence to support the submission that it does seem to improve when given more galloping room.

The Stewards were entitled to question Jockey McDuff's ride. Racegoers would expect them to do that. But the evidence which has emerged does not enable us to be comfortably satisfied that Jockey McDuff was in breach of the rule.

The appeal is upheld. The finding of guilt is set aside. The deposit will be refunded.

Dated 18 November 2011

  
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John Stewart  
Chairman