

TRNT Appeals Committee

APPEAL of Apprentice Jockey A Lindsay

**APPEAL COMMITTEE: Mr P McIntyre (Chair),
Mr S J Stirling**



DATE of HEARING: 5 November 2020

REASONS FOR DECISION

Appearances

At the Appeal;

- a. Mr D Hensler represented the Stewards.
- b. Mr K Ring represented Apprentice Jockey A Lindsay via video link.
- c. Apprentice Jockey A Lindsay was also present in person.

Background

1. Apprentice Jockey A Lindsay appealed against a conviction under AR 232 (i) of giving false evidence when interviewed by the Stewards and against the penalty imposed of a fine of \$500.00.
2. The particulars of the breach were that at a Stewards interview conducted prior to the running of Race 4 at the Darwin Turf Club on 17th October 2020 Apprentice Jockey A Lindsay gave evidence that she had given trainer Pat Johnson 2 girths after weighing to ride She Shines Bright when that evidence was false.
3. Apprentice Jockey A Lindsay filed a Notice of Appeal dated 21 October 2020 seeking to have the conviction set aside and alternatively seeking to have the penalty set aside as excessive.
4. The Grounds of Appeal relied on at the hearing of the Appeal are set out in the first and third paragraphs of the Notice of Appeal. Leave was granted at the hearing for the second paragraph of the Notice of Appeal to be deleted from the Notice of Appeal.
5. Prior to the hearing of this appeal the Appeals Committee had the benefit of considering:
 - a. the Notice of Appeal.
 - b. the transcript of the Stewards Inquiry conducted prior to the running of Race 4 at the Darwin Turf Club on 17th October 2020 (the Transcript).
 - c. TRNT Stewards Report 17th October 2020.
6. At the hearing of this appeal the Appeals Committee also had the benefit of considering two further documents provided by Mr D Hensler.
 - a. Disciplinary Report – Alice Lindsay (Disciplinary Report)

- b. A table entitled 'Recent National breaches of cases involving apprentice jockeys/jockeys giving false or misleading evidence before the Stewards resulting in a fine.' (the Penalties Table).
7. The documents referred to at paragraphs 5 and 6 were accepted into evidence without objection.

Considerations on the Appeal against Conviction

8. At the hearing of the appeal on 5 November 2020 the Appeals Committee both Mr K Ring and Mr D Hensler took the opportunity to make submissions to the Appeals Committee about what it should conclude based on the evidence recorded in the Transcript.
9. It was common ground that the evidence of Apprentice Jockey A Lindsay referred to in paragraph 2 above was false.
10. It was also common ground that the Transcript revealed that the Stewards had heard and understood the offered explanation of 'an honest mistake', considered it and ultimately rejected it.
11. Mr Ring sought to challenge the finding of the Stewards set out at approximately line 20 on page 28 of the Transcript as follows:

'We don't accept that there is an honest mistake. We believe that you were under no duress. You were asked a specific question by the Stewards and you replied with a false answer.'
12. Mr Ring submitted on the question of the Appeal against conviction that the above conclusion should be overturned because it was 'only the opinion of the Stewards and they don't know what she was thinking'.
13. In other words, Mr Ring urged the Appeals Committee to conclude that the Stewards were obliged to accept the assertion of an honest mistake.
14. Such submission is entirely lacking in merit and reveals a disappointing ignorance of the functions and role of the Stewards within the racing industry and in particular their responsibility to protect the reputation and integrity of that industry by conducting Inquiries with rigour and discipline, providing all parties with procedural fairness; whilst discharging their duty to assess evidence, determine guilt or innocence and where appropriate to impose penalties.
15. Mr Ring did not identify any error on the part of the Stewards either in the conduct of the Inquiry or in their consideration of the evidence before them.
16. Mr Hensler submitted that page 3 of the Transcript reveals both;
 - a. that Apprentice Jockey A Lindsay was given fair opportunity to understand the Stewards questions; and
 - b. gave false testimony on more than one occasion about herself allegedly having supplied 2 girths to Trainer Johnston.

17. Mr Hensler quite properly rejected the submissions of Mr Ring referred to in paragraphs 12 and 13 above.
18. The Appeal against conviction lacked any rational foundation and accordingly was dismissed on the 5 November 2020 for reasons to be published. These are those reasons.

The Appeal against Sentence

19. On the Appeal against sentence Mr Ring submitted (in summary) that the penalty imposed was excessive because:
 - a. Apprentice Jockey A Lindsay had no prior conviction for an offence against AR 232 (i).
 - b. It was an honest mistake.
 - c. She had apologised to the Stewards later at the Inquiry.
 - d. She was remorseful.
 - e. In his opinion a reprimand would be more appropriate in the circumstances.
20. Mr Ring further submitted that Apprentice Jockey A Lindsay was not aware of AR185 that prohibits changing equipment after weighing-out. That submission does not advance the Appeal against Sentence.
21. Mr Hensler submitted that the sentence was not excessive in the circumstances because;
 - a. A consideration of the Penalties Table demonstrates that the penalty imposed was about half of the usual penalty imposed.
 - b. The offending was not trivial.
 - c. The admitted use change of girth by Apprentice Jockey A Lindsay permitted her to claim 2kgs which claim would otherwise not have been available.
 - d. There is a need to protect the reputation and integrity of the Racing Industry in such matters as this offending with both specific and general deterrence; and
 - e. There was no guilty plea offered by Apprentice Jockey A Lindsay to the Stewards nor has she during the appeals conceded her offending.
22. Whilst it is correct that the Disciplinary Report reveals no prior conviction for this offence, it does relevantly reveal seven occasions where Apprentice Jockey A Lindsay has been convicted of various offending related to her weight claims. The purported reliance upon her track record by Mr Ring does in this context does not bear serious scrutiny.
23. Neither does reference to the Transcript reveal any evidence of genuine apology nor of remorse. That is not surprising given that throughout the Appeals Apprentice Jockey A Lindsay and Mr Ring continued to assert that the offending was 'an honest mistake'. Such is far from an admission of guilt.
24. For the reasons set out above concerning the Appeal against Conviction we have not disturbed the Stewards findings concerning the alleged 'honest mistake'. The continued submission as to 'honest mistake' does not advance the interests of Apprentice Jockey A Lindsay in her Appeal against Sentence.

25. Neither the opinion of Mr Ring described at paragraph 19 e. above, or indeed the merit of an alternative penalty of reprimand generally are relevant to this Appeal against Sentence unless we are persuaded that the penalty imposed by the Stewards was excessive. We did not so conclude.
26. This Appeals Committee was persuaded by the submissions of Mr Hensler referred to in paragraph 21 above.
27. The Appeal against Sentence was dismissed on the 5 November 2020 for reasons to be published. These are those reasons.

Guilty Pleas and Frivolous Appeals

28. The Appeals Committee takes this opportunity again to remind Jockeys and those who advise them that, that it is considered common and proper, that the Stewards, and indeed this Appeals Committee, take into account in favour of potentially reducing an otherwise appropriate penalty from time to time, the early entry by a Jockey of a guilty plea. No such potential reduction was available in the circumstances of this matter.
29. Despite previous reminders in Reasons published by the Appeals Committee in recent appeals, it is apparent that some Jockeys and their advisers consider it appropriate to decline to offer any plea before Stewards' Inquiries and later complain that sentences imposed are excessive when compared to sentences imposed upon people who have entered an early plea of guilt.
30. Furthermore, this Appeals Committee is concerned that some appeals (including this appeal) are advanced in circumstances lacking in any realistic prospect of success thereby needlessly involving the Racing industry in expense and wasted resources.
31. We take this opportunity to remind the Racing Industry that this Appeals Committee may in appropriate circumstances decide in an Appeal against Penalty to impose a greater penalty than that imposed by the Stewards. See for example the decision of the Appeals Committee in the Appeal of Raymond Vigar dated 10 June 2015.
32. Because these appeals by Apprentice Jockey A Lindsay lacked any reasonable prospect of success, demonstrated an unwillingness to heed earlier reminders of the type referred to in paragraph 28 and revealed a disturbing ignorance of the proper role and responsibilities of the Stewards as described in paragraph 14 above; the Appeals Committee seriously considered substituting a higher penalty for that imposed by the Stewards in respect of this serious offending.
33. However, because Apprentice Jockey A Lindsay is at an early stage in her career and to some extent may have relied upon poor advice from others concerning her failure to enter a plea and to maintain these meritless appeals, we decided on the 5 November 2020 not to interfere with the penalty from which she appealed.
34. We take this opportunity to put the Racing Industry on notice that this Appeals Committee is likely to increase penalties in meritless future appeals where, by their

conduct, appellants demonstrate ignorance of or contempt for the Rules of Racing and the system relied upon to maintain honesty and integrity in the racing industry.

Dated the TWENTY FIRST day of JANUARY 2021



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P F McIntyre (Chair)



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Mr S J Stirling