

TRNT Appeals Committee

APPEAL of Jockey F Bergstrand

APPEAL COMMITTEE: Mr P McIntyre (Chair), Mr R Longuet and Mr C McNally

DATE of HEARING: 8th August 2018

REASONS FOR DECISION

Appearances

At the Appeal;

- a. Mr P Carroll represented the Stewards.
- b. Mr K Ring represented Jockey F Bergstrand both of whom appeared by telephone.

Background

1. Jockey F Bergstrand appealed against a decision of the Stewards made on 18th July 2018 finding her guilty to a charge under AR175(p) that she failed or refused to comply with an order, direction or requirement of the Stewards by failing to restrain her mount or pull her mount up on the track when warning lights were operating. She was fined the sum of \$500.00.
2. Jockey F Bergstrand filed a Notice of Appeal on 20th July 2018 seeking to have the conviction set aside.
3. At the hearing Mr P Carroll tendered the following documents;
 - a. A document headed 'Notice of Appeal' signed by Jockey F Bergstrand and dated 20th July 2018. [Exhibit 1]
 - b. Transcript of Proceedings of Stewards Inquiry 18th July 2018 [Exhibit 2] (Transcript).
 - c. A document headed 'Australian Jockeys' Code of Conduct' and dated February 2008.[Exhibit 3]

Orders

4. On 19th July 2018 the TRNT Appeals Committee upheld and referred the matter back to the Stewards for re-hearing pursuant to s145E(2)(d) for reasons to be subsequently published. These are our reasons for that decision.

Reasons

1. In defence of her conduct it is recorded at page 15 of Exhibit 2 that Jockey F Bergstrand said as follows;

'Ah just like I stated before I did do a gallop out there. It was a mistake I didn't see the lights, its not like I intentionally didn't follow any regulations.'

2. The substance of the appeal by Jockey F Bergstrand is that the Stewards convicted her improperly by either;
 - a. Refusing to believe that she did not see the lights; and
 - b. In determining that the lights were readily observable and were the reason six other jockeys left the track;

without undertaking reasonable investigations of other readily available witnesses;

3. Page 10 of the Transcript records Mr Hensler (Chairman of Stewards) saying;
'I can't understand how 6 riders who were all on the track saw the lights and came off and Felicia didn't- I'm bewildered by that.'
4. Page 11 of the Transcript records the following exchange between Jockey F Bergstrand and Mr Napier (Senior Stipendiary Steward);

'Miss Bergstrand No one had got out of the ute, all I could see was the ute driving down there. As I'm going past um and there's trucks driving down there parking, there are trucks there when trackwork is going on. So I didn't acknowledge that on what was going on there at that stage and all the horses that were actually coming off the track, none of them were going back out to do their work again all the horses that were pulled up were finished their work off. So it's not like I was the only one that didn't listen to anything because I'm in the middle of my work and that's the first thing, and the second thing we had this incident happen only a few weeks ago where the riders didn't see the light either. So this is not the first time and when Lindsay Lane was here we had the same incident that people didn't see the light when the incident happened in daylight so I'm not the first person not to see and acknowledge the light.

Mr Napier 'Just excuse me, the other riders saw the lights, that's why they came off, you just made an assumption because they were coming off that they had finished their work'

5. Pages 12-13 of the Transcript records the following exchange between Jockey F Bergstrand and Mr Napier;

Mr Napier 'Do you believe it is your duty of care that when you are actually doing track work if you perceive that there is a problem with the lights, seeing the lights, do you think it is your duty of care when you are on the track to be extra vigilant to look at the towers with the lights on if you perceive that they are not very visible at all times, do you think its your duty of care to basically keep an eye on them anyway while you are on the track?

Miss Bergstrand Yeah maybe, yeah maybe I should take better care and look up more when I doing a gallop, but like I stated I am not the first person to mistaken to not seeing the lights and maybe we need to change something about the safety issue here for all the riders to see the lights

in the future. Because there is obviously a safety issue there, people don't see the light, we need a siren or we need to put a red flashing light on the inside of the fence as well so people can acknowledge. That are lower that are not up in the sky because you are not riding around in a gallop looking up like this you are sitting straight in front of the horse looking where you are going making sure no one is in front of you as you are galloping.'

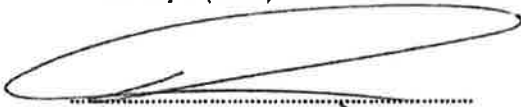
6. It is clear from the Transcript as a whole and submissions made at the hearing of the Appeal that Jockey F Bergstrand and the Stewards are in dispute concerning the following matters;
 - a. Whether or not Jockey F Bergstrand was galloping her mount;
 - b. Whether or not 6 other jockeys saw and heeded the lights;
 - c. For what period of time the lights were operating and at what time had they been turned on;
 - d. Whether or not there have been some weeks earlier incidents that involved the Stewards where jockeys had not seen the lights when the lights were operating during the day.
7. At the Inquiry and at the hearing on Appeal Jockey F Bergstrand complained that despite her suggestion (at the Inquiry) that they do so, the Stewards did not investigate what relevant evidence might have been obtained from;
 - a. Bob Richard (her trainer);
 - b. The six jockeys referred to by Mr Hensler; and
 - c. The jockeys and Stewards said to have been involved in the earlier incident referred to at paragraph 5 d. above.
8. At the hearing on Appeal Mr P Carroll confirmed that there had in fact been an earlier incident involving the Stewards of the type referred to at paragraph 5 d. above and in which in fact he had been involved.
9. The Transcript does not disclose whether (and to what extent) that earlier incident was considered by the Stewards; nor whether in fact it ought to have been. What the concession does disclose is that the Stewards did in fact have knowledge of such incident and did not disclose that fact to Jockey F Bergstrand.
10. At the hearing on Appeal Mr P Carroll conceded that the Stewards accept that Jockey F Bergstrand 'did not see the lights'. Such acceptance is not apparent in the content of the Transcript.
11. It is important to recall that Jockey F Bergstrand was not charged with careless riding.
12. The concession referred to at paragraph 10 suggests that the Stewards concluded that whether or not Jockey F Bergstrand intended to fail or refuse compliance is irrelevant to a charge under AR175(p).

13. The first problem with such conclusion in the present matter is that the Stewards did not disclose to Jockey F Bergstrand that that was the nature of the charge.
14. It is an important protection afforded by the common law; that an honest and reasonable mistake about the existence or not of a set of facts; which if true would render an act lawful; provides a defence to a charge. The classic statement of that principle in Australia was provided in the High Court of Australia by Dixon J in Proudman v Dayman (1941) 67 CLR 536.
15. Given that the Stewards were apparently relying upon recklessness on the part of Jockey F Bergstrand it was incumbent upon them to inform her of that and for them to then properly investigate matters having a bearing upon her conduct.
16. In the circumstances a proper inquiry should have included the matters set out in paragraph 7 above.
17. In the circumstances the TRNT Appeals Committee upholds the appeal on a procedural fairness basis and refers the matter back to the Stewards to conduct their Inquiry afresh taking into account these reasons.
18. We take this opportunity to mention that it is in the interests of safety in racing as a whole, that the adequacy of the lights as precautionary devices during the day be investigated.

Dated the 11th day of September 2018



P F McIntyre (Chair)



R Longuet



C McNally