

APPEAL of MICHELLE HAGLEY

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

DATE of HEARING: 9<sup>TH</sup> APRIL 2018

REASONS FOR DECISION

Background

1. Jockey Hagley appealed against a decision of the Stewards made on 24<sup>th</sup> February 2018 relating to her ride in Race 2, BMNT 1300m. She was found guilty of improper conduct under AR175(q) and was fined the sum of \$500.00.
2. The decision of the Stewards' is set out at page 1 of the Stewards' Report of the Darwin Turf Club dated Saturday 24<sup>th</sup> February 2018 (Stewards' Report) as follows;  
'On inquiry jockey M Hagley was found guilty of a charge of improper conduct under AR 175(q) as a result of her actions when mounted on CHERABIN whilst returning to the saddling enclosure following the running of this event. Ms Hagley was fined the sum of \$500.'
3. Jockey Hagley filed a Notice of Appeal on 28<sup>th</sup> February 2018 (Notice of Appeal) seeking findings;
  - a. Setting aside the finding of guilt; and
  - b. Determining that the penalty was excessive.
4. During the Appeal hearing the appeal committee was provided with copies of
  - a. The Steward's Report;
  - b. The Notice of Appeal;
  - c. The transcript of the Stewards Inquiry conducted on the 24<sup>th</sup> February 2018; and
  - d. Video footage of the incident (the Transcript).
  - e. A document entitled 'Michelle Hagley-Personnel Incidents' setting the history of Jockey Hagley from 22<sup>nd</sup> August 2001 until 18<sup>th</sup> March 2018 in terms of convictions for various breaches of the rules of racing (Conviction History).
5. During the Appeal hearing the parties agreed that the particulars of the charge were as set out on page 7 of the Transcript as follows;  
'your conduct in the return raceway of deliberately manoeuvring your mount Cherabin to pass One Faster ridden by Brendon Davis posed an unacceptable safety risk and in the opinion of the Stewards was therefore improper'.

Orders

6. On 9<sup>th</sup> April 2018 we dismissed the appeal against guilt and upheld the appeal against penalty. These are our reasons for those decisions.

Reasons

7. At the Appeal Mr D Hensler, Chairman of Stewards appeared. Jockey Hagley appeared personally and was assisted by Mr Des O'Keefe Chair Australian Jockeys Association whom we had permitted to appear by telephone.

8. During the Appeal hearing each of Mr D Hensler, Jockey Hagley and Mr Des O'Keefe on several occasions commented upon various aspects of the vision contained in the video footage in support of their respective submissions.
9. Mr D Hensler submitted that the vision clearly supported the decision of the Stewards' set out paragraph 2 above.
10. Both Jockey Hagley and Mr Des O'Keefe submitted that the video footage supported an alternative conclusion that the decision of Jockey Hagley to overtake ONE FASTER ridden by Jockey B Davis in the race after having come from the track was reasonable because Jockey Davis caused an unsafe situation to arise by slowing his mount to a walk in front of Jockey Hagley.
11. Having viewed the video footage several times we were satisfied that the submission of Mr D Hensler referred to in paragraph 9 is correct.
12. We were satisfied that the unsafe situation referred to by Jockey Hagley was caused by her own decision to bring her mount into the race at faster pace than that of the horse immediately in front of her. On her own account Jockey Hagley brought CHERABIN into contact with the rear of ONE FASTER causing that horse to increase its pace beyond a walk.
13. It was common ground that there had been some spoken exchange between Jockey Hagley and Jockey Davis prior to Jockey Hagley deciding to overtake ONE FASTER.
14. Neither party sought to rely upon the content of the spoken exchange at the Appeal hearing.
15. Jockey Hagley submitted that the action of Jockey Davis in returning the pace of his mount to a walk was the sole cause of the unsafe situation and that we should ignore all the events shown in the video footage prior to that event.
16. In fact, the video footage showed (as was agreed by all present at the Appeal hearing) that shortly prior to Jockey Hagley bringing CHERABIN from the track into the race;
  - a. CHERABIN was approximately one length behind ONE FASTER; and
  - b. Both CHERABIN and ONE FASTER were walking;
  - c. CHERABIN entered the race at a faster pace than a walk and faster than that of ONE FASTER;
  - d. In the race CHERABIN came into contact with the rear of ONE FASTER because of which ONE FASTER momentarily increased its pace.
17. It is in this context that we reject the submissions that the unsafe situation was caused by the actions of Jockey Davis.
18. We conclude rather, that Jockey Hagley created the unsafe situation herself.
19. Jockey Hagley submitted that when CHERABIN completed the BMNT 1300, when CHERABIN entered the race and when confronted with the unsafe situation, CHERABIN was difficult to control and agitated.
20. Jockey Hagley further submitted that because of the matters referred to in paragraph 18 the decision by jockey Hagley to overtake ONE FASTER in the race was at the time her only reasonable response to the unsafe situation.
21. However, the video footage and the agreed facts referred to in paragraph 15 above do not support the submission in paragraphs 18 and 19.
22. On the contrary, the video footage and the agreed facts referred to in paragraph 15 above, show that CHERABIN was in fact calm and at a walk prior to being ridden into the race by Jockey Hagley at a pace in excess of a walk.
23. Jockey Hagley was not compelled to enter CHERABIN into the race when and in the circumstances in which she did. It was incumbent upon her to ensure a safe distance between her mount and that immediately in front of her. She did not do so. Neither did she provide any explanation for not doing so.

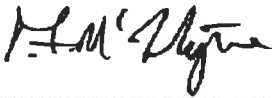
24. For these reasons we find that Jockey Hagley has failed to demonstrate a basis to support the appeal against the Stewards' finding of guilt.
25. Jockey Hagley submitted that the fine of \$500.00 was excessive.
26. Jockey Hagley submitted that she was a very experienced Jockey and had never before been charged under AR 175(q).
27. That submission is supported by the information contained in the Conviction History.
28. For personal reasons including that her work as a jockey is her only form of income from which she supports two young children; that her income has been detrimentally affected by a recent downturn in racing caused by the recent cyclone; Jockey Hagley submitted that the fine would have a huge affect on her and her family.
29. Jockey Hagley submitted the penalty should have been and was not at the lower end of the possible range of penalty and should have been just a reprimand; or if a fine such fine should have suspended for a period subject to good behaviour.
30. Mr D Hensler submitted that the available range of penalties pursuant to AR196 included a fine of up to \$100,000.00 and that in those circumstances a fine of \$500.00 was near the bottom of such a range.
31. He further submitted that the conduct of Jockey Hagley was serious improper conduct and gave rise to an actual unsafe situation both for herself, for Jockey Davis and others; and that in those circumstances a penalty of more than a reprimand was appropriate.
32. We agree with the submissions of Mr D Hensler in paragraphs 30 and 31 above.
33. Mr D Hensler conceded that consideration had not been given by the Stewards to the question of suspension of the fine because Jockey Hagley did not make any submissions in that regard or at all when given an opportunity by the Stewards to do so. He referred us to page 10 of the Transcript in support of such submission.
34. Jockey Hagley did not provide any reasons for her decision not to make submissions concerning penalty to the Stewards. On her behalf Mr Des O'Keefe submitted that it is apparent from the content of the Transcript that the Stewards Inquiry was at times emotive and highly charged and that it was in those circumstances that Jockey Hagley's failed to make submissions as to penalty.
35. It is important to bear in mind that AR 196(4) provides as follows;  

'Any person or body authorised by the Rules to penalise any person may in respect of any penalty imposed on a person in relation to the conduct of a person, other than a period of disqualification or a warning off, suspend the operation of that penalty either wholly or in part for a period not exceeding two years upon such terms and conditions as they see fit.'
36. The exercise by the Stewards of their power to suspend set out in AR 196(4) is not conditional upon submissions to that effect by the relevant person upon whom the penalty is imposed.
37. A proper exercise of AR 196(1) is one that has regard to AR 196(4).
38. In light of the concession made by Mr D Hensler (referred to in paragraph 33 above) we uphold the appeal as to sentence because we conclude that had the Stewards properly considered AR 196(4) they would have concluded that a suspension of the fine 'either wholly or in part' would have been appropriate both for reasons of personal and general deterrence and as appropriate to the personal financial circumstances and prior history of Jockey Hagley.
39. We have for these reasons upheld the imposition of the fine of \$500.00 but have ordered that payment of half of that amount (\$250.00) be suspended for twelve months provided

that during that twelve months Jockey Hagley not be found guilty of any misconduct, improper conduct or unseemly behaviour pursuant to AR 175(q).


Dated: 2<sup>nd</sup> May

2018



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P McIntyre

Chair

  
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R Longue

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C McNally