



APPEAL OF MATTHEW HART: AR 137A (5)

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

Date of Hearing: 27 November 2014

Date of Decision: 2 December 2014

REASONS FOR DECISION

Stewards' Decision

On 15 November 2014 Stewards found Jockey Matthew Hart guilty of breaching AR 137A (5) which provides:

“(5) Subject to the other requirements of this rule:

(a) In a race, official trial or jump-out prior to the 100 metre mark;

(i) The whip shall not be used in a forehand manner in consecutive strides.

(ii) The whip shall not be used in a forehand manner more than on 5 occasions.

(iii) The rider may at his discretion use the whip with a slapping motion down the shoulder, with the whip hand remaining on the reins, or alternatively in a backhand manner.

(b) In the final 100 metres of a race, official trial or jump-out a rider may use his whip at his discretion.”

The charge arose from Jockey Hart's ride on “Noir Rasoir” in the 1,000 metres SUNFM Handicap at Alice Springs that day. Particulars were that the whip was used in the forehand manner on 18 occasions prior to the 100 metre mark. Jockey Hart was informed that on some of those occasions the whip was used in consecutive strides.

Jockey Hart pleaded guilty. Stewards imposed a penalty of suspension for 7 days and a fine of \$500.

The Appeal

Jockey Hart did not appeal against the finding of guilt. The appeal was confined to the penalty on the following grounds:

"I'm appealing against the severity of the penalty imposed by TRNT Stewards on 15/11/14 at ASTC.

I think a fine or at worst a suspension would suffice, but to get both handed to me is I think excessive.

\$500 + 7 days means the penalty hits me in the pocket to the tune of \$1,300+ which I see as a huge jump from my last fine in July 2014 \$250."

The appeal was heard in Darwin on 27 November 2014. Mr David Hensler, Chairman of Stewards, represented the Stewards. At his request Jockey Hart appeared by telephone link from Mt Isa, Queensland, where he currently resides. We determined the appeal on the basis of a transcript of the evidence received during the course of the Stewards' inquiry and the official race film. No additional evidence was admitted.

Stay

The application for a stay was not opposed by the Stewards. A stay was granted and remains in force.

Consideration

As already mentioned Jockey Hart pleaded guilty as charged at the Stewards' inquiry.

It was common ground between the Stewards and Jockey Hart that he used the whip in a backhand manner before changing to forehand use. Jockey Hart disputed the point at which Stewards alleged he changed from backhand use to forehand use. Therefore, Jockey Hart initially said that much of what the Stewards were characterizing as forehand use was really backhand use. He asserted that the change from backhand to forehand occurred about 210 or 220 metres from the finish.

He pleaded guilty after having a close look at the video recording of the race. His explanation for the breach stemmed from the different way of racing in the two jurisdictions, Queensland and the Northern Territory, where he regularly rides. He told the Stewards:

"We go the opposite way in Queensland and for some reason backhand works a lot easier for me. That's why I haven't been answering to them there; I'm rarely caught for it."

Adding:

"But as soon as I come back here it's 10 years of bad habits I suppose and hard to break. I've been trying. Like I said, it comes back in. That's a big breach. I didn't realise that I'd pulled it forehand. In all honesty, that's what I said to you when I first came in. I thought I had backhanded it until about here."

Jockey Hart conceded that he had received two penalties not so long ago for excessive forehand whip use: on 22 June 2014 a reprimand for using the whip 2 times more than permitted and on 20 July 2014 a fine of \$200 for using the whip 6 times more than permitted. [The reference to 27 June 2014 on page 8 of the transcript is incorrect.] In each case the whip was used consecutively.

At the appeal hearing Jockey Hart urged us to accept that the official race recording was inconclusive. He said that a recording on Youtube was clearer. We viewed both recordings but they hardly added anything to our understanding of the circumstances of the offence. The images are not very well defined and we are content to rely upon the interpretation that the Stewards advanced at the inquiry and the admissions made by Jockey Hart. It should be noted that only one angle of the official race recording was produced at the appeal hearing.

On the issue of penalty Mr Hensler produced:

- (a) The decision of the NT Racing Appeal Tribunal in the Appeal by Scott Westover (4 June 2013). Before the 100 metre mark the rider struck the horse in a forehand manner between 8 and 10 times, 3 of which were consecutive. The horse won the Pioneer Sprint, one of the feature races of the Alice Springs Carnival. The Tribunal dismissed the appeal against a penalty of forfeiture of riding fee, forfeiture of riding percentage and one week's suspension.
- (b) Lists of penalties applied for breaches of AR 137A (5) (a) (ii) in New South Wales and Western Australia.
- (c) By way of example, records of penalties applied by Stewards against two riders in the Northern Territory.

The above material is of limited assistance in determining whether the penalty imposed on Jockey Hart was within the discretion of the Stewards. Firstly, in the Westover decision, the Stewards and the Tribunal all placed reliance on the "NT Whip Penalty Template". That template was also referred to in previous decisions of TRNT Appeal Committees but Northern Territory Stewards have ceased to use it as a guide.

Secondly, it is unavoidable that significant differences will occur between penalties in the Northern Territory as compared with penalties for the same offence in other jurisdictions. It is desirable that at least there be consistency of penalties within the Northern Territory. As the remarks at the foot of page 3 of the Westover decision indicate, the Tribunal had in mind the need for "the penalties to be consistent with the proper disposition of such offences in the Northern Territory".

Thirdly, based on the Stewards' examples it is difficult to get a sense of the range of penalties in the Northern Territory for this particular type of offence since the

use of the template was discontinued. One of the riders has been fined 4 times and reprimanded once for excessive forehand use since last March. The last and largest fine was \$750 for 6 additional strikes with the whip (the ride resulted in a win). The second rider has been fined on 4 occasions since last March including a \$700 fine for 4 extra strikes (this ride also resulted in a win). Both of those riders have received warnings that another breach may result in a suspension.

Mr Hensler informed us that there have been no suspensions for a breach of the whip rule since Stewards ceased to refer to the template about 9 months ago. However, this is the largest number of excessive forehand strikes in any race during that period. He submitted that this is a case of high culpability; the large number of strikes shows disregard for the whip rule.

Jockey Hart submitted that the feature race was an important element in the Westover penalty. The SUNFM Handicap was not a feature race.

Jockey Hart denied that he has disregard for the rule. He asked us to accept that he has changed his riding style to try and conform to the rule. He informed us that he has other work as a contractor in the mines at Mt Isa. At each Mt Isa race meeting he can earn \$850 without winning a race. If he misses a race meeting at Mt Isa it will also impact on the horse owners and the race club. He travels to Alice Springs to help out with the local shortage of jockeys. Each trip costs him \$350. His girl friend is not in paid employment and he has a little baby to support. He feels that it is a harsh penalty without a warning from Stewards about possible suspension.

We have come to these conclusions:

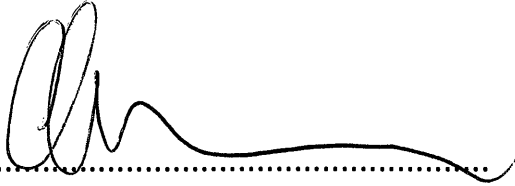
1. Although Jockey Hart has not had the benefit of a warning and it was not a feature race, in our opinion this breach is so egregious that the penalty of suspension is fully merited.
2. However, when added to the suspension, the fine of \$500 results in an overall penalty which seems to us to be too high. It should be noted that the other riders mentioned in the Stewards' examples could have used their winning percentages to help to pay the larger fines.
3. Given this rider's record we would prefer to substitute a fine equivalent to the fee for riding in the race (\$225).
4. We do not regard the rider's submissions about financial consequences as deserving of any additional relief from what must necessarily be a significant penalty.

When the Stewards imposed the suspension, Jockey Hart was informed that he would have to miss one meeting, namely the meeting at Mt Isa on 22 November 2014. The stay which we granted on 19 November enabled Jockey Hart to ride at that meeting.

The meeting at Mt Isa on 6 December 2014 is the next meeting at which Jockey Hart would ordinarily be expected to ride. To preserve a period of suspension commensurate with the penalty of one meeting, we fix in lieu of 7 days a period of 4 days commencing immediately and expiring at midnight on 6 December 2014. In addition, there is a fine of \$225.

The appeal has been partly successful. The deposit will be refunded.

Dated 2 December 2014

A handwritten signature in black ink, appearing to be 'John Stewart', written over a horizontal dotted line.

John Stewart
Chairman
Thoroughbred Racing NT