



**APPEALS of RICHIE OAKFORD: AR 137A**

**Appeal Committee: Mr John Stewart (Chairman), Mr James McNally and Mr Brett Dixon**

**Date of Hearing: 23 September 2011**

**REASONS FOR DECISION**

These appeals were heard on the same day as an appeal by Jockey Michael McDuff involving the same rule.

The legal representation was also the same in each case. Stewards were represented by Mr David De Silva; Jockey Oakford was represented by Mr Gerald Clarke.

Jockey Oakford's grounds of appeal were much the same as those used by Jockey McDuff. We were informed that it was agreed that the same arguments in relation to the construction and application of the rules as in the McDuff appeal would be relied upon by both parties in Jockey Oakford's appeals.

The transcript of the Stewards' inquiry into each race was tendered; we viewed the video of each race, and received some additional evidence mainly consisting of comments upon the video evidence.

We will consider the facts of each of these appeals separately. The complete text of AR 137A is set out in the reasons for our decision in the McDuff appeal.

**"Uridashi" - 1 August 2011**

Jockey Oakford was charged with using the whip on "Uridashi" in excess of 30 times in the straight in the Sportingbet Stakes over 1200 metres at Fannie Bay on 1 August 2011. "Uridashi" won the race.

Stewards found Jockey Oakford guilty and ordered that he forfeit his riding fee and 50 percent of his winning prizemoney percentage.

By consent Jockey Oakford lodged amended grounds of appeal against the finding of guilt and the severity of the penalty.

The particulars of Jockey Oakford's appeal were:

"A. I denied and continue to deny that I struck the horse other than in a backhand manner at any time throughout the race.

B. I denied and continue to deny that I used the whip in an excessive, unnecessary or improper manner. My horse was involved in a two horse struggle with his stablemate all the way down the straight and any lesser use of the whip by me no doubt would have resulted in an inquiry as the stablemate who ran second was the favourite for the race and my horse an outsider.

C. I denied and continue to deny that I hit the horse in a forehand manner during any part of the race contrary to Rule 137A.

D. During the last 100 metres of the race I am required to use my discretion as to how vigorously I use the whip. Taking into consideration the closeness of the finish and the factors aforementioned I had no option but to continue to use the whip right up to the line as my horse was still going forward and won in the last stride."

There was a question about whether each of Jockey Oakford's swings with the whip resulted in impact with the horse or was merely a "wave". This exchange between Chairman of Stewards, Mr Lane, and Jockey Oakford at the Stewards' inquiry is relevant:

"MR OAKFORD: .....There's a few hits there that do look like I'm hitting him where I haven't. It's just because I flick it down the side, but maybe I should modify that a bit. Yeah, it looks like I'm hitting him a fair bit, but, as I say, I didn't really get stuck into him until after the hundred – or until the hundred, probably just after the crossing.

MR LANE: If I've counted correctly, and I'm not too sure that I have, but I counted 39, leaving out the ones that I thought were waves. Would I be close or not close, do you think?"

Mr Lane proceeded to count the hits and, after counting to 39, this was Jockey Oakford's response:

"MR OAKFORD: There might have been a couple that weren't hits, but I'm not going to argue about that. There's a couple maybe that are debateable whether I hit him."

When charged, Jockey Oakford submitted: "If I didn't hit him, he wouldn't have won. Simple as that."

We accept Mr Clarke's submission that the forehand action is capable of generating more force than the backhand action. It is for that reason that sub-rules (5)(a)(i) and (ii) are more restrictive of forehand use.

As in the McDuff appeal it was submitted on behalf of Jockey Oakford that AR 135(b) required him to "...take all reasonable and permissible measures throughout the race to ensure that his horse is given full opportunity to win...". Mr Clarke argued that Jockey Oakford's use of the whip was reasonable and permissible.

Mr Clarke argued that it was significant that Stewards did not exercise the power of objection available under sub-rule (9) where the rider contravenes sub-rule (3) or sub-rule (5). Mr De Silva replied that it was guesswork where the horse would have finished in the absence of such a contravention.

Mr Clarke argued that sub-rules (4) and (5) are there to give a jockey guidance. They override the general provision made by sub-rule (3). The problem with that submission is that sub-rule (4) expressly preserves the general force of sub-rule (3) so the submission tends to reinforce the conclusions that we reached in the McDuff appeal.

Mr Clarke also argued that where sub-rule (5)(b) states "subject to the other requirements of this rule" it really means "subject to the other *specific* requirements of this rule". This is another way of trying to eliminate sub-rule (3) from consideration. The argument is rejected not only because sub-rule (4) upholds sub-rule (3) but also because there is a good reason why it does so. That reason, as explained in the McDuff appeal, is that sub-rule (3) continues to reflect the intendment of AR 137A that, in dealing with excessive, unnecessary or improper use of the whip, Stewards will not be confined to breaches of sub-rule (4) or sub-rule (5).

We adopt all of the reasoning in numbered paragraphs 1 to 18 (inclusive) of our decision in the McDuff appeal except where reference is made to the particular circumstances of that case. The remark about exceptional difficulty applies with equal force to the appeals of Jockey Oakford.

For greater clarity we confirm that our conclusions as they apply to each of the Oakford appeals are, in essence:

1. The limits on the use of the whip, whether forehand or backhand, are only partly covered by sub-rule (5).
2. The restrictions in sub-rules (3) and (4) must also be observed.
3. Sub-rule (4) provides examples that will assist the rider in exercising whatever discretion is available.
4. Sub-rule (3) provides a mechanism for Stewards to deal with inappropriate whip use where the other parts of Rule 137A do not fully respond.

5. Whether the use of the whip is excessive will depend on the circumstances of the particular case.

There will be cases where a jockey will get the benefit of the greater latitude allowed for backhand use of the whip. This is not such a case. Jockey Oakford explained that he has developed a whip action that enables him to swing in rhythm with the horse but without hitting the horse with every swing. While we have to agree that it is better if the swing does not connect, it is difficult to tell if some of Jockey Oakford's swings made contact. Doing our best to eliminate any swings that did not result in contact we were satisfied that the count of 39 hits was approximately correct. Jockey Oakford's use of the whip was undoubtedly excessive.

Jockey Oakford conceded to Stewards that he may have to modify his action with the whip. We strongly recommend that he should put that intention into practice. The image of him applying the whip to the horse throughout the length of the straight is not in keeping with the rules or the best interests of modern Australian racing. As we said in the McDuff case, when a horse is in contention the obligation to use all reasonable and permissible measures does not justify excessive use of the whip.

Mr Clarke submitted that the penalty imposed by Stewards cost Jockey Oakford \$689, an excessive amount.

Jockey Oakford's record was tendered. He has a prior record of numerous breaches of Rule 137A the last of which occurred on 3 April 2011. Mr De Silva tendered a template adopted by the Stewards as a guide. He explained that the template is non-binding and that each case receives individual consideration. Nevertheless, in accordance with the template, Stewards could have considered imposing a penalty of loss of riding fee plus percentage of prizemoney plus suspension. By comparison, Mr De Silva said Jockey Oakford was treated with lenience.

Mr De Silva brought to our attention the decisions of the Racing NSW Appeal Panel in the *Appeal of Corey Brown* (22 September 2009) and in the *Appeal of Michael Rodd* (20 April 2010). Both jockeys were charged with breaches of AR 137(5) so the guidance provided by those penalties is questionable. We do not regard the decisions in the Brown appeals as having any greater utility than illustrating that, in an appropriate case, Stewards can penalise a rider by suspension, and forfeiture of riding fee and percentage of prizemoney.

It is worth noting that Jockey Brown was found guilty of using the whip in one race 5 more times than the permissible maximum inside the final 200 metres and in the other race 3 more than the permissible maximum. While the penalties are not directly comparable, the observations of the Panel are worthy of note:

“The Panel recognise it is important that jockeys comply with the rule at the same time being competitive to achieve the best position in the race for the horse. This is necessary to achieve an even playing field and integrity of racing.

A jockey should not have success or receive an advantage when other jockeys are complying, nor should owners and connections of other horses be disadvantaged.

To maintain the integrity of racing and compliance jockeys or other persons who breach rule 137A must be deterred by significant penalty.”

For completeness, we note that in the Rodd appeal a fine of \$2,000 was reduced on appeal to \$1,000. Jockey Rodd used the whip for 7 strokes with the forehand (2 more strokes than was permissible) prior to the 100 metre mark. Again, because of the different circumstances we do not derive any assistance from that decision.

We consider that the conduct of Jockey Oakford was a conspicuous example of the type of conduct that Rule 137A seeks to eliminate. Penalties for his past breaches of whip rules have included reprimands, fines and forfeiture of riding fee. It is evident that those penalties have not operated as a sufficient deterrent. The penalty imposed on this occasion was perhaps lenient given Jockey Oakford’s persistent breaches of the whip rules and the seriousness of this particular breach. We would not have interfered with the Stewards’ penalty had a short period of suspension been imposed in addition to the fine and forfeiture of prizemoney percentage. However, we regard the Stewards decision as within reasonable bounds.

The appeal is dismissed. The Stewards’ decision is confirmed. The deposit is forfeited.

**“Laduni” – 13 August 2011**

We now come to Jockey Oakford’s second appeal.

“Laduni” was placed second in the NT Shipping Agency’s Handicap over 1200 metres at Fannie Bay.

Stewards charged Jockey Oakford with excessive use of the whip in that he commenced to ride “Laduni” with the whip in the early part of the straight and, save for a short period within the last

hundred metres used the whip in most strides. Stewards found him guilty as charged, suspended his permit to ride for one meeting and ordered forfeiture of his percentage of prizemoney.

At the Stewards' inquiry, Chairman of Stewards Mr Lane suggested: "Now, if you give him one and then ride him hands and heels for three or four strides, then give him another one, but here we are getting over the 20 hits again on a horse which really had no chance of winning if you look at the film". Jockey Oakford explained that he did ease up on the horse and would have stopped riding altogether except that the third place getter started challenging his horse.

This passage followed:

"MR LANE: I know you've changed to back-hand and you seem to think, despite the fact that we've said the opposite, you seem to think that because you're using back-hand, you can just use it indiscriminately.

MR OAKFORD: If the horse is in contention I can do that. That's my belief. That's my understanding of the rules. If it's in contention and responding...."

And later:

"MR OAKFORD: He's a hard horse to ride. He's a lazy horse. He does respond at the top of the straight. As I say, when it was clear I wasn't going to catch the leader, I eased up on him. I started to ride him a little harder again when I thought the third placegetter had a chance of running me down. And if you watch the film again, you'll see that I did ease up and I started to wave it at him rather than hit him and I don't think that was unnecessary."

At the appeal hearing, Stewards observed that Jockey Oakford used the whip on "Laduni" substantially more than any other rider in the race. In our presence Mr Lane counted 17 hits before the last 100 metres and another 7 to the finish making a total of 24 in the straight. By comparison the rider of the winner used the whip 9 times. We were satisfied that Mr Lane's counts were correct.

Stewards conceded, however, that the whip was more sparingly used on "Laduni" than in Jockey Oakford's ride on "Uridashi" that was the subject of the first appeal. They also conceded that if the first appeal was successful then the penalty in the second appeal should be reviewed.

We did feel that Jockey Oakford's ride on "Laduni" had more going for it than his ride on "Uridashi". He at least made some apparent effort to adapt his whip use to the circumstances. However, he still used the whip to excess so the appeal against the finding of guilt is dismissed.

We repeat that by and large Northern Territory Stewards appear to be enforcing the whip rules correctly and sensibly. Jockey Oakford's persistent defiance is most unhelpful to his cause. If he

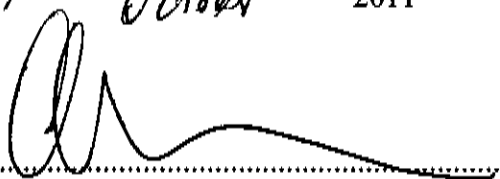
reforms his practices with the whip he will have a better chance of explaining to Stewards why on a given occasion the circumstances required comparatively greater use.

We hope that these decisions will serve to clarify the whip rules and that Jockey Oakford will make a more determined effort to comply with them in the future. Although we are again satisfied that the penalty imposed by the Stewards was within reasonable bounds, we have decided that it would be appropriate to give Jockey Oakford some relief. We do this in recognition of a modicum of improvement evident in this ride and to encourage him to make a firm resolution to mend his ways.

The penalty will be varied so to that extent the appeal is allowed. The suspension stands but the forfeiture of prizemoney is reduced to 50%.

The deposit will be forfeited.

Dated 27 October 2011

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

John Stewart, Chairman