

## **TRNT Appeals Committee**

### **APPEAL of Jockey S Fawke**

**APPEAL COMMITTEE: Mr P McIntyre (Chair) and Mr R Longuet**

**DATE of HEARING: 3 August 2018**

### **REASONS FOR DECISION**

#### **Appearances**

At the Appeal;

- a. Mr D Westover represented the Stewards (with him Mr D Hensler appeared as an observer);
- b. Mr D O'Keefe represented Jockey Fawke (with him Mr J Hickmott appeared as an observer)

#### **Background**

1. Jockey Fawke appealed against a decision of the Stewards made on 1 August 2018 relating to his ride in Race 3 that day (Marina). Jockey Fawke pleaded guilty to a charge of careless riding under AR137(a) and his license to ride was suspended for 2 NT meetings to commence midnight 4 August 2018 and he was also fined the sum of \$500.00.
2. Jockey Fawkes filed a Notice of Appeal on 1 August 2018 seeking an order setting aside the penalty as excessive.
3. At the hearing Mr D Westover tendered the following documents;
  - a. A document headed 'Careless Riding Penalties' [Exhibit 1] (Penalties Schedule);
  - b. TRNT Stewards Guidelines for Careless Riding' [Exhibit 2](Stewards' Guidelines);
  - c. Transcript of Proceedings of Stewards Inquiry 1 August 2018 [Exhibit 3] (Transcript).  
Orders
4. On 3 August 2018 we dismissed the appeal for reasons to be subsequently published. These are our reasons for those decisions.

#### **Reasons**

5. At the Appeal we observed recorded video vision of the race (from several cameras) on a number of occasions and both Mr Westover and Mr O'Keefe commented upon various aspects of the vision (from various cameras) in support of their respective submissions.
6. Mr O'Keefe submitted that the penalty imposed by the Stewards was excessive for the following reasons;
  - a. the degree of carelessness should have been determined to have been 'low' rather than 'low to medium';
  - b. the degree of interference should have been determined to have been 'medium' rather than 'medium to high';
  - c. the early plea of guilty was not reflected in the penalty imposed;
  - d. the penalty imposed demonstrated that the Stewards did not properly consider the number of prior penalties imposed upon Jockey Fawke in the context of the number of rides he had undertaken in the previous twelve months in considering his record;
  - e. the penalty imposed was inconsistent with penalties disclosed in Exhibit 1;

- f. the penalty imposed was excessive given the ramifications for Jockey Fawke in that it would prevent him participating in the major event of Monday 6 August 2018 being the Darwin Cup.
7. Mr O'Keefe submitted that, if we were persuaded that the penalty was excessive, that the Appeal Committee has power to and should order the suspension be reduced to 1 NT meeting and further that the committee has power to and should order the suspension be served on Saturday 4 August 2018 relying upon s 145ZE Racing and Betting Act.

**Submission 6 a. and 6b.**

8. Mr O'Keefe presented detailed, extensive and coherent argument in support of his submissions. He relied, for the purpose of the submissions referred to at paragraph 6a. and 6b. above, upon various viewings of the video referred to in paragraph 5 above. He argued that such video was inconclusive of either the degree of carelessness or the degree of interference and that in those circumstances Jockey Fawke should have been afforded the benefit of doubt, and accordingly the conclusions for which he argued.
9. Mr Westover argued that the vision supported the conclusions of the Stewards both as to the degree of carelessness and the degree of interference. He directed our attention to various parts of the vision arguing that it was conclusive as to the following;
  - a. that Jockey Fawke had clearly observed the position of Jockey Davis and his mount (Snowy Black) and yet moved into position in front thereof when insufficiently clear resulting in Snowy Black being tightened for room, checked, and losing ground.
  - b. That Snowy Black 'lost 2 lengths and clearly did not get back into the race' and there is no doubt that Snowy Black 'suffered serious interference' and was 'put out of the race' because of the carelessness of Jockey Fawke.
10. Mr Westover argued that these arguments are supported by the testimony of Jockey Davis at page 4 of the Transcript both as to having been directed to 'ride the horse forward' and the effect of his mount 'getting the dirt in his face'.
11. We agree with the arguments of Mr Westover referred to at paragraphs 9 and 10 above and reject the arguments of Mr O'Keefe referred to at paragraph 8.
12. Accordingly, we reject the submissions referred to at paragraphs 6a. and 6b. above.

**Submission 6 c.**

13. We also reject the submission referred to at paragraph 6c.
14. It is clear from what is recorded at page 7 of the Transcript as having been said by Mr Westover and by Jockey Fawke that the latter conceded that he had received 4 prior suspensions in less than twelve months described as follows;

'.so 14 June at Port Augusta 4 meetings, 16 May at Murray Bridge was 3 meetings, 14 March Naracoote 3 meetings and 1<sup>st</sup> October last year Port Lincoln 3 meetings'.
15. Mr Westover argued that in these circumstances it is reasonable to conclude that the starting point in consideration of the duration of an appropriate suspension period would be 3 meetings.

16. We note that the Transcript reveals at page 6 that Jockey Fawke was in fact thanked for his early plea and that at page 10 specific reference to the Stewards having considered that plea is made.
17. Reference to 'an admission of guilt' as a 'mitigating factor' is included in the Steward's Guidelines.
18. There is no merit to the submission that the early plea of guilty was not reflected in the penalty imposed.

**Submission 6 d.**

19. In his submission referred to at paragraph 6d. above, Mr O'Keefe argued that the penalty was demonstrably excessive because the Transcript and the Steward's Guidelines revealed that the Stewards had erroneously failed to consider the number of Jockey Fawke's suspensions within the past twelve months (4) as a percentage of the number of his rides at race meetings (said to be 667). Mr O'Keefe argued that this percentage or ratio revealed that Jockey Fawke did not have what was described by the Stewards at page 7 of the Transcript as a 'fairly poor record'.
20. Mr O'Keefe sought to persuade us that the Stewards' Guidelines should in fairness include reference to consideration of the percentage or ratio described in paragraph 17'.
21. It was conceded by Mr O'Keefe and by Jockey Fawke at the hearing that the Stewards Guidelines were posted in the Jockeys Room and readily available to be read by all jockeys including Jockey Fawke prior to and during race meetings at the Darwin Turf Club and that they do not presently refer to such a calculation of percentage or ratio.
22. Mr Westover argued that the more rides that a jockey has had should improve the jockeys experience and competence and provides no basis for excusing careless riding.
23. We are not persuaded that the calculation of percentage or ratio between the number of rides and the number of suspensions of a jockey is relevant in the way advanced by Mr O'Keefe.
24. We reject the submission that the Stewards erred in the way described in paragraph 19 above.

**Submission 6 e.**

25. Mr O'Keefe argued that consideration of the Penalties Schedule reveals that the penalty imposed upon Jockey Fawke was excessive. He drew our attention to penalties imposed on 14 July 2018 and on 18 July 2018 mentioned therein arguably to demonstrate apparent inconsistency.
26. Mr Westover drew our attention to penalties imposed on the 5 May 2018, 18 July 2018 and 21 August 2018 mentioned therein arguably to demonstrate apparent consistency.
27. The information contained in the Penalties Schedule is summary and not a detailed analysis capable of providing exact comparisons.
28. Nevertheless, it is helpful in that it provides an indication of the general range of penalties imposed for apparently similar offences.

29. The notion of consistency in the application of sentencing principles is concerned with ensuring that similar penalties for similar offences bear an apparent consistency in range. It does not mean that penalties should be precisely the same. Indeed, it is unlikely that any offender or offending will be precisely the same as another.
30. The appellant, in this case Jockey Fawke , has the burden of persuading us that the penalty imposed was demonstrably outside of the usual range of penalties for offences of this sort.
31. We consider that all the penalties set out in the Penalties Schedule, including that the subject of this appeal, fall within a generally consistent range.
32. Accordingly, we reject the submission set out at paragraph 6e. above.

**Submission 6 f.**

33. In essence, Mr O'Keefe argues that because the suspension imposed will result in Jockey Fawke being unable to participate in the Darwin Cup on Monday 6<sup>th</sup> August 2018, that the penalty was excessive.
34. Mr O'Keefe does not argue that the Stewards failed to take that fact into consideration. Such an argument would, clearly, not be open to him because it is apparent from the content recorded at pages 7 and 8 of the Transcript that the Stewards were quite conscious of that fact that the penalty would impact upon Jockey Fawke's participation in features races and took that into consideration.
35. Indeed, the Stewards discussed with Jockey Fawke the benefit to him, should he ask that they suspend operation of the suspension, so that he could at least ride on Saturday 5<sup>th</sup> August 2018 upon which day Jockey Fawke had seven rides.
36. In the absence of such a suspension of penalty Jockey Fawke would have been ineligible for both the 5<sup>th</sup> and the 6<sup>th</sup> August 2018.
37. Neither does Mr O'Keefe argue that the Stewards could and should have suspended the operation of the penalty until mid-night on 6<sup>th</sup> August 2018. Mr O'Keefe does not point to any source of power entitling the Stewards to have done so.
38. There is no merit to the submission.

**Submission concerning s 145ZE Racing and Betting Act.**

39. Because we have rejected all the submissions of the Appellant, and accordingly are not persuaded that the penalty was excessive, the occasion does not arise for us to consider the submission of Mr O'Keefe concerning s145ZE Racing and Betting Act (the Act).
40. We take this opportunity to point out that this appeals committee is governed relevantly by s145E of the Act rather than s145ZE of the Act, although nothing relevantly turns upon that.

**Conclusions**

41. The penalty has not been shown to have been excessive. Rather, the penalty imposed by the Stewards, was consistent both with the Stewards' Guidelines and with the range of penalties shown in Penalties Schedule.

42. For these reasons the appeal is dismissed.

Dated: 2018

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P McIntyre

Chair

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R Longuet