



APPEAL of VANESSA ARNOTT: AR 135(b)

Appeal Committee: John Stewart (Chairman), Phillip Bradford and Cameron McNally

Date of Hearing: 15 February 2016

Date of Decision: 25 February 2016

REASONS FOR DECISION

Stewards' Decision

1. Jockey Vanessa Arnott rode "Kayno" in the "NT NEWS Weight-for-Age" run over 1100 metres at the Australia Day meeting conducted by Darwin Turf Club at Fannie Bay on 26 January 2016. "Kayno" came fourth in a field of 5 horses.
2. After conducting an inquiry Stewards found Jockey Arnott guilty of a breach of AR 135(b) which provides:

“(b) The rider of every horse shall take all reasonable and permissible measures throughout the race to ensure that his horse is given full opportunity to win or obtain the best possible place in the field.”
3. Particulars of the charge were:
 - “(1) From the 1000m until near the 700m she did, when racing in a 5-wide position, maintain a hold of her mount, thereby losing considerable ground on the field and did fail to make any effort to allow the gelding to stride freely and work into a competitive position in running.
 - (2) Between the 700m and the 350m when approximately 14 lengths from the leader, she rode with a distinct lack of purpose and displayed no urgency to improve her mount's position in running.
 - (3) From the 350m to the winning post she did fail to fully test her mount and rode with insufficient vigour given the circumstances of the race.

The Stewards were of the opinion that in all the aforementioned sections of the race that Ms Arnott did fail to take all reasonable and permissible measures to win or obtain the best possible place in the field.”
4. Ms Kerry Petrick, the trainer of "Kayno" gave evidence at the inquiry. Stewards delivered this decision:
 - (a) “The stewards are of the opinion that the instructions issued by Ms Petrick, whilst not overly specific, were consistent with *Kayno* being ridden in a similar pattern to its previous starts. There was clearly an onus on you, Ms Arnott, to try and ride to the instructions but their general nature implied a heavy reliance on you to exercise reasonable judgment and initiative in your handling of the gelding.”
 - (b) “You stated in your evidence that whilst you had not ridden *Kayno* before you

were familiar with its racing pattern and also stated that you formed the opinion that its normal jockey, Felicia Bergstrand, never moved on it in running. We have had the benefit of reviewing the gelding's previous four starts and the comparison between those rides and yours is markedly different. *Kayno* normally races in a midfield position or further back. Whilst it is not normally ridden in an overly vigorous manner, which is consistent with Ms Petrick's views, the gelding is continuously encouraged along from the early and middle stages of races in a competitive manner. The films show that the gelding works into the home turn strongly and responds when fully tested in the straight. This racing pattern has seen the gelding win in its previous four starts, albeit over different distances. None of these aspects of *Kayno*'s customary racing pattern were evident last Tuesday due to the quality of your ride."

- (c) "You stated that the fast pace of the race was responsible for you getting so far back in the early stages. We believe that it is not supported after the examination of previous overall times in the 600 metre section of 1100 metre races. This concludes that the race was run well within normal parameters and as the leading rider here at present you are fully aware of the manner in which races are run in Darwin and how to ride competitively no matter where you are positioned in the running."
- (d) "The other compelling issue that we have considered is the comparison between this ride and your normal riding manner. The stewards know you as an experienced jockey and that you generally ride in a vigorous manner. In races where your mounts are positioned midfield or worse you normally extract the best of those horses by placing them under pressure and riding them vigorously with hands and heels or with the aid of the whip to the finish."
- (e) "Dr Farebrother conducted a post-race vet examination of *Kayno* following the race and reported no abnormalities. Ms Petrick contacted the stewards yesterday afternoon with some concerns and Dr Farebrother examined the gelding at the stables and has reported that the gelding has an injury to the near fore heel, bruising the near fore heel and rates that as a three out of five lameness. The stewards have obviously had to consider whether this condition had any bearing on *Kayno*'s performance. After consideration of Dr Farebrother's report and the expert opinion of Dr Suann we are not satisfied that there is sufficient evidence to support that this affected the manner in which the gelding was ridden or its performance on Tuesday."
- (f) "The stewards find that there is no evidence of any deliberate attempt by you to ride *Kayno* in the manner you did. We are of the opinion you did not exercise reasonable judgment and further that your failure to ride competitively in the early and middle stages of the race combined with your actions thereafter have adversely impacted on your mount's prospects of winning or gaining the best possible position in the field."
5. Jockey Arnott's licence to ride in races was suspended for 3 months. In assessing the penalty, Stewards mentioned in their report that they took the following factors into account:
- "There was no evidence to suggest any deliberate attempt from any party for **KAYNO** to not be ridden on its merits."
 - "The high level of culpability of the offence, bearing in mind the quality of the ride and that the specifics equated to the majority of the race."
 - "Breaches of this rule impact directly on the reputation of the Industry as a gambling medium."
 - "Her unblemished record over 17 years in regards to this rule."

- “Her personal circumstances.”
- “The penalty must act as a specific and general deterrent.”

Notice of Appeal

- Jockey Arnott appealed against the finding of guilt or, alternatively, the severity of the penalty. In her notice of appeal, she gave the following grounds of appeal, in essence:
 - She made every effort to put the horse in the best position, considering it was dropping back in distance (and never had before); she was riding to instructions and had never ridden for Ms Petrick in 10 years; and the horse pulled up with 3/5 lameness.
 - It was her first offence against this rule.
 - The Stewards should have taken into account loss of opportunity to ride at Alice Springs.
 - She is the leading rider (“Why would I jeopardise that?”).
 - The Stewards decision was not consistent with other related decisions in the NT.
- Jockey Arnott applied for, and was granted, a stay of the suspension. The stay remains in force.

Appeal Hearing

- At the appeal hearing Jockey Arnott was represented by Mr Troy Walsh. Chairman of Stewards, Mr David Hensler, represented the Stewards.
- The appeal is by way of re-hearing with limited power to receive additional evidence not adduced before the Stewards: NT Local Rule 25. Jockey Arnott bears the onus of persuading us that the decision of the Stewards was infected with legal, factual and/or discretionary error.
- The evidence tendered at the appeal hearing consisted of:
 - Transcript of the oral evidence taken at the Stewards’ inquiry; and other evidence from that inquiry, namely -
 - Video recording of the subject race and of “Kayno” competing in other races on 3 November 2015, 21 November 2015, 12 December 2015 and 2 January 2016;
 - Veterinary report by Dr Jamin Farebrother dated 29.01.16;
 - A record of 1100 m race times at Fannie Bay; and
 - An analysis of on-course betting on the subject race.

When referring to the contents of the transcript of the Stewards’ inquiry we shall use “T” followed by the page number.

- Additional evidence was tendered by consent, namely:
 - Video recording of Jockey Arnott’s rides on other horses; and
 - Oral evidence of veterinary surgeon Dr Craig Suann.
- The video recording of the race showed that “Kayno” was slow to begin, running wide, tailed off behind the other four horses, about 14 lengths behind the leader between about 700 metres and 350 metres from the finish and made up considerable ground in the straight to be beaten by 4.2 lengths.
- At the inquiry, Ms Petrick told Stewards (at T2) she gave Jockey Arnott the following instructions:

“To let him fall out the back. He doesn’t like the dirt; go around the outside but basically if they run off or if there’s an opportunity to go up the inside, make up your own mind.”
- Ms Petrick said (at T2) “Kayno” was coming back from 1300 metres to 1100 metres. She said the horse was racing “to hold the race up” but denied that it was “going around for a barrier trial”. She said the horse was “going around to try”; her instructions to Jockey Arnott were....“if he’s not in contention, don’t knock him around, which is a fair call. It’s stinking hot out there, but if you can win it, win it.”
- Jockey Arnott told Stewards (at T2):

- “They jumped excessively quick. He didn’t even – like he jumped but they were gone when he sort of come out the barriers and I just edged out and they were just gone. Like he was that far back he was sort of very, very relaxed and I’ve watched his races before and he’s gotten away back and I just thought, you know, give him a little bit of a dig coming up to about the [inaudible] and I gave him a slap and he sort of started waking up and I thought he got home enormous.”
16. Jockey Arnott said (at T3) that she watched another rider (Felicia Bergstrand) on the same horse, adding “her instructions were to sit on him quite early, like let the horse do it in his own accord.” Ms Petrick agreed with those “instructions” (at T3): “You’ve got to let him find his own feet. You watch all of his races. You watch the race where he won over 1100 first up when Ben rode him. You see how far he got back then and the same thing. He is just one of those horses. You have to let him find his own feet. In the times before that we have tried to ride him up on the speed it hasn’t worked.”
17. Mr Hensler put his concerns to Jockey Arnott (at T4):
 “What I am saying is that in the early and middle stages of the race, when you are a mile from them, you don’t appear on my viewing of the film or of the race live to be doing anything to put the horse into the race.”
 Jockey Arnott replied:
 “I just thought he’d pick up the bit and get into the race himself.”
18. Ms Petrick recognized the potential benefit of a more vigorous ride (at T7): “Look, if Vanessa had ridden him and rode him again and knew that was going to happen, she would probably start riding him at the 800 or 1000” but she cautioned “in the early stages you don’t ride a horse like him aggressively. If you did that you are doing the punters more of a disjustice (sic) than what you are because a horse like him doesn’t race like that.” She said “I’ve never dropped him back to 1100. I wouldn’t have thought he would have got that far out either.”
19. Jockey Arnott said (at T8): “I didn’t think he’d get that far back. He seriously did catch me unawares.” Ms Petrick agreed: “I would have thought he would have been six, maybe seven lengths off them” and Mr Hensler observed: “...he may have caught everyone by surprise by getting that far back – but then what action did your rider take? Not a lot I would suggest looking at the film.” Jockey Arnott replied: “Let him find his feet and run his race.”
20. Stewards presented a punting analysis showing that “Kayno” started second favourite at \$3.60. Ms Petrick explained that her stable is not a punting stable. She added (at T9) that she did not regard “Kayno” as a good betting proposition in that race and continued:
 “Just because he won first up, anyone that knows anything about horses should know that a good horse, a stayer, is capable of winning first up. You know, I actually said to everyone including Vanessa that don’t be surprised if this horse runs over the top of them if they go too hard early. It wouldn’t be a surprise if he won but you certainly wouldn’t be disappointed if he didn’t.”
21. This passage – in our view, a key passage – comes next (at T9):
 “MS PETRICK: He is a fairly relaxed horse and I think he probably showed that today. Like I said, if Vanessa had rode him before and rode him again and even if I did – dropped him back and started him over 1100 again, my instructions would be you might have to rattle him up. If he is going to start relaxing too much, rattle him up.
 MR HENSLER: Surely that is a rider’s initiative to do that themselves in a race, would you not think Ms Petrick, in your experience as a trainer?
 MS PETRICK: Probably, yes possibly, but I also couldn’t believe how hard and fast they went out the front as well.
 MS ARNOTT: I’ve honestly never been that far back in my life.
 MS PETRICK: You know you’ve only got a window of five seconds really.”

MS ARNOTT: Not even that.

MS PETRICK: You have got a split second to make up your mind.”

22. Later (at T11) Ms Petrick said:

“I probably have made a mistake in my instructions...I didn’t think the pace was going to be as fierce as it was...I probably should have said to Vanessa look if he is going to get too far back, you know, get up him a bit.”

and

“I probably should have said to Vanessa, you know they are going to go hard. Had I known that was going to happen, I probably would have said you know you are going to have to rattle this horse up because he does go to sleep at the back.”

23. Jockey Arnott explained that she hadn’t ridden for Ms Petrick previously, adding: “On our horses I’m riding for Jason who is my partner and I can sort of do what I want whereas I was riding for Kerry. It’s probably one of her best horses. I’m trying to do what she said and hopefully ride properly that she might want to put me on again.” After viewing videos of previous races involving “Kayno”, Mr Hensler observed (at T17): “Would you agree though looking at those couple of films that we’ve looked at so far that the horse is ridden along in the race? He’s not – to use the colloquial term – his ears aren’t scrubbed off but the riders are moving their hands. They are keeping the momentum going.”

24. On reflection Ms Arnott said (at T34):

“If I had my time again I probably wouldn’t ride him the same because I didn’t know what was going to happen. That’s what I am saying, I don’t understand. If I had ridden him before and that had happened I would probably ride him differently, or try and urge a bit but I honestly don’t think it would have made any difference.”

25. Mr Farebrother’s report dated 29 January 2016 stated that he examined “Kayno” on 28.01.16 (2 days after the race) and continued:

“The horse was grade 3/5 lame near fore with an increased medial digital pulse near fore, and a marked bruising at the medial heel.

The horse was examined by myself at the request of stewards post race on the 26/1/16 and trotted up and there were no abnormalities detected then.

The injury would have occurred during the race with the bleeding occurring subsequently. Most horses have bruising post race from this track, and it is hard to say how it would of affected him during the race.”

26. Dr Suann gave evidence at the Stewards’ inquiry but his evidence was not properly recorded. It was summarised by Mr Hensler (at T14). Dr Suann appeared at the appeal hearing and again gave his evidence by telephone. He referred to a video recording of the subject race and gave opinion evidence in relation to Dr Farebrother’s report. He was appropriately qualified as an expert. He explained that 3/5 is obvious lameness but not as bad as 5/5 non-weight bearing lameness. Having observed “Kayno” in the race, in his opinion the motion of the horse was fluid without any sign of lameness. If there was something wrong with the horse’s action, he would expect to see it. When Mr Walsh suggested that the trainer said that “Kayno” looked uncomfortable and had problems in the past, Dr Suann conceded that he wouldn’t dispute a trainer’s knowledge of a horse’s idiosyncrasies. [Ms Petrick had mentioned (at T15) that the horse’s performance may have been affected by the bruised heel and (at T25) that the horse had his head held high and this may have been suggestive of pain.] Dr Suann’s opinion was that this behaviour was not necessarily an indication of injury. He was not prepared to speculate about when “Kayno” was injured. He agreed that he was not familiar with the way horses race in Darwin.

Finding of Guilt

27. In the *Appeal of Kacie Connor* (2 December 2014) a differently constituted TRNT appeal

committee mentioned the importance of AR 135(b) in upholding the integrity of racing and confidence in the sport as a betting medium. The committee also considered remarks drawn from other cases concerning the principles to be applied when considering a charge under the rule. We are content to accept the guidelines set out in page 6 of that decision, repeating for present purposes the need to be “comfortably satisfied” of the rider’s guilt and the remarks of Judge Lewis of the Racing Appeals & Disciplinary Board in the *Appeal of Talia Rodder* (1 December 2011, at page 3):

“The rule imposes an objective standard of care. The standard of care takes into account, amongst other things, the views and the explanations of the rider and the views and opinions of the Stewards. A mere error of judgment is not a sufficient basis for a finding that the rule has been breached. The rider’s conduct must be culpable in the sense that, objectively judged, it is found to be blameworthy.”

28. A decision of the Queensland Civil & Administrative Tribunal in *Racing Queensland Ltd v Cassidy* [2012] QCAT 31 gives further guidance (at page 3):

“[5] The plain language of AR 135(6) [sic] permits only of an objective analysis as to whether the measures taken by the jockey were sufficient to discharge the obligation that rule imposes. In undertaking that analysis, it is proper for the Tribunal to take into account the views and opinions of the Stewards, the evidence of the jockey, including his explanation of the race, and any other matters the Tribunal considers relevant to the review.

[6] In determining whether the jockey has complied with the objects of a jockey’s decision making is necessarily to be scrutinised. Various factors are relevant factors in determining whether the steps taken and decisions made by the jockey satisfy the obligations set out in the rule. Those obligations endure throughout the race and the race officials quite properly scrutinise all aspects of the race to ensure that all reasonable and permissible measures are taken.

[7] However, AR 135(b) does not exist to punish a rider simply because he does not win, or does not achieve a place consistent with the trainers, bookkeepers or betting public’s expectations. Even a decision which appears poor with the benefit of hindsight will not offend the rule without more. What is needed to offend AR 135(b) is the availability of a measure to improve the horse’s success in the race and an unreasonable failure to take that measure.”

29. AR 135(b) has been a tough nut for stewards to crack. In *Rodder* the rider was an apprentice with a reasonable amount of experience. She was charged with taking her mount forward in the field and continuing to ride without restraining it. The Board found her guilty of failing to obtain the best possible placing due to an error of judgement but allowed her appeal because the Board was not satisfied that the error was culpable or blameworthy. Judge Lewis observed (at page 6):

“This is not a case where, for example, a horse with a definite racing pattern was ridden upside down or where a clear run existed and was not taken. It is a case where a horse travelled much too quickly to have any chance. Riders, even experienced intelligent riders, have been known to make mistakes in rating a horse by either travelling too fast or too slow at critical stages of a race.”

30. Jockey Arnott is one of the Northern Territory’s leading riders. It is clear that she could have ridden “Kayno” with more vigour at an earlier stage. It is not so clear that it would have been a reasonable measure to use more vigour or, if that measure was taken, that “Kayno” would have had a better chance of success. It is important to note that the sub-rule does not require proof that the horse would have had more success if another measure was employed. The relevant question is whether, in failing to take the measure, an opportunity to achieve more success was lost.

31. We are not persuaded that the Stewards were wrong in finding Jockey Arnott guilty of a breach of AR 135(b). In our view there was ample evidence to justify that finding:
- (a) We accept that Jockey Arnott was caught by surprise just after the start when the rest of the field got away from “Kayno” and that it was reasonable for her

to be mindful of Ms Petrick's instructions not to ride him aggressively in the early stages.

- (b) However, we do not regard it as a sufficient response to rely on the horse to "get into the race himself". We agree with Stewards that Jockey Arnott should have done more to improve the horse's position.
 - (c) The Stewards were entitled to rely on their own observations, especially those mentioned at paragraphs 17, 19 and 23 above.
 - (d) The image of "Kayno" being tailed off and Jockey Arnott apparently putting little effort into her work was a bad one for racing. With the benefit of hindsight Ms Petrick implied that if "Kayno" was "relaxing too much" it would have been worth trying to "rattle him up" (paragraphs 21 and 22 above) or "start riding him at the 800 or 1000" (paragraph 18 above).
 - (e) We accept that Jockey Arnott did not have the benefit of Ms Petrick's post-race comments when she was riding in the race. She was obliged to try to comply with the trainer's instructions but she also had to be mindful of the interests of punters. We agree with Stewards that the instructions left room for Jockey Arnott to use her initiative and, as a senior rider with many years of experience, she should have done that by urging "Kayno" to put more effort into his performance at least by about the 800 metres point if not before. This view was also supported by Ms Petrick (paragraph 21 above).
 - (f) "Kayno" finished very strongly in the straight and ran a good competitive time for the last 600 metres. We do not believe that Jockey Arnott failed to test him adequately in that part of the race.
 - (g) However, had "Kayno" been closer to the rest of the field at the 600 metres point, he may have secured a better placing. The measure available to Jockey Arnott to achieve that objective was to do more to encourage "Kayno" to improve. It was a reasonable measure in the circumstances.
32. We are not satisfied that the Stewards erred in excluding lameness as a factor affecting the horse's performance in the race. There was sufficient support for that conclusion in the evidence of Dr Farebrother and Dr Suann combined with the absence of any report of lameness by Jockey Arnott or Ms Petrick immediately after the race. In any event, Jockey Arnott did not advance lameness as an excuse for her lack of vigour.

Penalty

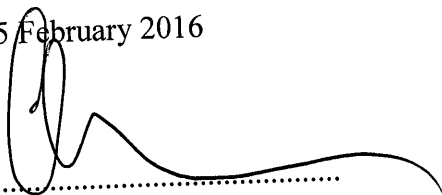
33. We agree with the factors mentioned by the Stewards (paragraph 5 above) except for the "high level of culpability". We also note that:
- (a) As previously explained, the breach of the rule was confined to the rider's actions between the 1000 metre point and the 600 metre point;
 - (b) Although Jockey Arnott failed to exercise her initiative in a satisfactory manner, we recognize that "Kayno" caught her and Ms Petrick somewhat by surprise by his behaviour when coming back in distance to 1100 metres; ;
 - (c) Stewards have submitted that there have only been 2 breaches of the sub-rule recorded in the Northern Territory in the past 7 years – one resulted in one month's suspension and the other in 2 months' suspension reduced to one month on appeal.
 - (d) Stewards have also submitted that the range of penalties interstate is between 2 weeks or a month at the low end and between 2 and 4 months at the high end.
34. It is unnecessary for us to comment about the penalties applied in other cases save to say that the penalties applied interstate should be treated with caution. We are of the opinion that, while Jockey Arnott's failure was culpable, it was a moderate level of culpability. The penalty imposed by Stewards was too severe. They did not give sufficient weight to the mitigating circumstances or Jockey Arnott's excellent record in regard to this rule.

Decision

35. This is our decision:

- (a) The appeal against the finding of guilt is dismissed.
- (b) The appeal against the severity of the penalty is upheld; the period of suspension is reduced to 1 month commencing from 26 February 2016.
- (c) The appeal deposit will be retained.

Dated: 25 February 2016



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John Stewart
Chairman