

RACING APPEALS TRIBUNAL

RAT 12/13

DATE: THURSDAY, 3 APRIL 2014

TRIBUNAL: **PRESIDENT:** MR M KING
ASSESSOR: MR R BEST
MR J PETZER, CHAIRMAN OF STEWARDS,
THOROUGHBRED RACING SA LTD
APPELLANT: MR JORDAN FREW
MR W PASTERFIELD APPEARS FOR THE APPELLANT

IN THE MATTER of an Appeal by **JORDAN FREW** against a decision of Thoroughbred Racing SA Ltd Stewards.

BREACH OF RULE: ARR 135(b)

Rule 135(b) The rider of any horse shall take all reasonable and permissible measures throughout the race to ensure that his horse is given full opportunity to win or to obtain the best possible place in the field.

PENALTY: SUSPENSION OF LICENCE FOR 2 MONTHS

DETERMINATION

This appeal arises out of a decision of the Stewards of Thoroughbred Racing SA Limited following the running of Race 4, the Duttons Automotive/Sabois Three-Year-Old Maiden Plate – 1050 metres at Oakbank on Friday, 13 December 2013.

Following that race the Stewards convened an Inquiry. The vision of the race was reviewed, and the Stewards heard evidence from the jockey Jordan Frew (the Appellant) who had ridden SCENIC GREY in that race, and from the trainer of SCENIC GREY. Following the Inquiry, the Stewards determined to charge the Appellant with a breach of Rule 135(b) of the Australian Rules of Racing (ARR) which states:

‘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 to obtain the best possible place in the field.’

Particulars of the charge were provided to the Appellant at the time, namely:

'The particulars of the charge are that you, Jordan Frew, as the rider of SCENIC GREY in Race 4 at Oakbank on Friday, 13 December 2013, have failed to take all reasonable and permissible measures in that (a) from the vicinity of the 400 metres until inside the 200 metres, your vigour displayed was only of moderate level and (b) from the 180 metres, you failed to show any vigour at all for the remainder of the event, thereby not giving SCENIC GREY a full opportunity to win or obtain the best possible place in the field.'

The Appellant pleaded not guilty.

After considering the evidence, the Stewards determined to find the Appellant guilty as charged. After hearing submissions as to penalty, the Stewards imposed a penalty – a suspension for two months.

The Appellant appeals to this Tribunal pursuant to Section 26.9 of the Constitution of Thoroughbred Racing SA. The Appellant appeals against both conviction and penalty.

At the appeal, Mr J Petzer, Chairman of Stewards, appeared for the Thoroughbred Racing stewards.

The Appellant was represented at this appeal by legal counsel, Mr Pasterfield, who argued ably on his behalf.

In his submission, Mr Pasterfield, on behalf of the Appellant conceded that in the last 50 metres to 70 metres of the race, the Appellant did not apply vigour, but contended that that was justified by the position of SCENIC GREY in the race, that is that it was moving into the back of a wall of horses.

Mr Pasterfield called evidence from the Appellant and took the Tribunal carefully through the vision of the race from various angles.

He submitted that information about the horse's history and the general circumstances were relevant to the objective judgement required of the Appellant's conduct. In that regard, he pointed out:

1. That the Appellant had only ridden SCENIC GREY in one trial;
2. That in that trial, SCENIC GREY had shown a tendency to shift inwards under pressure;
3. That this was SCENIC GREY'S first race;
4. That the Oakbank track upon which the race was being run was a difficult track for experienced horses and even more so for inexperienced horses;
5. That in the race, SCENIC GREY jumped poorly and tailed off from the field;
6. That during the race, at all stages SCENIC GREY raced greenly. To paraphrase the Appellant's evidence, he described SCENIC GREY as racing uncomfortably, by which he meant awkwardly, greenly, not taking a full length of stride and with a high head;
7. That at no stage in the race did SCENIC GREY settle to gallop properly.

Against that backdrop, Mr Pasterfield argued that the Appellant had made a decision to use minimum vigour on the horse as he considered the horse would not improve with vigour and would shift inward. Mr Pasterfield considered that the Appellant's judgement on that issue was both justified and correct.

Mr Pasterfield explained the Appellant's failure to articulate that reasoning to the Stewards at the Stewards' Inquiry on the basis of the Appellant's relative inexperience in Stewards' inquiries, and anxiety at the time.

In support of the proposition that SCENIC GREY tended to shift in under pressure, Mr Pasterfield sought to rely on evidence relating to SCENIC GREY'S two subsequent races.

On behalf of the Respondent, Mr Petzer objected on the grounds of relevance, that is that the test was whether the Appellant's ride on SCENIC GREY in this race breached the Rule, and therefore that subsequent events could not be relevant to that judgement.

Both the Appellant and the Respondent referred the Tribunal to the often quoted passage of Honourable T E F Hughes AC, QC in the appeal of Munce – appeal panel 5 June 2003:

'The task of administering this Rule is not always easy. One must keep it clearly in mind that on its true interpretation it is not designed to punish a jockey unless on the whole of the evidence in the case the Tribunal considering a charge under the Rule is comfortably satisfied that the person charged was guilty of conduct and that all the relevant circumstances fell below the level of objective judgement reasonably to be expected of a jockey in the position of the person charged in relation to the particular race.'

I did not rule on Mr Petzer's objection at the time but allowed the evidence in, subject to the objection. In this case, the judgement of the Appellant's conduct must be made on the basis of information known and available at the time of the race. I therefore uphold Mr Petzer's objection and disallow evidence regarding the manner of galloping of SCENIC GREY in its two subsequent races.

On behalf of the Respondent, Mr Petzer relied on the vision of the race, particularly over the last 300 metres. He pointed out that SCENIC GREY appeared balanced and had ample room and yet the Appellant rode with only moderate vigour to approximately the 180 metre point, and with no vigour thereafter.

I have closely examined the vision and have had the benefit of the expert and experienced views of the appointed Assessor, Mr Best, for which I am indebted.

Having reviewed the vision, I am not persuaded by the Appellant's argument. Despite the Appellant's view, I consider that the vision of the race reveals that from approximately the 300 metre point SCENIC GREY appeared balanced and the Appellant had little difficulty in managing the horse. The horse's run was not impeded in any way and any movement inwards was marginal and certainly did not

pose any threat to the inside horse. SCENIC GREY finished the race on strongly without the use of any vigour over the last 180 metres.

Over the last 300 metres of the race, the Appellant had every opportunity to experiment with adequate vigour to see if the horse would improve. It is not an adequate response from the Appellant to say that he did not apply vigour on the assumption that the horse would shift under pressure. A careful review of the vision showed little evidence of the horse shifting in. The horse was not tested and whether the horse would have shifted in cannot be said. It appeared that the Appellant was resigned to the horse finishing the race poorly, was not prepared to experiment with the application of some vigour to test the ability of the horse to improve, and did not react at all over the extended period as the horse improved its performance.

It is the view of the Tribunal that the decision of the Stewards was correct and the Appellant's appeal against conviction is dismissed.

The Appellant also appealed against the penalty imposed. In relation to penalty, both the Appellant and Respondent provided to me a range of decisions of this Tribunal and interstate Tribunals. Mr Pasterfield argued that penalties of one month appeared prevalent for offences under this Rule and that given the Appellant's youthfulness, and the difficulties which he encountered with this horse, the Stewards' penalty of two months was excessive.

In response, Mr Petzer pointed to the importance of both general and specific deterrence.

Taking into account that this was the horse SCENIC GREY'S first start, that it displayed some difficulties in its run in the first part of the race, and that settling the horse was complicated by the geography of the track, I accept the Appellant's argument that there is a case for reduction of the penalty.

The appeal against penalty is upheld and this Tribunal substitutes, by way of penalty, a suspension of one month commencing at midnight on Sunday, 6 April 2014.

I order a refund of the applicable portion of the bond.