

## **RACING APPEALS TRIBUNAL**

RAT 8/14

DATE: TUESDAY, 8 JULY 2014

**TRIBUNAL:**           **PRESIDENT:**           MR P ERIKSEN  
**ASSESSOR:**           MR R BEST  
**MR J PETZER**, CHAIRMAN OF STEWARDS,  
THOROUGHBRED RACING SA LTD  
**APPELLANT:**           MS AMY HERRMANN  
**MR P JURKOVSKY** APPEARS FOR THE APPELLANT, WITH  
HIM MR D O'KEEFE (BY LEAVE)

**IN THE MATTER** of an Appeal by **AMY HERRMANN** 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 1 MONTH

### **DETERMINATION**

This is an appeal arising from a decision of the Stewards of Thoroughbred Racing SA Limited following the running of Race 7, Australian Hoteliers Association SA Rating 0-58 Handicap over 1200 metres, held at Mount Gambier on Thursday, 27 March 2014.

Following the race the Stewards convened an Inquiry. The Stewards' Inquiry took place on two occasions, namely Thursday, 27 March 2014 and Friday, 16 May 2014.

The Stewards heard evidence from the Appellant who rode KIRVIC in the race, and Mr Lee Creek, the trainer of the horse.

Following the Inquiry, the Stewards charged the Appellant with a breach of Rule 135 (b) of the Australian Rules of Racing. That rule 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 by the Stewards, namely:

*'That you, Amy Herrmann, as the rider of KIRVIC, in Race 7 at Mount Gambier on Thursday, 27 March 2014 have failed to attempt a run to the outside of Dom Tourneur and to the inside of Justin Potter from the vicinity of the 250 metres until the vicinity of the 100 metres that was available to you and both reasonable and permissible for you to attempt the run thereby not giving KIRVIC a full opportunity to win or obtain the best possible place in the field.'*

The Appellant reserved her plea at the Stewards' Inquiry and the Stewards, quite properly, regarded that as a plea of not guilty. After finding the Appellant guilty of the breach of Rule 135 (b) the Stewards imposed a penalty by suspending the Appellant's licence to ride for one month.

The Appellant appeals to this Tribunal against the conviction and penalty.

At the appeal hearing, written submissions were presented to the Tribunal by both the Appellant and the Respondent. In addition there were oral submissions presented to the Tribunal.

The Stewards' position is that over the last 250 metres of the race the Appellant, as the jockey of KIRVIC, was presented with a run to the outside of Dominic Tourneur on HE'LL TELL US and to the inside of Justin Potter on GAV'S GIFT, and that that opportunity was available to the Appellant for approximately 150 metres.

During this time it appears that the Appellant was attempting to restrain her mount and it was only when approximately 100 metres prior to the finishing line that the Appellant did alter course and pursued a run to the inside of Tourneur who was riding HE'LL TELL US.

The Appellant maintained that although she accepts the position that an opportunity presented for her to ride her horse to the outside of HE'LL TELL US, she maintains that her horse KIRVIC was "laying out" and that she was trying to operate the reins in a manner which would result in the horse changing direction and coming in.

Having viewed the vision of the incident, this Tribunal heard detailed submissions and sworn evidence from the Appellant, who was represented by two advocates, her

counsel Mr Jurkovsky, and Mr Des O'Keefe, who was granted leave by the Tribunal to also make submissions.

The factual situation that presented in the race, from approximately the 250 metres mark from the finishing line for a distance of approximately 150 metres, was that the Appellant was presented with an opportunity to improve her horse's position by seeking to ride forward into the opening between GAV'S GIFT and HE'LL TELL US. Initially it was agreed that the opening was "neat", and then it was agreed that the opening increased.

The Appellant's position was that she agreed with the above. However, her evidence, both before the Stewards' Inquiry and the Tribunal, was to the effect that her horse KIRVIC was intractable and difficult to control from approximately the 600 metre mark up to the 200 metre mark, and it was with great difficulty that she was able to control the horse and maintain its position in the race.

Consequent upon that, she believed it was unsafe for herself, her horse and the other horses and riders to attempt to take the opportunity to improve her position between GAV'S GIFT and HE'LL TELL US.

After careful consideration of the evidence and the vision, it is the Tribunal's decision that the horse KIRVIC was not displaying behaviour to justify the conclusions that the Appellant reached during the course of the race.

The Tribunal agrees with the appropriate decision which is particularised as follows:

*'The leading statement of principle involving Rule 135(b) is generally regarded as being that of Mr T E F Hughes, QC: "The task of administering this rule is not always easy. One must keep 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 this rule is comfortably satisfied that the person charged was guilty of conduct that, in all the relevant circumstances, fell below the level of objective judgment reasonably to be expected of a jockey in the position of the person charged in relation to the particular race. The relevant circumstances in such a case may be numerous. They include the seniority and experience of the person charged. They include the competitive pressure under which a person charged was riding in the particular race. They include any practical necessity for the person charged to make a sudden decision between alternative courses of action. The rule is not designed to punish jockeys who make errors of judgement unless those errors are culpable by reference to the criteria that I have described."*

Rule AR135(1) was also considered in Appeal No. 5 of 2013/14 by the Tasmanian Racing Appeal Tribunal which concluded:

*'It is well established that the rule:*

- (a) imposes an objective standard of care;*
- (b) does not permit the mere substitution of the stewards' view of how the horse should have been ridden;*
- (c) does not seek to punish an error of judgment;*
- (d) attempts to ensure not merely that the horse has a winning chance but that, assuming an inability to win, it will still do the best it can in the circumstances;*
- (e) is designed to penalise the rider's conduct where it is culpable in the sense that it is blameworthy;*
- (f) intends to penalise a rider when he or she fails to take some measure which was either the only reasonable and permissible measure open to him or her or so clearly the measure that he or she should have adopted as to make the failure to do so deserving of punishment.'*

In all the circumstances the Tribunal finds that the Stewards were correct in applying the *Briginshaw* onus and conclude that on the objective facts the Appellant's ride in this situation was such as to constitute a breach of Rule 135 (b). The appeal as to conviction is dismissed.

Regarding penalty, the Tribunal was mindful of the fact that the Appellant had a genuine concern for safety of all people participating in the race, as well as the horses.

It is the Tribunal's view that that belief in the circumstances was unfounded.

The Appellant has been riding for 8 years, is a very accomplished rider and has had an excellent racing career.

In the unique circumstances that presents in this case, and the motivation for the Appellant which has ultimately resulted in her conviction, the Tribunal considers that the penalty of one month should be set aside and a penalty of two weeks substituted, commencing at midnight on 9 July 2014 and finishing at midnight on 24 July 2014.

The refundable portion of the bond is to be returned to the Appellant.