RACING APPEALS TRIBUNAL

RAT 30/2017

DATE OF HEARING: FRIDAY 16 FEBRUARY 2018

TRIBUNAL: **DEPUTY PRESIDENT**: MR MICHAEL KING

ASSESSOR: MR GLYNN PRETTY

MR J PETZER, CHAIRMAN OF STEWARDS, THOROUGHBRED RACING SA LTD

APPELLANT: MR J BOWDITCH

IN THE MATTER of an Appeal by **MR JOE BOWDITCH** against a decision of Thoroughbred Racing SA Ltd Stewards.

BREACH OF RULE: ARR 135b

> "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."

PENALTY: SUSPENSION OF LICENCE TO RIDE FOR 8 WEEKS

DETERMINATION

The Appellant Joseph Bowditch is a licensed jockey.

He appeals to this Tribunal against a decision by the Stewards of TRSA Ltd suspending him from riding for eight weeks.

On 9 December 2017 the Appellant rode a horse EXTREME WITNESS in Race 5 at Morphettville. Following the race the Stewards conducted an Inquiry into the race and in particular into the Appellant's riding of EXTREME WITNESS in the race.

At the conclusion of the Inquiry the Stewards were of the view that it was appropriate to charge the Appellant with a breach of AR135(b).

AR135b 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 in the following terms:-

> "The particulars of the charge being that while riding EXTREME WITNESS in Race 5 at Morphettville on Saturday, 9 December 2017 you failed to take all reasonable and permissible measures throughout the race to ensure that EXTREME WITNESS was given full opportunity to obtain the best possible place in the field, particularly that from the 400 metres where it was reasonable and permissible for you to ride your horse vigorously, you failed to do so for the remainder of the race and only rode your horse with moderate vigour."

The Appellant declined to enter a plea and the Stewards treated that as a plea of not guilty.

After consideration of the evidence the Stewards found the Appellant to be guilty of that charge. The Stewards provided brief reasons for being comfortably satisfied that the Appellant had breached the Rule as charged.

The Appellant made submissions as to penalty and after consideration of the Appellant's submission and relevant sentencing factors the Stewards imposed a penalty of suspension for a period of eight weeks.

The Appellant appealed to this Tribunal against both conviction and penalty.

At the hearing of this Appeal I was ably assisted by the appointed assessor, Mr Glynn Pretty. Mr Pretty brought his vast experience to bear in assisting this Tribunal reach its determination.

At Appeal, the Appellant sought and was granted leave to be represented by Mr Paul O'Sullivan who made thorough and detailed submissions on his behalf and represented him ably. He provided extensive information for the assistance of the Tribunal.

The Chief Steward Mr Petzer represented the Stewards and effectively put the Stewards' position to this Tribunal.

In approaching the Appeal, the parties were largely in agreement as to the appropriate interpretation and application of the Rule. Each party accepted the helpful statement of the Honourable T.E.F. Hughes AC QC in the appeal of Chris Munce on 5 June 2003. Mr Hughes said:-

> "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 change 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 judgement 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 judgment unless those errors are culpable by reference to the criteria that I have described."

In reaching a finding of guilt, the Stewards made findings, in part, as follows:-

"3. That after passing the 400 metres you rode your horse in a hands and heels manner with only moderate vigour.

4. That from near the 400 metres until the finish you did not at any stage ride your mount with a level of vigour expected of a rider in your position and we take the view that your vigour, being only moderate, lacked purpose.

5. That it was reasonable and permissible for you to ride your horse with a greater degree of vigour than you did between the 400 and the finish.

6. That there was nothing preventing you from riding your horse with a greater degree of vigour".

In his defence, the Appellant argued that his riding must be seen in the context of the race overall. EXTREME WITNESS had missed the start and tailed off badly. During the course of the race up to the 400 metre point, the Appellant had urged EXTREME WITNESS up to a position close to the rear of the field. In so doing, EXTREME WITNESS had expended considerable energy. When the field quickened, the Appellant felt EXTREME WITNESS was unable to quicken with the field. He readily conceded that he could have exerted more vigour in the last 400 metres but considered that during that time he did continue to urge the horse forward. He justified using only the level of vigour he had by his view that EXTREME WITNESS was trying as hard as it could and that it could not find a lot more. He did not consider that he could have improved its position.

In response, the Stewards at the Inquiry focused on his failure to test the horse by riding more vigorously to ascertain the extent to which it would have improved its position.

The Appellant relied on his extensive experience as a jockey in reaching his judgment. Whilst acknowledging his experience, the Stewards took the view that it was not reasonable to reach the judgement as to what EXTREME WITNESS might have achieved without at least testing the horse with more vigorous riding.

Essentially the finding of guilt was based on the view that using only the limited vigour used by the Appellant (described by the Stewards as "moderate vigour"), without further testing the horse with the application of his usual vigour, was not taking all reasonable measures.

At the hearing of the Appeal, a close examination of the film of the race was undertaken.

On behalf of the Appellant, it was strongly argued that the level of vigour he applied over the last 400 metres of the race was, in all the circumstances, reasonable. The circumstances he relied on were:-

1. The circumstances of the race;

2. The manner of the ride in the earlier part of the race; and

3. How the horse felt to the Appellant.

It was submitted that the Appellant had ridden EXTREME WITNESS both in a race and in track work before, and was familiar with the horse. He formed the view that the horse had nothing more to give. At worst, it was submitted that the Appellant may be guilty of making a poor judgment, but not a judgement so poor as to represent conduct in breach of the Rule.

In response, it was argued on behalf of the Stewards that the failure to exercise more than the moderate vigour applied, deprived EXTREME WITNESS of the opportunity to achieve its best outcome. Whilst it is speculative as to what outcome EXTREME WITNESS might have achieved, the failure of the Appellant to ride with his normal vigour in that last 400 metres to, at least, test the capacity of EXTREME WITNESS to improve its position meant that the extent to which EXTREME WITNESS might have improved its position will never be known.

The Stewards argued that by utilising only a moderate vigour over that extended period of time the Appellant was not making a momentary error of judgment but was making a considered decision which deprived EXTREME WITNESS of the opportunity to achieve its best possible placing.

At the commencement of the Appeal the Appellant was granted leave to introduce evidence from a veterinarian who had inspected EXTREME WITNESS on the morning following the race. The veterinarian noted that EXTREME WITNESS was lame and an x-ray revealed a stress fracture. However, at no stage did the Appellant report EXTREME WITNESS having run in a fashion suggesting of any injury or that anything was untoward. Veterinary inspection immediately following the race failed to reveal any injury. Thus, in this instance, the evidence of the veterinary inspection on the morning following the race could not assist in determining the reasonableness of the conduct of the Appellant during the race.

Having weighed up carefully the arguments put by each of the parties, and reviewed the film of the race, and aided by the valuable analysis of the Race and the Appellant's ride provided by the assessor Mr Pretty, it is the view of this Tribunal that the Appeal against conviction should be dismissed.

The Appellant did not apply more than moderate vigour during the last 400 metres of the race. Whilst he is a very experienced jockey with good knowledge of the horse, and was well aware of the horse's earlier efforts in

the race, there was ample opportunity for him to test the capacity of the horse to improve its position. He failed to do so, relying on his assumption that the horse could not improve its position. It is the view of this Tribunal that, without testing the horse, that is not an assumption it was reasonable for the Appellant to make and that by failing to apply greater vigour at least for a test period, the Appellant did fail to take reasonable measures as he was required to do by Rule 135(b).

As to penalty, the Appellant referred to a range of alternative penalties both in South Australia and elsewhere. The Appellant submitted that, in this case, if there had been a breach of the Rule then it was a breach at the very lower end of the scale of gravity in that there was a low risk of any erosion of public confidence in racing as a result of this conduct, that the horse had never been better than last during the course of the race, and that the imposition of an eight week suspension for this Appellant was too severe.

The Appellant acknowledged a prior conviction for a like offence but urged the Tribunal to recognise that it was over 10 years ago and that the Appellant had ridden literally thousands of rides since then. On that basis it was urged that the prior offence should not weigh heavily against the Appellant.

On behalf of the Stewards, it was submitted that a breach of Rule 135(b) is serious. In considering penalty for offences against that Rule, both individual and general deterrence factors must be considered.

Whilst the prior offence was a long time in the past, it nevertheless represented a prior offence against a like rule.

No discount for a guilty plea could be offered/granted.

In considering the submissions regarding penalty, the Tribunal was influenced by both the gravity of the offence, it being at the lower end of the scale for offences of this nature, and the length of time and number of rides since the Appellant's conviction under a like rule. Taking those matters into consideration, the decision of this Tribunal is to uphold the Appeal against penalty and substitute in place of the penalty imposed by the Stewards, a suspension for five weeks.

It is ordered that the Appellant be refunded the applicable portion of the bond.

With the consent of the Stewards, the Appellant's suspension is to commence at mid-night Sunday 25 February 2018 and expire at midnight Sunday 1 April 2018.