

RACING NEW SOUTH WALES

APPEAL PANEL

23 February 2015

MR R CLUGSTON — PRINCIPAL MEMBER  
MR J FLETCHER  
MR T CARLTON

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IN THE MATTER OF THE APPEAL OF  
SAMANTHA CLENTON

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REASONS FOR DECISION

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CHAIRMAN: This is an appeal by licensed apprentice jockey Samantha Clenton (hereinafter referred to as “the Appellant”) against a finding of guilt and the penalty imposed by Stewards at Racing NSW Offices, Drutt Street, Sydney on 30 December 2014 in respect of a breach of AR 135(b). That Rule provides that:

“The rider of every horse shall take all reasonable and permissible measures throughout the race to ensure his or her horse is given full opportunity to win or to obtain the best possible place in the field.”

The particulars of the charge were that when she rode *More Precise* in Race 3, the Ideal Hydraulic Correctors Class 1 and Maiden Plate over 2000 metres at the Hawkesbury Race Club’s meeting on 14 December 2014, she failed to take all reasonable and permissible measures throughout the race to ensure that *More Precise* was given a full opportunity to win or to finish in the best possible place in that field in that:

1. after jumping from barrier two (2) she failed in the run to the 1800 metres to establish a position one (1) off the rail which resulted in the favourite *Pinot Gris* which started from barrier one (1) obtaining a position one (1) off and which resulted in *More Precise* racing three (3) wide, when it was reasonable and permissible for her to take up a position one (1) off the rail;

2. between the 1800 metres and the 1600 metres when positioned in a forward three (3) wide position outside *Pinot Gris* and some two (2) lengths off the leader *Sky Clip* and with the pace slower than average she made no effort to hold her forward position which resulted in *More Precise* drifting back in the field, when it was reasonable and permissible for her to maintain her forward position outside *Pinot Gris* or in the alternative to go forward and cross *Pinot Gris* and race outside the leader *Stay Clip*;
3. near the 1600 metres when the pace of the race was slower than average she restrained *More Precise* which resulted in *More Precise* whilst continuing to race three (3) wide being positioned a further two (2) lengths behind the leader and eventual winner *Sky Clip*, when it was reasonable and permissible to maintain her position outside *Pinot Gris*;
4. approaching the 1000 metres when positioned three (3) wide to the outside of *Mal's Last Dancer* and *Boratora* she again restrained *More Precise* which resulted in *More Precise* being taken four (4) wide when *Malibu Stacey* improved to the inside of *More Precise* and shifted out resulting in *More Precise* being positioned some seven (7) lengths from the leader *Sky Clip* near the 800 metres, when it was reasonable and permissible for her to maintain her position outside *Mal's Last Dancer* and *Boratora* or in the alternative to allow *More Precise* to improve to the outside of *Pinot Gris*;
5. near the 1000 metres she directed *More Precise* to the rail to follow *Mal's Last Dancer* such action resulting in *More Precise* being held up for a short distance rounding the home turn and positioned seven (7) lengths off the leader and eventual winner *Sky Clip*, when it was reasonable and permissible to follow *Boratora* and improve to that runner's outside near the 500 metres which would have resulted in *More Precise* being afforded clear running and being able to be fully tested from that point of the race.

The Appellant pleaded not guilty to the charge before the Stewards however the charge ( being particulars 1-4 inclusive) was found proved and the Appellant's licence was suspended for a period of one (1) month to commence on 7 January 2015 and to expire on 7 February 2015 on which day she may ride. The Appellant was granted a stay of proceedings on 2 January 2015 until further order of the Panel.

The Appellant adhered to her plea of not guilty in the proceedings before the Panel. This appeal is therefore a rehearing on the questions of guilt and penalty. The

Stewards were represented in the proceedings before the Panel by M Van Gestel, Deputy Chairman of Stewards-Operations, and Mr P O'Sullivan appeared for and with the Appellant by leave. The transcript of the Stewards' inquiry conducted at the Clarendon Racecourse on 14 December 2014 and at Racing NSW offices in Sydney on 30 December 2014 and the transcript of the hearing of the charge which took place on 30 December 2014 and the exhibits tendered in those proceedings have been admitted into evidence in the proceedings before the Panel. In addition, Steward Mr C Polglase gave oral evidence in the Stewards' case and the Appellant gave oral evidence before the Panel.

The evidence establishes the following undisputed facts:

- the Appellant's mount *More Precise* started from barrier two (2) in a field of six (6) in a race over a distance of 2000 metres;
- *More Precise* started as the third favourite in the race in question;
- *More Precise* jumped well and for a short distance travelled in a line of three (3) with *Pinot Gris* to its inside and *Sky Clip* to its outside until *Sky Clip* took up the lead position followed by *Pinot Gris* and *More Precise* behind and to the outside and slightly forward of *Pinot Gris*;
- at that point of the race *Pinot Gris* moved forward of *More Precise* which then raced in a three (3) wide position outside of *Boratora* (J. Taylor) and *Mal's Last Dancer* (C. Nutman);
- at about the 1000 metres *Malibu Stacey* (G. Buckley) which had been travelling rearward of *More Precise*, *Boratora* and *Mal's Last Dancer* moved forward to a position inside *More Precise* placing *More Precise* in a four (4) wide position;
- *More Precise* then eased to a position where she travelled at the rear of the field until approaching the home turn she gained a run inside other horses and finished on into third placing beaten approximately one and a quarter (1 ¼) lengths by the winner *Sky Clip*;
- the speed of the race in question was slightly slower than the average speed for a Class 1 race over 2000 metres on a good surface at the Clarendon Racecourse the evidence being that the time taken for the first 1400 metres of the race was 87.57 seconds against the average time of 86.97 seconds.

The Stewards' inquiry was opened at the Clarendon Racecourse on 14 December 2014 in the presence of the Appellant, licensed trainer Noel Mayfield

Smith and former jockey and now apprentice mentor Malcolm Johnston. The Stewards indicated from the outset that they had concerns regarding the riding tactics adopted by the Appellant on *More Precise* in Race 3 run on that day. Those concerns were expressed by Steward Mr C. Polglase who said (at pages 4 and 5 lines 178-209):

“-----I did observe the running of Race 3 from the stewards' tower at the home turn, which gave me a lateral view across the track at the early stages and of course head on leaving the turn at the 900m before a rear on view of the straight. I did feel in the early stages that *More Precise* appeared to jump well enough and was prominent early; certainly *Sky Clip* was leading and *Pinot Gris* was also prominent. To my eye it looked like *More Precise* was going to take up a position outside *Pinot Gris*, *Tye Angland's* mount, in the early stages. Just then in the middle stages I did observe *More Precise* ease back and it appeared to be caught wide to my eyes, certainly for some distance before eventually apprentice Clenton looked to ease back to take up a position outside *Malibu Stacy* at the tail of the field. I then felt that apprentice Clenton almost invited Grant Buckley out on *Malibu Stacy* getting to the 900m. Grant Buckley then rode his mount along to improve and shifted out and carried *More Precise* wider and as a result apprentice Clenton then dragged her mount back to last while *Malibu Stacy* then took up a position outside *Mal's Last Dancer* and *Boratora*, which at that stage were a number of lengths off the front runners there, *Sky Clip* and *Pinot Gris*, and at this stage of the event I would say apprentice Clenton left herself a conservative 8 lengths off the front runners and of course the favoured runners, those being *Sky Clip* and *Pinot Gris*. Just getting towards the 600m there I felt that Samantha Clenton didn't make any opportunity or didn't take any opportunity to improve her position at that stage. Grant Buckley was in a three wide position under pressure and she then followed through *Mal's Last Dancer*, Claire Nutman's mount on the rail. Predominantly though my concerns were Claire Nutman firstly allowing Grant Buckley to shift her mount outwards near the 900m – ah, sorry Samantha Clenton allowing *Malibu Stacy* to shift her mount out near the 900m and then also taking into account the ground that she left between herself and the favoured runners *Sky Clip* and *Pinot Gris* which were up front. I would say she was a conservative 8 lengths off them and gave herself a near impossible task in the straight to make up that ground.”

Mr Polglase's observations were supported by the evidence of the inquiry Chairman Mr M Van Gestel, Deputy Chairman of Stewards – Operations. Mr Van Gestel said (at pages 5 and 6 lines 219-249):

“My observations were from the Chairman of Stewards' tower opposite the winning post giving me a lateral view of the race. From barrier 2 I observed Samantha Clenton on *More Precise* jump well. The two other fancied runners, *Sky Clip* and *Pinot Gris* also went forward. *Sky Clip* eventually went forward to lead and I felt at that stage the opportunity was for *More Precise* to take up a position outside *Pinot Gris* which had drawn barrier 1. As the field come through the early stages I became concerned when it was apparent to me looking across the track that Samantha Clenton was caught three deep on *More Precise*. *Mal's Last Dancer* and also *Boratora* had improved to her inside and she was then caught three deep which I felt was surprising given the fact she had drawn barrier 2. My concerns were sort of heightened as the field made the first turn and it appeared to me the pace in those early to middle stages had only been average and Samantha Clenton then took hold of her mount and elected to come back. This resulted in Grant Buckley's mount, *Malibu Stacy*, which was positioned last at that stage, improving forward, shifting off and forcing *More Precise* four deep. As a consequence of that Samantha Clenton elected to take up a position at the rear of the field. It was my opinion watching the race live that this manoeuvre cost the horse *More Precise* at least three lengths at that stage of the race when the two fancied runners, *Pinot Gris* and also *Sky Clip* were racing in the lead. I then continued to watch Samantha Clenton. She did make some use of her mount to try and go forward as they made the home turn but it was apparent to me that she was a little awkwardly placed on the heels of *Mal's Last Dancer*. Once they straightened certainly *More Precise* was placed under full pressure and it ran home quite strongly to finish third behind the two early leaders *Pinot Gris* and *Sky Clip*. It appeared to me in those early and middle stages that the opportunity to be in a more forward position racing in contention with the two leaders, particularly *Pinot Gris*, was the best tactic to adopt. By going back and giving away start certainly I felt was the wrong move in the circumstances.”

Evidence was taken from the trainer of *More Precise*, Mr N Mayfield-Smith, as to the riding instructions given to the Appellant. His evidence was (at page 3 lines 107-110):

“Yeah, what I said was, ‘First time over 2000, just jump her out and let her travel where she is comfortable, give her every chance to run the race out.’ And that was basically it. I said, ‘I’ll it to you because of the smallish field but just make sure she’s travelling where she’s comfortable.’ And that was basically it.”

The Appellant was questioned extensively by Mr Van Gestel at the inquiry on 14 December 2014 and when the inquiry resumed on 30 December 2014. In relation to particular one (1) Mr Van Gestel asked the Appellant (at page 22 lines 981-986):

“Well you are starting to turn from the 1800, but why would you want to give away a competitive edge? You have got two favoured runners, *Sky Clip* and *Pinot Gris*, you are the third pick, and you are giving away a competitive advantage by allowing him to come out. You are in front of him to his outside, you are in a position where you can dictate. Wouldn’t that be a competitive advantage that we would expect a rider of your calibre to take advantage of?”

The Appellant replied (at page 22 lines 987-992):

“Well I was – in the race we were travelling – I was travelling outside him and my horse wasn’t going good enough at the time to stay outside him and that’s how he’s ended up in front of me and dictated, which is a – like, I do believe – I’m not going to disagree that I wasn’t hard up outside him, but I don’t believe that being outside – being hard up against outside him he still wouldn’t have dictated to me and put me where I was.”

In relation to particular two (2) Mr Marc Van Gestel said to the Appellant (at page 24 lines 1051-1053):

“So as we run the video on, do we see any effort from you in between say the 1600m and the 1800m to try and hold a position outside of *Pinot Gris* or are you allowing your horse to come back?”

The Appellant replied (at page 24 lines 1054 and 1055):

“I was allowing the horse to come back and travel underneath me, sir. I did say that in my first evidence”.

Mr Van Gestel then said to the Appellant (at page 24 lines 1058-1060):

“Yes, and in respect to your positioning as we get to the crossing just near the 1600m there, that’s at about 21.17.40, how much ground do you say in that part of the race do you lose on the leader *Sky Clip*?”

The Appellant replied (at page 24 line 1061):

“I lose a length – I believe I lose a length from where I was”.

Later, Mr Van Gestel put to the Appellant (at page 24 lines 1087 and 1088):

“- from the 1800m to the 1600m. Just tell me, why would you give away a competitive – like an advantage like that? Like you –“

The Appellant replied (at page 24 lines 1089-1092):

“I was allowing the horse to travel because Mr Mayfield-Smith was at me to make sure it seen out the 2000 because it was coming from 14 to a 2000, from a country to a provincial race, stepping up in grade and distance. It's a big ask, and he was very suspect at the trip”.

In relation to particular three (3) Mr Van Gestel said (at pages 25 and 26 lines 1140-1147):

“Then the third particular is in relation to, Samantha Clenton, your actions at the 1600m and the details in respect to the pace being a little slower than average and that when you are positioned behind the leader *Sky Clip* you actually restrain your mount which results in your horse losing additional ground at that point near the 1600m. (Video played). Why do you say at this point – are you restraining your mount at that point as you go past the crossing?”

The Appellant replied (at page 26 lines 1048 and 1049):

“I did grab hold of it to help it cross the crossing but I didn't restrain it. I do it on every horse when I ride it over a longer –“

In relation to particular four (4) Mr Van Gestel said to the Appellant (at page 27 lines 1217-1220):

“So we get down towards the 1200m and you are caught three wide and you are still racing quite loose to the horses to your inside. Why then at that point, and we are dealing now with particular 4, do we see you restrain again and come back?”

The Appellant replied (at page 27 lines 1221-1223):

“I believe I only restrain when Grant Buckley pushes me out. I don't believe you see me grab hold – actually grab hold of the horse and restrain her until Grant Buckley pushes me out.”

In her oral evidence before the Panel the Appellant gave the following evidence:

- in relation to particular one (1) her evidence was that she believed she could not force *Pinot Gris* (T. Angland) on to the fence in order for her to take up a position one (1) off the rail;
- in relation to particular two (2) her evidence was that her mount *More Precise* had dropped off the bridle and was not travelling which then

precluded her from crossing *Pinot Gris* and moving to a position outside the leader *Sky Clip*;

- in relation to particular three (3) her evidence was that *More Precise* couldn't maintain her position outside *Pinot Gris* and that at the 1600 metre crossing she balanced *More Precise* who then reacted to *Pinot Gris* shifting out;
- in relation to particular four (4) her evidence was that *More Precise* had stopped travelling approaching the 1000 metres and that she eased her mount to avoid losing further ground on the 1000 metre turn.

The Panel has considered the evidence and the submissions made on behalf of both parties on the question of guilt. This Panel has regard to observations made by a differently constituted Panel in the Appeal of Glyn Schofield (23 January, 2014) in relation to the approach which should be taken when considering a possible breach of AR 135(b). In that case the Panel said:

“ ----The Panel emphasises that the Rule 135 (b) is specifically directed to the jockey. The obligations the rule imposes are obligations which are borne by the jockey during the entirety of the race. The rule places significant responsibility on the jockey, and that includes an obligation to take all reasonable and permissible measures.

That responsibility includes it being necessary for the jockey to make a value judgement where he should have the horse positioned and where he should exert pressure on the horse or where and when to restrain the horse and in a manner that the horse does not exceed its limitations. The rider is required to exercise reasonable judgement in the handling of his horse and that entails a consideration of the horse's limitations.

Those measures have to be directed to ensure the horse is given full opportunity to either win or in any event to obtain the best possible pace in a race.

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Mere error of judgement is not a breach of the rule. It must be an error of judgement which is blameworthy.-----

The concepts of 'reasonable and permissible measures to be adopted' involves the discharge of objective test which requires an assessment by the Panel of what a jockey acting reasonably would or could do in all the circumstances and

whether such jockey's failure or omission to so act was blameworthy as to be deserving of punishment.-----“

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The Panel notes that the Stewards made the following findings in relation to the charge:

1. as to particular one (1) – that the Appellant's failure to establish a position outside *Pinot Gris* in the early stages of the race constituted uncompetitive riding;
2. as to particular two (2) – that between the 1800 metres and 1600 metres the Appellant made no effort to hold a position outside *Pinot Gris* thereby losing ground on the two (2) leaders in the race;
3. as to particular three (3) – that at a point near the 1600 metres the Appellant restrained her mount thereby losing further ground on the two (2) leaders in the race;
4. as to particular four (4) – that when racing to the outside and in advance of *Boratora* (J.Taylor) the Appellant took hold of her mount thereby losing in excess of two (2) lengths in relation to the leaders in the race at a vital stage in the race.

The Panel concurs with the findings made by the Stewards in relation to each of the particulars of the charge. In essence the Panel is satisfied that notwithstanding her relative inexperience as an apprentice jockey the Appellant's failure to ride competitively in the early stages of the race combined with her actions thereafter in allowing or causing her mount to gradually lose significant ground to the leaders in a race where the speed of the race was slower than average adversely impacted on her mount's prospects of winning or gaining the best possible place in the field. Further, the Panel is comfortably satisfied that the Appellant's manner of riding was serious and blame worthy and deserving of punishment. For these reasons, the Panel is satisfied that the charge alleging breach of AR 135 (b) has been proved.

The Panel has taken into account the evidence and the submissions on the question of penalty.

The Panel considers that breach of AR 135 (b) is a serious offence in the overall framework of the Australian Rules of Racing as it raises issues in relation to the integrity of racing. The Panel has taken into account that the Appellant is an

inexperienced apprentice jockey who has not previously incurred a breach of this Rule.

The Panel has considered the comparative penalties imposed for breach of AR 135 (b) and notes that the normal penalty is a period of suspension. The Panel considers that in this case a suspension of one (1) month is appropriate in all the circumstances.

The orders of the Panel are as follows:

1. Appeal against finding of guilt dismissed;
2. Finding of guilt made by Stewards on 30 December 2014 confirmed;
3. Appeal against penalty dismissed;
4. Penalty of one (1) month suspension imposed by Stewards on 30 December 2014 confirmed such suspension to commence on 26 February 2015 and to expire on 26 March 2015 on which day she may ride;
5. Appeal deposit of \$200 forfeited.