

RACING NEW SOUTH WALES

APPEAL PANEL

19 February 2016

MR R CLUGSTON — PRINCIPAL MEMBER
MR J FLETCHER
MR K LANGBY

IN THE MATTER OF THE APPEAL OF
TERRY TREICHEL

REASONS FOR DECISION

CHAIRMAN: This is an appeal by licensed jockey Terry Treichel (hereinafter referred to as “the Appellant”) against a finding of guilt and the penalty imposed by Stewards at Port Macquarie Racecourse on 22 December 2015 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 that his 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 he rode *Wonderful Thing* in race 1, the Kempsey Macleay RSL Club 3yo Maiden Plate, over 1250 metres at the Kempsey Race Club’s meeting on 26 November 2015 the Appellant did fail to take all reasonable and permissible measures throughout the race to ensure that *Wonderful Thing* was given full opportunity to win or obtain the best possible place in the field in that:

1. after riding his mount vigorously early to take up a position outside of the leader *Mother’s Presence* at a strong pace he rode his mount forward to eventually cross *Mother’s Presence* at the 600 metres when it was reasonable and permissible of him to continue to occupy a position to the

outside of *Mother's Presence*, desist from riding his mount forward and therefore make less use of *Wonderful Thing*;

2. after crossing to the lead on the rails near the 600 metres at a strong pace he continued to allow *Wonderful Thing* to stride forward and from the 500 metres he asked his mount to respond further by pushing it along with hands and heels riding when some three and a half (3½) lengths in front of *Mother's Presence* when it was reasonable and permissible for him to have restrained *Wonderful Thing* after crossing to the lead and ridden it more conservatively thus setting a more sustainable pace;
3. passing the 500 metres he rode *Wonderful Thing* hard hands and heels and near the 400 metres slapped that horse down the shoulder with the whip in his right hand when some five (5) lengths in front of the next runner when it was reasonable and permissible for him in the circumstances to have ridden *Wonderful Thing* more conservatively so that it might finish the race off more strongly.

The Appellant pleaded not guilty to the charge before the Stewards however the charge was found proved and the Appellant's licence was suspended for a period of six (6) weeks to commence on 22 December 2015 and to expire on 2 February 2016 on which day he may ride. The Appellant was granted a stay of proceedings on 24 December 2015 until further order of the Panel.

The Appellant adhered to his plea of not guilty in the proceedings before the Panel. This appeal is therefore a rehearing on the questions of guilty and penalty. The Stewards were represented in the proceedings before the Panel by Mr R Murrihy, Chairman of Stewards and Mr W Pasterfield, Solicitor, appeared for and with the Appellant by leave. The transcript of the Stewards' inquiry conducted at the Kempsey Racecourse on 26 November 2015 and at the Port Macquarie Racecourse on 22 December 2015 and the transcript of the hearing of the charge which took place on 22 December 2015 and the exhibits tendered in those proceedings and the video recording of the race in question have been admitted into evidence in the proceedings before the Panel.

The evidence establishes the following undisputed facts:

- the Appellant's mount *Wonderful Thing* started from barrier two (2) in a field of eight (8) with the race being run on a track rated a Good 3;

- Wonderful Thing was having its third start in a race and started as the second favourite in the race;
- *Wonderful Thing* jumped well and in the early stages of the race travelled in the lead outside *Mother's Presence* (ridden by Ms B Hodder) which had jumped from barrier one(1);
- approaching the 800 metres *Wonderful Thing* and *Mother's Presence* were three (3) lengths clear of the third horse when the Appellant rode *Wonderful Thing* to the lead by crossing the leader and then travelling on the fence from the 600 metres;
- the Appellant continued to ride *Wonderful Thing* along and travelling past the 400 metres was six (6) lengths clear of *Mother's Presence* in second place;
- *Wonderful Thing* led to 50 metres before the winning post and finished in third position beaten 3-4 lengths by the winner *Yambaah Prince*;
- the race in question was the fastest maiden event run in three (3) years at Kempsey over the 1250 metres distance;
- the sectional time from the barriers to the 800 metres was 27.36 seconds which was 6.2 lengths above the benchmark for maiden class over the distance of 1250 metres at Kempsey;
- the sectional time from the 800 metres to the 400 metres was 22.4 seconds which was 1.5 lengths above the benchmark for that section;
- the sectional time from the 400 metres to the winning post was 26 seconds which was 11.6 lengths below the benchmark;
- the Stewards had no concerns in relation to the betting activities on the race in question;
- the Appellant has been a licensed jockey for approximately 20 years;

The Stewards' inquiry commenced on race day at the Kempsey Racecourse on 26 November 2015 in the presence of the Appellant and licensed trainer Mr H Dew and from the outset the Stewards indicated that they had concerns regarding the riding tactics adopted by the Appellant on *Wonderful Thing* in race 1 run on that day. Those concerns were expressed in the following exchange between the Appellant and the inquiry Chairman, Steward Mr D R Smith (at pages 1 and 2 lines 20-84):

“Q: The Stewards have some queries regarding your handling of that filly, in particular, during the middle stages of the event. Could you start by telling us how you were instructed to ride *Wonderful Thing*?

A. Drive it out, keep it out one off the fence, when I to get to the half mile to go.

Q. Drive it out, but stay one off the fence. Is that your evidence?

A. Yeah. If I couldn't lead I had to sit outside the leader or even back in behind one. I had to stay one off the fence and don't get stuck behind any horses and then get to the half mile and go, take off on it pretty much.

Q. Can you take us through how you thought it unfolded?

A. Well, it began nicely. I drove it. I had sat up, up at equal lead for a while and then I slowly let it slide from the half mile. I should have known better. I should have waited a lot longer and then let it slide from the 600 because it had a quick turn of foot and it gapped them pretty quickly as it was and that would have been the difference. It would have made the finish today.

Q. As I said, our queries were more with your riding in the middle stages and, watching the race live, my observation was the pace seemed to be fairly solid in the early stages.

A. Yeah, we rolled along.

Q. Yeah, but still you didn't think to maybe conserve some energy for the finish or you did seem to end up quite a distance in front during the middle stages. Were you aware of that?

A. I didn't realise I was that far in front. As I said, it did have a quick turn of foot. I'd never rode the horse before. So I was doing what I was told, even though it was stupid, but if you don't sort of do what you've been asked to do they're up to you. I have rode another horse for him (inaudible) and he's a very similar situation, *French Command*, and I won a couple on him when he was in his lower grades by doing that, by doing what he told me. So I just took it that he knows his horse well enough and it's strong enough to do it.

CHAIRMAN: We'll go to the film.

VIDEO PLAYED

T TREICHEL: Dropped the whip there.

Q. We'll speak to Mr Dew to confirm the instructions, but obviously you're the jockey on the horse and obviously you try to ride to instructions. Surely the pace leading up to the 800 would have been a concern to you then, then to continue on with it

or were you not concerned, sorry, that the pace was so strong before the 800 that you may be better to try and conserve your horse?

A. No, because I more on taking that Hilary Dew knew his well enough to do what he's asked me to do.

Q. They run just over a second outside the course record in a three-year-old maiden. How would you say you've judged the pace then during the middle stages?

A. If I had it all over again I wouldn't be doing that. I would have done enough to be there and I would have just sat well and truly to the 600.

Q. And the reason for that is because you used so much early. Is that right?

A. Because it has got - yeah, it has got a good turn of foot, more than--

Q. Did Mr Dew make mention at all regarding any of the horse's tendencies or anything like that, other than to get going at the 800?

A. No, just pretty much what I've been told. Yeah, didn't say that I sprint or that I just plod away. So I just sort of took it as well that to be going so early that it's just a bit of a one pacer, but, yeah.

Q. You concede that the horse has weakened quite badly the last furlong. Would you agree with that?

A. I seen it."

Evidence was taken from the trainer of *Wonderful Thing*, Mr H Dew, as to the riding instructions given to the Appellant. His evidence was (at page 3 lines 108-115):

"Basically I said to him sometimes she's little bit hard - she doesn't jump as well, so I said, 'Jump her out and get her going, have her where she's comfortable.' I said, 'If you can get to the front, go to the front and dictate the pace. If not, if you don't get to the front, stay one off the fence and at the 800 don't' - I said, "Don't get boxed up on the fence. Stay off the fence and then at the 800 make a decision and go from there' and I said, 'Come around the horses. Don't come up the inside.' I think he - the only thing I can see that he did probably wrong was he went a little bit too hard at the 700, probably got a bit excited."

The trainer was given the opportunity to comment on the manner in which the Appellant rode his horse. The trainer responded as follows (at page 3 lines 134-144):

“A. Well, as I said, probably my own opinion was that he went a little bit too early. He might not have noticed how far he was in front, made a judgement of error.

That’s about all I can say.

Q. What do you feel his error in judgement was? He went too early?

A. Well, he just - yeah, he might have been more advantaged, more advantage to the horse to wait for a little bit longer.

Q. Did you think going too early told on your horse’s finishing effort?

A. Yes. I think she just ran out of condition at the last 50 metres. Not being able to get a run last Taree run didn’t help her either.”

The Appellant was questioned by Mr Smith when the inquiry resumed on 22 December 2015 in relation to particular one (1). Mr Smith asked the Appellant (at page 22 lines 1048 and 1049):

“In relation to particular 1 is there any comment you would like to put forward in defence of the charge?”

The Appellant replied (at page 22 lines 1050 and 1051):

“I was riding to instructions to go forward. The horse had travelled from the 1000 until the 500. Yes, it did go a length quicker, but it was never let off the bit.”

Mr Smith put to the Appellant that he was niggling his mount along from the 800 metres however the Appellant continued to assert that his mount was travelling on the bit at that stage of the race.

In relation to particular two (2) the following exchange took place between Mr Smith and the Appellant (at page 23 lines 1091-1109):

“What do you say in relation to that particular?”

A. Yeah, well, realistically, who is going to be sitting and restraining their horse from the 600 and onwards? Everyone gets going at the 600, especially at Kempsey.

Q. Even when you’ve rode considerably faster sectionals leading up to that point than average?

A. Well, I’m not going to pull up.

Q. I don't think anyone has suggested that you should have pulled it up, but restrain or slow the pace the Stewards would feel would have been a better option.

A. That’s only - that’s only opinion on that and then what’s to say that the horse doesn’t sprint? What if the horse actually does plug away and I’ve restrained between the 600 to the 500? So that little bit of work the horse has done to be -

to take up the forward position is all lost because I give it away at that point where everyone moves forward to be swamped.

Q. Wouldn't that also be considered conserving some energy?

A. To conserve, yes, but just from there, if you pull up and the horse doesn't actually sprint, it whacks away, you're losing. You're not really conserving anything."

In relation to particular three (3) Mr Smith said to the Appellant (at page 24 line 1162):

"What would you say in relation to that particular?"

And the Appellant replied (at page 24 line 1163):

"Yes, I did ride it forward from the 500."

The following exchange then took place between Mr Smith and the Appellant at (page 25 lines 1165-1179):

"Q. Slapped the horse down the shoulder with the whip in your right hand. Do you agree with that?

A. Yes.

Q. When you were some 5 lengths in front of the next runner?

A. Yes.

Q. What's your explanation for that?

A. Ninety-eight per cent of jockeys go forward from roughly at that point, especially at Kempsey. Even you go forward at the 600. So being the 500 and slapping the horse near the 400, it's time to start to finish off the race, not pull him up or easing.

Q. How would you describe the manner the horse finished off the race?

A. The last 100 metres it stopped like it got shot, the same as it's done in every other start it's had."

The Panel has considered the evidence and the submissions made on behalf of both parties on the question of guilt. The Panel has regard to the 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 AR 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 either to win or in any event to obtain the best possible place in a race.

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

To adopt tactics which result in the horse having been physically spent is clearly not a measure that is reasonable or in compliance with the rule.

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."

Furthermore, the Panel has regard to the observations made by a differently constituted Panel in the Appeal of Robyn Freeman (2 September 2010) in relation to the relevance of riding instructions to AR 135(b). In that case the Panel said:

"The Appellant has emphasised that in her mind her instructions were paramount. Whilst her instructions are relevant AR 135(b) is a rule that places significant responsibility on the rider in the race. It is necessary for her to make a valued judgement about her riding of the horse, where she should have the horse positioned and where she should exert pressure on the horse to ensure it will win or obtain the best possible place in the field. The existence of riding instructions does not detract from the obligations which the rule places directly on the rider."

The Panel notes that the Stewards made the following findings:

1. that at different stages during the middle stages of the race the Appellant urged his mount along with hands and heels pressure;

2. from the 500 metres the Appellant placed his mount under strong hands and heels pressure;
3. the speed during the early and middle stages of the race was excessive for a three (3) year old maiden at Kempsey and which could not be sustained;
4. as a result of the speed of the race and the pressure placed on it by the Appellant during the race the horse weakened badly over the final stages of the race;
5. in all of the circumstances his manner of riding of *Wonderful Thing* was blameworthy.

The Panel concurs with the findings made by the Stewards in relation to each particular of the charge. In essence the Panel is comfortably satisfied that the pressure placed on the horse by the Appellant having regard to the speed at which the race was run when viewed objectively was not reasonable and did not give the horse *Wonderful Thing* full opportunity to win or obtain the best possible place in the field. The Panel considers that the Appellant was at fault in not giving the horse that opportunity. For those reasons the Panel is comfortably satisfied that breach of AR 135(b) has been established.

The Panel considers that breach of AR135(b) is a serious offence in the overall framework of the Australian Rules of Racing as it raises issues in relation to the image and integrity of racing.

The Panel takes into account that the Appellant has been a licensed jockey for a period of twenty (20) years and has no previous breaches of this Rule. On the other hand, the Panel notes that the charge was defended before the Stewards and the Panel with the result that the Appellant is not entitled to a discount of the penalty which is otherwise appropriate.

The Panel has considered the table of comparative penalties for breaches of AR 135(b) and notes that the normal penalty is a period of suspension. The Panel also notes that in the appeal of licensed jockey Glyn Schofield (20 December 2013) a license suspension of one (1) month was imposed in relation to facts which were similar to the facts in the present case. Ultimately, the Panel considers that the appropriate penalty in this case is licence suspension for four (4) weeks.

The parties agree that the Appellant sustained a significant injury in a race fall at Kempsey on 12 January 2016 and has been stood down from riding until a medical certificate clears him to resume riding. The Appellant has not obtained a

medical clearance at today's date and is still in receipt of workers compensation benefits. The effect of LR 109(a) is that any suspension imposed upon the Appellant is deferred for such a period as he is in receipt of racing related workers compensation benefits. Consequently, as the Appellant is still in receipt of such benefits, it is not open to the Panel to specify the commencement date of his period of suspension.

The orders of the Panel are as follows:

1. the appeal against finding of guilt is dismissed;
2. the finding of guilt made by Stewards on 22 December 2015 is confirmed;
3. the appeal against penalty is upheld;
4. the penalty of six (6) weeks licence suspension imposed by Stewards is varied to four (4) weeks licence suspension the commencement date of which is to be determined by Racing NSW pursuant to LR 109(a).
5. the appeal deposit of \$200 is forfeited.