



APPEAL RESULT

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FROM: Registrar – Racing Appeals and Disciplinary Board

DATE: 13 August 2009

SUBJECT: **APPEAL HEARING RESULT: JOCKEY – DALE SMITH**

Panel: Mr Brian Forrest (Acting Chair), Mr Jeremy Rosenthal, Mr Ron Taylor

Appearances: Mr James Ogilvy, lawyer for RVL, appeared on behalf of the Stewards.
Mr Peter Randles of Randles Cooper & Co appeared on behalf of D Smith.

At an adjourned inquiry held at Cranbourne on Sunday 9 August 2009 jockey Dale Smith pleaded guilty to a charge under the provisions of AR 137A(5) – in that over the final 200m he used his whip on at least 14 consecutive strides (at least 11 more than allowed).

The charge relating to his ride on *Betty's Belle* in Race 6 the *Aygee Gippsland Country Showcase 0-68 Handicap (1013m)* at Sale on Thursday 6 August 2009.

Mr Smith had his licence to ride in races suspended from midnight Tuesday 11 August 2009 and to expire midnight Saturday 15 August 2009, a total of 4 race meetings (2 metropolitan, 2 provincial). In addition, Mr Smith had his race riding fee and prizemoney forfeited for this race.

A Notice of Appeal against **the severity of the penalty** was lodged on Tuesday 11 August 2009.

A stay of proceedings was granted effective until midnight Wednesday 12 August 2009.

DECISION: **Appeal allowed in part – the period of suspension to be set aside (i.e. there is no period of suspension) but the forfeiture of the race riding fee and prizemoney to remain.**

**TRANSCRIPT OF
PROCEEDINGS**

RACING APPEALS AND DISCIPLINARY BOARD

**MR BRIAN FORREST (ACTING CHAIRMAN)
MR JEREMY ROSENTHAL
MR RON TAYLOR**

EXTRACT OF PROCEEDINGS

DECISION

**IN THE MATTER OF: TWO APPEALS REGARDING AR137A(5) -
MR D SMITH & MR B RAWILLER AND
ONE APPEAL REGARDING AR 137A (6) – MISS L STOJAKOVIC**

**MELBOURNE
THURSDAY, 13TH AUGUST 2009**

MR P RANDES appeared on behalf of Mr D Smith and Mr B Rawiller

MR D O'KEEFFE appeared on behalf of Miss L Stojakovic

MR J OGILVY appeared on behalf of the Stewards

MR P. GALBALLY appeared on behalf of Mr D. Miller

ACTING CHAIRMAN: Thank you ladies and gentlemen, the Board is now in a position to announce its decision in relation to the three appeals.

These are three appeals against the severity of penalties imposed by RVL Stewards for breaches of AR137A, the rule governing the recently introduced changes to the use of whips.

Dale Smith had his license to ride in races suspended for four race meetings, two metropolitan, two provincial at an adjourned inquiry on 9 August into his ride on *Betty's Belle* in Race 6 at Sale on 6 August. In addition to his suspension his riding fee and percentage of winning prize money for the race, in total \$846.50, was forfeited. A stay of proceedings effective to midnight last night was granted. Brad Rawiller had his license to ride in races suspended for four race meetings, one metropolitan, three provincial at an inquiry into his ride on *Forever Fight* in Race 8 at Cranbourne on 9 August. In addition to his suspension his riding fee and percentage of winning prize money for the race, also totalling \$846.50, was forfeited.

Both Dale Smith and Brad Rawiller were charged with a breach of AR137A(5) which provides that a rider using the whip, must give his horse time to respond and other than once in the last 200 metres, when the whip may be used in three consecutive strides, the whip shall not be used in consecutive strides other than in a slapping motion down the shoulder with the whip hand remaining on the reins or alternatively in a back hand manner.

Dale Smith pleaded guilty to using the whip for fourteen consecutive strides in the last 200 metres and Brad Rawiller pleaded guilty to using the whip for eight consecutive strides in the last 200 metres.

The third appellant is Lauren Stojakovic an apprentice jockey, who had her license to ride in races suspended from Wednesday 12 August for four race meetings, one metropolitan, three provincial for the ride on *Slippery Madam* in Race 4 at Swan Hill on 10 August. In addition she had her race riding fee and percentage of winning prize money for the race in total \$585.25 forfeited.

Ms Stojakovic was charged with a breach of AR137A(6) which limits the use of the whip to five times prior to the 200 metres, other than with a slapping motion down the shoulder with the whip hand remaining on the reins or alternatively in a back hand manner. She pleaded guilty to the use of the whip on ten occasions prior to the 200 metres.

The provisions of Rule 137A which came into force on 1 August 2009 are designed to limit the use of whips in racing. If horse racing is to attract a wider audience in the sport/entertainment business, then it must reflect contemporary

community expectations where animal welfare is concerned, which is a primary focus of the new rule. The sight of a jockey whipping a horse too early and too often is not a particularly gratifying one and detracts from the image of racing. That it will no longer be tolerated is reflected in a prescriptive nature of the new rule 137A.

The changes introduced are significant and clearly for some require a rapid adjustment from previously accustomed practices, if racing is to prosper in a highly competitive sport/entertainment market, the display of expert horsemanship rather than flailing whips can only be for the betterment of racing.

The National Stewards body have circulated a proposed scale of penalties for breaches of the whip rules, to assist stewards adopt a generally consistent approach across the various jurisdictions. The scale of penalties was before the Board. While a scale of penalties is administratively convenient, it is not difficult to envisage that a situation may arise where slavish adherence to a predetermined set of penalties may lead to an injustice. It is therefore well to keep in mind that the proposed scale is a guide only, it is not the Ten Commandments and it does not have the force of a rule of racing. This Board will have regard to the broad parameters of the scale; however the discretion of the Board to make a decision contrary to the guide will not be fettered in any matter where in its judgement the particular circumstances warrant a departure.

As stated earlier, the Board recognises that for some jockeys the new rules represent a cultural change. Equally the Board is confident that experienced jockeys of the skill and calibre of Dale Smith and Brad Rawiller will quickly adapt.

The Board does not accept the proposition that jockeys automatically and without conscious intent use the whip in the final 200 metres or for that matter at any other stage of a race. Jockeys are trained to make any number of judgements and to respond to the vicissitudes of a race on the spur of the moment as they arise, including the use of the whip and the positioning of the mount. For the main part, jockeys apply that training with great skill.

The argument was also put to the Board by Mr Randles on behalf of the appellants, that calculating the number of strikes made in excess of those identified in the rules, the overall number of strikes after the three permissible consecutive strikes taken in the final 200 metres, should be discounted by the number of strikes that would have been permissible had they not been consecutive. The Board does not accept this proposition.

The new rules have not been of sudden making in that a considerable period of consultation and advance notice preceded their introduction. The Board is of

the view that in the circumstances of the Smith and Rawiller appeals, penalties which involve both a suspension and a monetary component for first instance infringements are not appropriate.

The decision of the Board is that the three appeals be allowed in part.

In the appeals of Dale Smith and Brad Rawiller, the monetary component of the penalty is not to be disturbed, because the infringements in both cases were not minor and the element of deterrence, going forward is a relevant factor. However as both are first offenders under this rule and for the reasons stated earlier, the decision to impose a period of suspension under the rule is set aside.

In the Stojakovic matter, there are some additional considerations. Although she has had an early warning, she is an apprentice jockey making her way, Mr O’Keeffe referred to her current limitations as a jockey; this is not being unkind to her, but a fact she clearly recognises by taking positive steps to remedy so as to improve her skills. The Board also notes with commendation the action of the stewards at Swan Hill ensuring that she was aware of the new rules. In this case the decision to impose a period of suspension is also set aside and in her circumstances the monetary component of the penalty decision is varied to the extent that forfeiture of the riding fee and percentage of prize money is to be reduced by 50 per cent.

The Board would like to conclude with a cautionary note to stakeholders. The decisions of the Board today have been made having due regard to the fact that these are first considerations of the implementation of the new regime. The Board recognises that with changes of such significance, the need for an emphasis on education can only assist the attainment of the objective of this rule and that process is the responsibility of stewards and licensed persons alike. Might I also add that the decision of the Board in these matters is a unanimous one. Finally I take the opportunity on behalf of the Board to thank Mr Randles, Mr O’Keeffe and Mr Ogilvy for their submissions which have assisted our deliberations.

MR RANGLES: Thank you Mr Chairman.

MR OGILVY: If the court pleases.

END OF EXTRACT