

RACING VICTORIA LIMITED
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RACING APPEALS AND
DISCIPLINARY BOARD



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APPEAL RESULT

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FROM: Registrar – Racing Appeals and Disciplinary Board

DATE: 11 October 2010

SUBJECT: **APPEAL HEARING RESULT – JOCKEY: LOGAN MCGILL**

Panel Judge Russell Lewis (Chair), Mr Brian Forrest, Mr Bill Kneebone.

Appearances Mr Des O’Keeffe, Chief Executive VJA, appeared on behalf of Mr McGill.
Mr Terry Bailey, Chairman of Stewards, appeared on behalf of the Stewards.

At an adjourned Stewards inquiry on Monday 4 October 2010, jockey Logan McGill was found guilty of a charge under the provisions of AR 135(b) which states 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 charge relating to his ride on *Akihito* in Race 4 the *Essendon Mazda 55 Second Challenge (Heat 2)* at Moonee Valley on Friday, 1 October 2010. The particulars of the charge being that:

- (1) *From the 400 metres until the 200 metres he failed to make sufficient effort to improve his position behind Tully Dreamer the eventual winner, when in the opinion of the Stewards he had the opportunity to do so.*
- (2) *Having obtained a run to the inside of Tully Dreamer near the 50 metres he then failed to ride his mount out to the end of the race.*

Logan McGill had his licence to ride in races suspended for a period to commence at midnight on Monday, 4 October 2010 and to expire at midnight on Monday, 13 December 2010 - a total of 10 weeks. In assessing penalty Stewards took into account his personal circumstances and his recent riding record.

A Notice of Appeal against **the decision and severity of the penalty** in relation to his riding between the 400 metres and 200 metres (part 1 of the charge) and **the severity of the penalty only** in relation to his riding near the 50 metres (part 2 of the charge) was lodged on Monday, 4 October 2010.

A stay of proceedings was not requested.

DECISION: **Appeal against Part 1 of the charge – dismissed.**
Appeal against Part 2 of the charge – allowed.

Penalty varied – period of suspension to now expire at midnight on Monday, 15 November 2010.

Georgie Curtis - Registrar, Racing Appeals & Disciplinary Board

TRANSCRIPT OF PROCEEDINGS

RACING APPEALS AND DISCIPLINARY BOARD

**HIS HONOUR JUDGE R.P.L. LEWIS, Chairman
MR B. FORREST
MR W. KNEEBONE**

EXTRACT OF PROCEEDINGS

DECISION

**IN THE MATTER OF THE ESSENDON MAZDA 55-SECOND
CHALLENGE (HEAT 2) OVER 955 METRES**

JOCKEY: LOGAN McGILL

MELBOURNE

TUESDAY, 12 OCTOBER 2010

MR T. BAILEY appeared on behalf of the RVL Stewards

MR D. O'KEEFFE appeared on behalf of the Appellant

CHAIRMAN: On Friday, 1 October 2010, Logan McGill was found guilty by Racing Victoria Ltd Stewards of a charge laid under Australian Rule of Racing 135(b). The rule was in the following terms:

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.

Details of the charge are as follows: (1) from the 400 metres until the 200 metres, Logan McGill failed to make sufficient effort to improve his position behind Tully Dreamer, the eventual winner, when in the opinion of the Stewards he had the opportunity to do so; (2) having obtained a run to the inside of Tully Dreamer near the 50 metres, he did fail to ride his mount out to the end of the race.

Logan McGill has now appealed to the RAD Board against the conviction and the penalty imposed by the Stewards, the penalty being the suspension of 10 weeks commencing at midnight on 4 October 2010. The onus of proof is on the Stewards, that is, to prove that the appellant has been in breach of the rule. The appellant is, in the circumstances, required to give an explanation for his actions. However, the onus always remains with the Stewards.

This is a serious offence. The standard of proof is that referred to in the well-known High Court case of *Briginshaw v Briginshaw* (1938) CLR 336. The standard is on the balance of probabilities. However, the Board must have

a reasonable degree of satisfaction that the charge has been proved. It is not a matter of mechanical comparison between competing views. Matters which the Board must take into consideration include the seriousness of the allegation and the gravity of the consequences flowing from a particular finding.

The rule imposes an objective standard of care. The standard of care takes into account, amongst other things, the views and explanations of the rider and the views and opinions of the Stewards. A mere error of judgment is not a sufficient basis for a finding that the rule has been breached. The rider's conduct must be culpable in the sense that objectively judged, it is found to be blameworthy. Putting the issue in context, the Board must be comfortably satisfied that in the circumstances which existed and viewed objectively, the failure of Logan McGill to take all reasonable measures to improve his position approaching the 200 metres fell well short of what would be reasonably expected of a rider in his position.

Having considered the evidence in this appeal, the Board accepts that there was a reluctance on the part of Logan McGill to take a run inside Nikolic's mount for the reasons he stated. However, the Board does not accept that explanation as a justification for not taking the run, thereby markedly improving his position to a point where he was likely to be in the finish. The Board is satisfied that there was an obligation for Logan McGill to improve his position, particularly having regard to where his mount was positioned in the race. His failure to improve his position approaching the 200 metres fell short of what a reasonable rider would have done in the circumstances.

Accordingly, the Board finds particular 1 of the charge proved. The Board is not satisfied that particular 2 has been made out, being of the view that the ride in the last 50 metres may have attracted attention under another rule, namely Australian Rule 137.

DISCUSSION

The Board has found the question of penalty not an easy one in this case. In particular, the Board is puzzled - although it does not enter into the consideration of what penalty is appropriate - about the number of offences committed in the past by Logan McGill related to not riding a horse out. It seems to us inexplicable why this should be so, but obviously something seems to go on inside Logan McGill's head which is a conundrum so far as the Board is concerned.

However, of all the mitigating factors in this case, the Board thinks that the personal circumstances of Logan McGill are quite cogent. His future looks bleak, but a very long period of suspension would pull the curtain well and truly down on his career. The Board takes that into account. The Board takes the view that he is a young man of otherwise good character. In the circumstances, we are prepared to be merciful in this case, to the point where we vary the suspension, to expire at midnight on 15 November 2010.

END OF EXTRACT