

Non Raceday Inquiry RIU v R A Reekie - Reserved Penalty Decision dated 5 October 2017 - Chair, Mr R G McKenzie

Rules:

Repondent(s)/Other parties:

Name(s):

Decisions:

**BEFORE A JUDICIAL COMMITTEE
OF THE JUDICIAL CONTROL AUTHORITY
HELD AT CHRISTCHURCH**

IN THE MATTER of the New Zealand Rules of Harness Racing

IN THE MATTER of Information No. A09571

BETWEEN S W WALLIS, Stipendiary Steward for the Racing Integrity Unit

Informant

AND RAYMOND ALFRED REEKIE of Leeston, Licensed Advanced Amateur Driver

Respondent

Judicial Committee: R G McKenzie (Chair)

S C Ching (Committee Member)

Present: S W Wallis, the Informant

T J Sissons, Counsel for the Respondent

N M Ydgren, Chief Stipendiary Steward (Registrar)

Date of Hearing: 29 September 2017

Date of Decision: 5 October 2017

RESERVED PENALTY DECISION OF JUDICIAL COMMITTEE

Background

[1] Following Race 1, Bishopdale/Bush Inn TAB's + Tavern Harewood (Amateur Drivers) Mobile Pace, held at the meeting of New Zealand Metropolitan Trotting Club at Addington Raceway on Saturday, 16 September 2017, Mr Reekie was charged by Stewards with a breach of Rule 869 (3) (g) in that, as the driver of ZAKSPATROL in the race, he "drove in a manner capable of diminishing his chances by challenging for the lead between the 2100 metres and the 1100 metres unsuccessfully resulting in his horse tiring badly from the 900 metres."

[2] Rule 869 provides as follows:

(3) No horseman in any race shall drive:-

(g) in any manner capable of diminishing the chances of his horse winning.

[3] Mr Reekie denied the charge and, after a hearing before this Committee, the charge was found proven.

[4] Submissions in relation to penalty were then heard from Mr Wallis at a hearing at which Mr Reekie elected not to be present, following which the Committee suspended Mr Reekie's Advanced Amateur licence for a period of 2½ years up to and including 15 March 2020.

[5] By Memorandum of this Committee dated 19 September 2017, the Committee quashed and set aside that penalty decision on the grounds set out in that Memorandum.

[6] A hearing as to penalty subsequently took place on 29 September 2017 and, at that hearing, penalty submissions were heard from Mr Wallis and Mr T J Sissons, representing Mr Reekie.

[7] At the conclusion of that hearing, the Committee reserved its decision.

Submissions of Informant

[8] Mr Reekie has had three drives this season prior to the drive in question. He had 16 drives in the 2016/2017 season and has had a total of 109 career drives since obtaining an amateur driver's licence in 2009. He is, therefore, a busy amateur driver, consistently driving in races in the Canterbury area.

[9] Mr Reekie's actions have had a detrimental effect, not only on punters who invested on the race, but also on potential punters who may have been "turned away" by his actions. Those actions have only served to dent the reputation of harness racing.

[10] As with all drivers, Mr Reekie carries with him the weight of public money and the integrity of harness racing - two things that cannot be compromised. The Stewards and the JCA must be seen to be protecting these. The Committee is charged with the responsibility of enhancing confidence and integrity within harness racing by imposing the right penalties when asked.

[11] The penalty imposed in this case should reflect the serious nature of the breach and also serve as a deterrent to any other driver who believes that style of driving to be acceptable. Mr Reekie's offending falls towards the higher end of the scale. He has challenged for the lead for approximately 1100 metres, tiring rapidly from the 900 metres and finishing some 35 lengths from the winner.

[12] Mr Reekie cannot be given any credit for admitting the breach although a person charged is entitled to defend himself.

[13] There have been no charges under the Rule since the new Penalty Guide came into force in May 2015. There have been charges under the race duelling and miscounting the rounds provisions but not for incompetent driving as in this case. The Penalty Guide starting point for incompetent driving under Rule 869 (3) (g) is 60 drives or a \$3,000 fine.

[14] Mr Reekie has the opportunity to drive in only 24 races per year on the basis of there being two amateur drivers' races per month. The maximum term of suspension for a breach of the Rule is 12 months so the starting point of 60 drives is irrelevant in this case.

[15] While the penalty in this case must be seen as a deterrent, it must also be seen as being fair and reasonable. Stewards submit that a fair and reasonable penalty in this case, in the circumstances, is a suspension of Mr Reekie's amateur driver's licence for 7 months and a fine of \$500. If there was to be no fine, the Stewards would be seeking a suspension for 12 months.

Submissions on Behalf of Respondent

[16] Mr Sissons indicated that Mr Reekie would accept either a fine or a suspension but, if possible, not a combination of both.

[17] Although there were no relevant recent cases under the Rule, there were a number of earlier cases to which the Committee should have regard.

[18] This case was not at the higher end of offences under the Rules, Mr Sissons submitted. He submitted that the appropriate penalty is a suspension of 3-6 months. It was not clear which of the three categories of diminishing chances applied to this case and there was a wide range of starting point for the various starting points, Mr Sissons submitted – from 15 drives (miscounting rounds) to 40 drives (race duelling) to 60 drives (incompetent driving).

[19] Mr Sissons referred the Committee to the case of O'Connell (January 2017) in which the Judicial Committee said:

Mr O'Connell has made a mistake. He has miscounted the laps and, in doing so, he has improved his horse into the passing lane and asked it for an effort before realising his error. The horse has subsequently dropped away finishing second last behind a horse that had broken early in the race. The connections of the horse and those persons who invested on the horse have been adversely affected by his actions.

Mr Sissons submitted that such comment could well apply to Mr Reekie who, instead of miscounting the rounds, had misjudged the pace. The penalty starting point in that race was 15 drives. A starting point of 60 drives in Mr Reekie's case is not consistent.

[20] Mr Sissons then showed a video replay of a race from June 2014 involving an amateur driver contesting the lead for about 1500 metres before the horse compounded and finished last. The Judicial Committee, in that case, imposed a 10-weeks' suspension, he said. The circumstances of that case were almost identical, Mr Sissons submitted. He quoted from the Judicial Committee decision:

We take into account that this is a serious breach and that Mr Frampton has admitted the breach at the first opportunity. Balanced against that is the fact that Mr Frampton persisted in attempting to take the lead when it was clear that the driver of the leading horse was not intending to relinquish the lead, and in doing so extinguished his horse's chances.

The video films confirmed the duelling occurred over various stages of the race and carried on until the 700 metres when MISTER DANN weakened badly to finish a long last. Clearly Mr Frampton made a poor decision and an error of judgement in assessing the pace of the race. In this instance the standard of driving was well below what is acceptable, with the chances of LOFTY BROGDEN being diminished when finishing unplaced and 17 lengths from the winner.

The Committee did have regard to the fact that Mr Frampton is an amateur driver.

In assessing a suitable penalty in this matter the Committee has to have regard to the penalties handed down to other drivers who have breached this Rule, and to look at the circumstances surrounding those penalties. Those recorded penalties showed a range between 2 days and 12 weeks suspension from driving in races.

[21] Mr Sissons then referred to the decision of the Appeals Tribunal in Chilcott (March 2010), a speed-duelling case, in which the Tribunal, referring to the decision in J & C (2000), said:

Each case has to depend on its own facts, but the Tribunal identified as a particularly relevant factor, the extent to which the chances of the horse were diminished by the particular driving tactics adopted. Also of relevance to penalty, was the degree of experience of the drivers involved. Ready admission of fault and any previous breach of the Rule were also to be weighed.

[22] Mr Sissons dealt with those factors in turn. Mr Reekie has no previous breaches. It is accepted that Mr Reekie cannot receive credit for admitting the breach. While Mr Reekie has been an amateur driver for a number of years, the standard required of an amateur driver is not the same as that for a professional driver. In the case of a breach of a Rule, the professional horseman is held to a slightly higher standard. It is more understandable for an inexperienced driver to “make poor choices” and lapse in judgement.

[23] Mr Sissons then referred to three other case in which the inexperience of the driver was specifically referred to. The fact that Mr Reekie is an amateur driver is very relevant in this case and should be weighed in his favour, Mr Sissons submitted. This case should, therefore, not be regarded as being at the high end of the spectrum in terms of penalty.

[24] Mr Sissons submitted that, in terms of diminishing the horse's chances, the “calibre and ability” of the horse is relevant in these cases. Mr Reekie's horse was 9/10 in the betting. In the recent case of *Williamson*, the horse was 3rd favourite - the penalty was 24 drives.

[25] Mr Reekie has been driving the horse with different tactics in the horse's recent races. On 10 September, Mr Reekie went back from the start then went around with cover to sit outside the leader. He tried to sprint, but only “plugged”, finishing 6th. The start before that the horse was driven by Open Horseman, Mr J R Dunn. It settled mid-field and finished 8th. On 13 August, driven by Mr Reekie, the horse went around to sit outside the leader before getting cover. It was pulled out at the home turn and only ran on for 9th. ZAKSPATROL is not a good horse, Mr Sissons submitted. While it was accepted that the horse's chances were diminished, this scenario was different from favourites duelling out in front. The horse's chances were not significantly affected by Mr Reekie's drive, Mr Sissons submitted, as it was never going to run in a stakes-bearing position. Neither did it upset the balance of the race, as the favourite won and the 3rd favourite was 4th by a nose. The 2nd favourite had a similar run to the favourite but could not run into it racing down the back.

[26] Mr Sissons submitted that amateur drivers' races are clearly identified as such and the level of risk in investing on such races is increased.

[27] Mr Sissons then referred to the case of *Stratford* (2013), in which the charge was under 869 (3) (a) – incompetent driving – a starting point for penalty of 80 drives or a \$4,000 fine. This is a more serious offence, Mr Sissons submitted. He referred to the penalty in that case of a 4-months' suspension and a \$750 fine. Consistency and common sense required that Mr Reekie's penalty be less severe than that, he submitted.

[28] Finally, Mr Sissons reiterated his earlier submission for a penalty of a suspension in the range of 3-6 months. This would be in line with the *Stratford* and more serious cases. Mr Reekie has been inconvenienced by having to retain counsel and face public reaction to the charge and, even though the original penalty has been vacated, some damage has already been done to Mr Reekie. He submitted that calculation of a suspension for an amateur driver in terms of number of drives may not be appropriate.

[29] Mr Reekie had not instructed Mr Sissons as to whether he would prefer a suspension alone or a fine alone. However, Mr Reekie regards a suspension as being the more appropriate penalty for amateurs as they do not earn money from their drives, Mr Sissons said.

The Penalty Rule

[30] Rule 1003 provides as follows:-

(1) A person who commits a breach of any Rule shall (subject to the provisions of Rule 111(1), 113(5), 451(3), 507(3), 1001 or 1004 hereof) shall be liable to the following penalties:

(a) a fine not exceeding \$10,000.00; and/or

(b) suspension from holding or obtaining a licence for a period not exceeding 12 months; and/or

(c) disqualification for a period not exceeding 12 months.

Reasons for Penalty

[31] The starting point for a Judicial Committee tasked with imposing penalty for a breach of any Rule is the Penalty Guide for Judicial Committees (effective 1 May 2015). That guide provides that:

Committees are expected to operate within the guidelines unless the committee has good reason to believe that the case before it has some special characteristic that justifies the imposition of a penalty greater or lesser than that suggested by the guidelines.

[32] That Penalty Guide, for a breach of Rule 869 (3) (g) – diminishing chances by incompetent driving – provides for a starting point of 60 drives or a \$3,000 fine.

[33] The Committee is satisfied that the present case has a “special characteristic” in that Mr Reekie is an amateur driver and, as such, has the opportunity generally speaking to drive in two races per month and any penalty calculated with reference to a number of drives would result in a very long period of suspension. It was accepted by both parties that, in the particular circumstances of this case, it was inappropriate to adopt a starting point of a particular number of drives.

[34] We could deal with Mr Reekie under the fine provision in the Penalty Guide - that is to say, a fine with a starting point of \$3,000. However, Mr Sissons, on behalf of Mr Reekie, told us that Mr Reekie's preference was for a suspension rather than either a fine or a combined penalty of a suspension and a fine. We have considered penalty on that basis and, in any event, we are of the view that a term of suspension is the appropriate penalty for this particular breach.

[35] Although, for the reasons given, the Committee does not intend to assess an appropriate period of suspension on the basis of a number of drives, the Penalty Guide starting point of 60 drives is, nevertheless, relevant as we note that particular starting point is the second highest for all breaches provided for in the guide, ranking behind only incompetent driving, Rule 869 (3) (a), for which the starting point is 80 drives, and alongside improper driving in a major race, which is 60 drives. This fact points to the charge of diminishing chances by incompetent driving as being one of the most serious of driving offences and the Committee is treating it as such. Mr Reekie's drive on ZAKSPATROL in the race in question was more than an error of judgement and displayed a high degree of culpability.

[36] This Committee found, in relation to Mr Reekie's drive in question:

The Committee is satisfied that Mr Reekie's drive between the 2100 metres and the 1100 metres fell far short of the standard of a reasonable and prudent driver and that the chances of ZAKSPATROL in the race were significantly adversely lessened or reduced by the actions that Mr Reekie took. These actions basically involved hotly contesting the lead, resulting in a hot pace . . . with no chance of the lead being available to him. Notwithstanding that, throughout the relevant part of the race, between the 2100 metres and the 1100 metres, Mr Reekie activated the removable deafeners at an early stage and urged his horse throughout with the reins and the whip.

That the chances of his horse were diminished is evidenced by the fact that the horse commenced to tire some 900 metres from the finish before dropping out and finishing a long last . . . 35.3 lengths from the winner. The hard run to which Mr Reekie had subjected it had, clearly, taken its toll on the horse and it inevitably weakened out a long way from home. Its chances had been diminished.

[37] The Committee has taken into account the seriousness of this breach in comparison with other types of driving breaches. Taking the maximum term of suspension permitted by Rule 1003 of a 12 months' suspension, we must impose a penalty near to the maximum in this case, since the offending in this case is, in the Committee's view, near to the most serious of cases for which the penalty is prescribed. At the same time, we must impose the least restrictive penalty that is appropriate.

[38] The most important purposes of sentencing to which the Committee has had regard in this case are to hold Mr Reekie accountable for his actions, to promote in him a sense of responsibility for and acknowledgement of his actions, to denounce his driving tactics and to deter him or other persons from committing the same or a similar breach. We have also had regard to the need to assist Mr Reekie in his rehabilitation with a view to enabling him to pursue, in the future, his passion of driving standardbred racehorses in amateur races.

[39] The Committee believes that those purposes can all be adequately served by the imposition of a term of suspension of Mr Reekie's Advanced Amateur licence for a period of 10 months from the date of this decision. A term of suspension of that duration is required to make the penalty for a serious breach of the Rule meaningful in the case of an amateur driver.

[40] In arriving at that penalty, the Committee has taken into account Mr Reekie's previous good record. He has driven, we were told, in 109 races since obtaining his licence in 2009. We accept that Mr Reekie is one of the most experienced amateur drivers in the country and his record is, therefore, a good one. However, along with recognising his experience, comes the expectation of a higher standard of driving than was demonstrated by him in this case, even allowing for the fact he is an amateur driver.

[41] Finally, the Committee does not propose to address individually in this decision the previous cases and principles referred to by Mr Sissons in his submissions, except to say that we have taken them into account, where relevant, in deciding the final penalty. We were grateful to Mr Sissons for his most helpful submissions.

Penalty

[42] Mr Reekie's Advanced Amateur licence is suspended immediately from the date of this decision for a period of 10 months, expiring on 5th August 2018.

Costs

[43] There will be no order as to costs as this was the conclusion of a hearing commenced on raceday.

R G McKenzie S C Ching

Chair Committee Member

Penalty: