

RACING APPEALS TRIBUNAL

RAT 7/2021

DATE OF HEARING: FRIDAY 10 SEPTEMBER 21

TRIBUNAL: PRESIDENT: MR T ANDERSON, QC

IN ATTENDANCE:

MR J PETZER: CHAIR OF STEWARDS, RACING SA LTD

MR DYLAN CABOCHE: APPELLANT

IN THE MATTER of an Appeal by **MR DYLAN CABOCHE** against a decision of Racing SA Ltd Stewards.

BREACH OF RULE: AR134

A rider must not use his or her spurs in an excessive, unnecessary or improper manner.

Penalty: \$1000.00 fine

BREACH OF RULE: AR 231(1)(a)

A person must not commit or commission an act of cruelty to a horse.

Penalty: \$2000.00 fine

DETERMINATION

Mr Dylan Caboche is a licensed jockey in South Australia.

He was charged by the Stewards with two offences arising from using a spur in an improper manner during trackwork on 5 December 2020.

The trainer of the horse, Mr Chris Bieg, and Mr Caboche had discussed and agreed to the use of the spur prior to the workout. Mr Bieg was not present at the workout.

Mr Bieg was subsequently fined \$1000.00 by the Stewards for a breach of AR 231(1)(b)(i).

The details of the charges against Mr Caboche are set out below.

AR134, on Saturday 5 December 2020, at the Morphettville racecourse, while riding Raheeba in track work he used his spur, fitted to his right boot, in an improper manner on this horse.

AR231(1)(a), on Saturday 5 December 2020, at the Morphettville racecourse, while riding Raheeba in track work he mistreated that horse by using his spur in an improper manner resulting in the horse presenting with a number of welts and a number of minor lacerations to its off side thorax region after track work.

Mr. Caboche pleaded guilty to both charges.

He was fined \$1000.00 on the first charge and a further \$2000.00 on the second charge, a total of \$3000.00.

In this matter, the Stewards prepared a statement of agreed facts, which Mr Caboche agreed to.

Those agreed facts numbered 1-24 are set out hereunder.

1. The *Appellant* is a Jockey licensed by the *Respondent* for the racing seasons 2020/21 & 2021/22.
2. The *Appellant* rode the thoroughbred racehorse Raheeba (*the Horse*) in track work at the Morphettville Training Facility on the morning of Saturday 5 December 2020.
3. The *Horse* was trained by Mr. Chris Bieg (*the Trainer*), at the time the *Appellant* rode it in track work.
4. The *Appellant* intended to use a Spur on the *Horse* on 5 December 2020 during track work.
5. The *Appellant* and the *Trainer* communicated by text message on Wednesday 2 December 2020 – the context of that communication confirming that they both agreed that a Spur would be used by the *Appellant* on the *Horse* on Saturday 5 December 2020 during track work.
6. The *Appellant* used a Spur fitted to his right boot while riding the *Horse* in track work.
7. The *Horse* was examined on Saturday 5 December 2020 by the *Respondent's* Veterinary Surgeon, after the *Appellant* rode the *Horse*, who reported the *Horse* presented with a number of welts and minor lacerations to its off side thorax region.

8. Photographs were taken of the *Horse* on Saturday 5 December 2020 by the *Respondent's* Compliance Officer, after the *Appellant* rode the *Horse*, confirming the *Horse's* identity, and showing clear evidence of a number of welts and minor lacerations to its off side thorax region.
9. The *Horse's* identity was also confirmed on 5 December 2020 by use of a hand held scanning device, by the Compliance Officer.
10. The *Horse's* identity was also verified subsequently, from records held by the *Respondent*, to be Raheeba.
11. The *Appellant* purported to use a blunt style Spur found in his possession, fitted to his right boot when riding the *Horse* in track work.
12. The *Appellant* purported to use a set of riding boots found in his possession when riding the *Horse* in track work.
13. The *Appellant* was charged under the Australian Rules of Racing with two charges.
14. Charge 1 – was under AR134, the particulars of the charge being “that on Saturday 5 December 2020, at the Morphetville racecourse, while riding Raheeba in track work he used his spur, fitted to his right boot, in an improper manner on this horse”.
15. The *Appellant* pleaded guilty to this charge.
16. Charge 2 – was under AR231(1)(a), the particulars of the charge being “that on Saturday 5 December 2020, at the Morphetville racecourse, while riding Raheeba in track work he mistreated that horse by using his spur in an improper manner resulting in the horse presenting with a number of welts and a number of minor lacerations to its off side thorax region after track work”.
17. *The Appellant* pleaded guilty to this Charge.
18. The *Appellant* does not challenge the convictions in respect of either charges.
19. The *Appellant* did not have the intention to commit the offences.
20. The *Appellant* appeals against the penalties imposed.
21. In respect of Charge 1 the *Appellant* was fined \$1,000.00.
22. The *Respondent* in arriving at the penalty in respect of Charge 1, commenced at a penalty of a fine of \$1,500.00 but applied a reduction of 33% for the *Appellant's* guilty plea and the fact that he had not previously been convicted of a similar offence, and consequently determined a fine of \$1,000.00.

23. In respect of Charge 2 the *Appellant* was fined \$2,000.00.

24. The *Respondent* in arriving at the penalty in respect of Charge 2, commenced at a penalty of a fine of \$3,000.00 but applied a reduction of 33% for the *Appellant's* guilty plea and the fact that he had not previously been convicted of a similar offence, and consequently determined a fine of \$2,000.00.

In the hearing of the appeal, Mr Caboche submitted that the total penalty imposed on him of \$3000.00 was disproportionate and unfair compared to the fine levied on the trainer, namely \$1000.00.

Both the trainer and Mr Caboche had pleaded guilty to the charges.

Mr Petzer, on behalf of the Stewards, argued that the rider's responsibility was greater than that of the trainer, even though a prior agreement had been reached between them for the use of the spur during trackwork.

In the end, I agree with Mr Petzer's submission, because it is the rider who can control the amount of force that is used in the application of the spur, and clearly on this occasion, as Mr Caboche accepts, he used excessive force and that resulted in penetrating the skin of the horse and causing the injuries, which are depicted in the photographs.

I raised with Mr Petzer the need for two charges, and he responded by saying that the first charge related to the using of the spur whereas the second related to the use of the spur which resulted in the injury to the horse. I can see the reasoning behind this, but in my opinion, the charges definitely arose out of the same set of circumstances.

In my view, dealing with charge 2 first, I consider the penalty of \$2000.00 imposed by the Stewards to be reasonable, having regard to the \$1000.00 imposed on the trainer.

However, in relation to charge 1, whilst I can see the reason for the charge, I think that the additional penalty of \$1000.00, making the total of \$3000.00, is manifestly excessive. The Tribunal is of the view that the appropriate result should have been a conviction on charge 1 but with no penalty attached.

I should say that both the charges levied against Mr Caboche are serious offences, and it is not to be understood from these reasons that the use of a spur will necessarily result in a conviction without penalty in other cases. On the contrary, a conviction for the use of the spur should in normal circumstances incur a penalty.

However, for the reasons which I have mentioned, in this case, it is appropriate to impose no penalty on charge 1.

Mr Petzer also argued that this was a vexatious appeal and therefore there should be no refund of the refundable portion of the bond lodged by Mr Caboche. I do not agree with that submission.

Therefore, the order will be that the refundable portion of the bond be refunded to Mr Caboche.

Finally, the formal orders of the Tribunal regarding penalty are:

1. The appeal on charge 1 is allowed in that there will now be a conviction with no penalty.
2. On charge 2, the appeal is dismissed and the penalty of \$2000.00 will remain.