RAT 8/2021

DATE OF HEARING: THURSDAY 30 SEPTEMBER 2021

TRIBUNAL: **PRESIDENT**: MR T ANDERSON, QC

ASSESSOR: MR G PRETTY

IN ATTENDANCE:

DEPUTY CHAIR OF STEWARDS, RACING SA LTD:
MR M SANTORO

APPELLANT: MS J EATON

APPELLANT REPRESENTATIVE: MR P O'SULLIVAN

IN THE MATTER of an Appeal by **MS JESSICA EATON** against a decision of Racing SA Ltd Stewards.

BREACH OF RULE: AR 129(2)

A rider must take all reasonable and permissible measures throughout the race to ensure that the rider's horse is given full opportunity to win or to obtain the best possible place in the field.

PENALTY: SUSPENSION OF LICENCE TO RIDE FOR 6 WEEKS

DETERMINATION

Ms Jessica Eaton is a licensed jockey in South Australia. In the last racing season, she was the leading metropolitan jockey. She is an experienced rider with many wins to her credit.

Ms Eaton was suspended by the Stewards for six weeks for her ride on Old Time Rock in Race 2 at Morphettville on 14 August 2021.

The Stewards charged her with a breach of AR129(2) for not taking all reasonable and permissible measures to ensure that her horse was given a full opportunity to win or to obtain the best possible place in the field.

The particulars given by the Stewards were that *'as the rider of Old Time Rock in Race 2, The Adelaide Galvanising Handicap at Morphettville on Saturday 14th August,2021, Ms Eaton did fail to take all reasonable and permissible measures to ensure that*

gelding was given full opportunity to win or obtain the best possible place in the field in that:

(1) Near the 150m, she shifted Old Time Rock to remain racing towards the heels of Viduka until approaching the 100 metres, when there was a run developing between that gelding and Alleboom, which was reasonable to take, when riding with full vigour.

(2) Near the 50 m, she shifted Old Time Rock to the outside of the heels of Viduka and away from a clear run between Viduka and Alleboom, which was reasonable to take, and in so doing failed to improve into that run directly in front of her.

(3) Between the 150m and the finish, she failed to ride Old Time Rock with sufficient vigour to allow it to improve into a more competitive position, when it was reasonable and permissible to do so.

(4) Old Time Rock was not given full opportunity to win or obtain the best possible place in the race as a result of the three particulars'.

The Stewards, after concluding their hearing, found that Ms Eaton's ride was "open to scrutiny from the 150-metre mark". The Stewards did not consider that it was an error of judgment.

Ms Eaton appeals against both her conviction and the penalty of six weeks' suspension. She was represented at the Tribunal hearing by Mr Paul O'Sullivan, a Solicitor from New South Wales.

The Tribunal saw the vision of the race several times from different angles.

Mr O'Sullivan sought to call an expert witness, retired jockey James Winks, to give evidence as to his interpretation of the vision upon which Ms Eaton was convicted.

This course was opposed by Mr M. Santoro, who represented the Stewards.
Mr Santoro argued that Mr Winks was not an expert. I heard argument from both sides as to the admissibility of his proposed evidence, which was by way of a prepared statement.

Mr O'Sullivan emphasised Mr Winks' riding record. He rode over 1000 winners, including five Group 1 events. He now conducts a business which includes, amongst other things, the mentoring and coaching of jockeys, analysing race performances and generally advising as to riding methods.

I ruled that Mr Winks did qualify as an expert but indicated to Mr O'Sullivan that some parts of the proposed written statement were objectionable. This was on the grounds that Mr Winks purported to give opinions on the ultimate question for the Tribunal, namely whether Ms Eaton's ride was in breach of the Rule.

Mr O'Sullivan, after obtaining instructions, advised that the deletions I had suggested were agreed, and therefore the statement of Mr Winks was tendered as Exhibit 1 in the appeal.

Mr Winks then gave evidence by reference to the race vision. He explained the importance of a jockey's instinctive reaction and concluded that Ms Eaton's decision not to take a run was a 50-50 call. He said it was a matter of judgment. He agreed that there was a run available but said it was only there for a stride or two. He said he understood why Ms Eaton, who was two lengths behind, did not try and take the run. He understood why she chose instead to move to the outside.

I have taken Mr Winks' evidence into account, together with all the other evidence made available to me.

Ms Eaton gave evidence again with reference to the race vision. She maintained, as she did before the Stewards, that because she had her horse under restraint, she did not believe that she could accelerate from two lengths behind into the run. She conceded that there was a run available.

Ms Eaton told the Tribunal that her horse had been under restraint from about the 300-metre mark. The run that became available was at about the 150 mark. As I understand her evidence, the horse was under restraint because it had suffered from a bad start and some interference at the 900-metre mark. She said she was concerned for her safety and that of others and the fact that her horse was not a good finisher in deciding not to take the run.

In his submissions, Mr Santoro emphasised a complete lack of vigour on Ms Eaton's behalf. He submitted that the horse was not tiring and, on Ms Eaton's own evidence to the Stewards, was "full of running". Mr Santoro further submitted that Mr Winks was wrong in his statement that the run was only available for a stride or two. He referred to the race vision to demonstrate that the run was there for at least 10 to 12 strides – that is, a distance of approximately 80 metres.

Mr Santoro submitted that with the exercise of appropriate vigour and by releasing the restraint on the horse, it was highly likely that the horse would have finished in the prize money. Even when Ms Eaton moved her horse to the outside instead of taking the run, she failed to exercise any vigour and allowed the horse to run to the line in last place.

Mr O'Sullivan submitted that Ms Eaton's decision not to take the run was a judgment call and that the error, if it was one, was not culpable. He submitted the Rule was not there to punish an error of judgment.

Mr O'Sullivan emphasised Mr Winks' evidence, in particular that Old Time Rock was two lengths adrift of where the run opened up. He submitted that Ms Eaton assessed that the horse had no capacity to accelerate and take the run. This is why she chose to

move to the outside, he said. He has analysed the race film and concentrated on the fact that the horse was two lengths behind the two horses which parted to enable the potential run.

He submitted that as this was a serious offence, the burden of proof was based on the Briginshaw principle. Therefore, he maintained that the offence could not be made out as it was at worst an error of judgment. I have a difficulty in reconciling Ms Eaton's evidence as to having her horse under restraint and her statement to the Stewards that she chose to ease out and explore other options but even then still failed to ride the horse with any vigour.

The trainer of the horse told the Stewards that he thought that Ms Eaton had made the wrong decision. Ms Eaton told the Stewards that her horse was full of running but she kept it under restraint. She agreed that her approach was very much on the cautious side. She agreed that she had conceded that the race was over and did not use hands-and-heels or use the whip.

I have taken account of all the evidence. I have been assisted in my examination of the race vision by my assessor, Mr Glynn Pretty, a very experienced and successful jockey in Australia and overseas.

I have been assisted by the helpful submissions of Mr O'Sullivan and Mr Santoro. In the end, I find that Ms Eaton's riding was below an acceptable standard and in breach of AR129(2). In summary, I find:-

(1) The horse was not tiring.
(2) It was under restraint from the 300-metre mark and nothing changed.
(3) The run was clearly available.
(4) Ms Eaton used no vigour at any stage.
(5) In particular, even when she moved to the outside, she failed to use appropriate vigour. She did not change her riding style and did not use the whip.
(6) The run was available for about 10 to 12 strides, a distance of at least 80 metres.
(7) Ms Eaton stopped riding and conceded the race.
(8) Had she released the restraint on the horse and used appropriate vigour even after not taking the run, the horse would most likely have improved its position.
(9) This was a culpable error by Ms Eaton and was not a mere error of judgment.
(10) As an experienced rider, she was obliged to ensure that her horse was given a full opportunity and failed to do so.
(11) She failed to at least test the horse by releasing her restraint and trying for the run.

I will now deal with penalty. In my view, the Stewards have correctly reasoned the relevant factors in considering penalty. They have not taken into account anything

which was not appropriate, and they have not failed to take into account any relevant factor.

The starting point of eight weeks was reasonable having regard to the seriousness of the offending.

The discount of 25 per cent was appropriate in the circumstances.

Therefore, the final result, namely six weeks' suspension, is appropriate.

I dismiss both the appeals on conviction and penalty.

I order the refund of the refundable portion of the bond lodged on appeal.

The suspension will commence at midnight on Monday, 4 October 2021.