

# RACING APPEALS TRIBUNAL

RAT 2/15

DATES OF HEARING: FRIDAY, 20 FEBRUARY 2015 AND  
MONDAY, 2 MARCH 2015

TRIBUNAL: PRESIDENT: MR T R ANDERSON QC  
ASSESSOR: MR R BEST  
MR J PETZER, CHAIRMAN OF STEWARDS, AND WITH HIM  
MR M SANTORO, FOR THOROUGHBRED RACING SA LTD  
STEWARDS  
APPELLANT: MR RONALD BELL

IN THE MATTER of an Appeal by **RONALD BELL** against a decision of  
Thoroughbred Racing SA Ltd Stewards.

**BREACH OF RULE:** ARR 137A (3)

Rule 137A The Stewards may penalise any rider who in a race, official trial, jump  
out or track work or elsewhere:

(3) Uses his whip in an excessive, unnecessary or improper manner..

**PENALTY:** SUSPENSION OF LICENCE FOR 2 MONTHS

## **DETERMINATION**

This appeal arises as a result of a suspension imposed by the Stewards for use of  
the whip by the Appellant in an 'excessive, unnecessary or improper manner under  
Australian Rules of Racing 137A (3). The Stewards have only pursued that aspect  
of the charge which relates to the use of the whip 'in an improper manner'.

I have read the transcript taken at the hearing by the Stewards on 7 February 2015, when the alleged incident occurred. In that transcript there is evidence from Mr Bell, summarised very briefly, in that he gave the horse he rode HAILWIN a couple around the bum, but he never hit the horse across the head, and when describing the actual area of the horse that was struck, he said 'Twice behind the saddle'. That was in his evidence to the Stewards, and he has effectively repeated that evidence before me.

Mr Lyons gave evidence before the Stewards and he said he was about 20 metres away, in front of the horse, and he saw Mr Bell use the whip four or five times, but that three were in the vicinity of the horse's head. He described the use of the whip as 'moderate' and that the whip was in the right hand. He said to the Stewards, when questioned, that he did not get it wrong and he saw the jockey hit the horse across the head, but he also saw him hit the horse behind the saddle.

In the Stewards' Inquiry, Mr Cartwright, another jockey, gave evidence but it is fair to say that his evidence does not really help anyone in the Inquiry. Unfortunately he did not see Mr Bell use the whip at all. So, I really cannot take any account of his evidence. It literally does not help.

So then in this Inquiry Mr Bell indicated that he wished to call a witness, Yvonne Forrest, who was the driver of a utility which towed the horse ambulance, and she was on duty at a point towards the place marked on Exhibit 1 by Mr Lyons. Exhibit 1 is Mr Lyons' version of events as to where things happened. I will come back to that in a moment. But in a nutshell, although Miss Forrest was going to give evidence today before me, despite several phone calls she was unable to be contacted although she had told Mr Bell that she was coming. She knew that the hearing was at 10.00 o'clock and so I allowed some time, in fact up until just before 11.00 o'clock before we proceeded without her evidence. Mr Bell wished to tender her statement, and I allowed him to do this, and it became Exhibit 4. The statement, unfortunately, is of limited weight, as I explained to Mr Bell, because it has not been tested in cross-examination, and Mr Petzer, representing the Stewards, told me that he did wish to question Miss Forrest. Notwithstanding that, I allowed the document to be tendered as an exhibit and I will take account of what she says in the statement given that that has to be looked at from the point of view that she was not cross-examined.

The statement effectively says that she saw Mr Bell pulling his horse up and that she saw him exit from the crossing, from the Park's track to the course proper and hit the horse around the rump two or three times, at the same time yelling a lot of abuse at the horse. That point that she describes is probably more likely to be in the area of RB2 marked on Exhibit 1, although it is possible it is anywhere between RB2 to RB1 because as was demonstrated in the video tendered before me, her vision up the main track was considerably limited by the sun visor device that she had placed across the whole of the front windscreen of her utility. That really did restrict her

vision and whatever she saw, and I accept that she did see Mr Bell hit the horse around the rump area, was as I say somewhere between RB2 and RB1.

The significance of the video and the position of the horse float behind her vehicle is that it would have been basically impossible for her to see up the main track to the area marked RB3.

Mr Lyons by use of Exhibit 1 said that the use of the whip on the rump of the horse took place at the point he marked RB1 and that the use of the whip around the head of the horse took place at RB3, which is quite a separate and distinct area from the first point marked RB1.

Mr Bell challenged that in relation to what Mr Lyons had seen and suggested effectively that the incident that Mr Lyons described did not take place at all, namely that there were no blows delivered across the head of the horse and that Mr Lyons was confused as to what happened respectively at RB1 and RB3.

Mr Lyons maintained that there was no confusion and that he had a clear view and that the horse was struck on the rump in a backwards movement with the whip at RB1 but that it was hit across the head in a forward position at RB3.

Now that effectively summarises the evidence that I have got before me, and it comes down, as I discussed during the hearing, to effectively were there two incidents, one at around about RB1 marked on the exhibit and one at about RB3.

The evidence contained in the statement of Miss Forrest does not assist me in relation to the area RB3 because I find that she could not have seen that with the position her vehicle was in and the fact that the large sun visor was covering the whole of the front windscreen.

I am therefore left in the position that I am left with conflicting evidence from Mr Lyons and Mr Bell. I have to resolve that, and I do resolve it in favour of Mr Lyons. Unfortunately I just cannot accept that there were not the two incidents as described by Mr Lyons. I accept him to be an accurate witness and I accept that the two incidents did take place.

Therefore my decision is that the decision of the Stewards should be upheld and that Mr Bell is guilty of using the whip in an improper manner as alleged.

The appeal against the conviction is dismissed.

In my view the penalty imposed by the Stewards is appropriate having regard to the previous incident. The penalty stands as it is.

The appeal against the penalty is also dismissed.

The Appellant will be suspended for two months, less four days. That suspension will commence at midnight 11 March 2015. The suspension will be lifted at midnight on Thursday 7 May 2015.

In relation to the deposit paid on the lodging of the appeal, it is my view the appeal cannot be called frivolous. The refundable portion of the bond will be refunded to the Appellant.

S:\Appeals\2015\2\_BELL Final Determination from DMilne