RACING VICTORIA LIMITED
ACN 096 917 930

RACING APPEALS AND
DISCIPLINARY BOARD

Racing Victoria Limited
www.racingvictoria.net.au

Racing Victoria Centre
400 Epsom Road
Flemington Victoria 3031
Tel: 03 9258 4260
Fax: 03 9258 4707
g.curtis@racingvictoria.net.au
www.racingvictoria.net.au

APPEAL RESULT

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FROM: Registrar – Racing Appeals and Disciplinary Board

DATE: 5 October 2009

SUBJECT: **APPEAL HEARING RESULT – JOCKEY: CRAIG WILLIAMS**

Panel Judge Russell Lewis (Chair), Geoff Ellis, Ron Taylor

Appearances Bruce McGinley, Senior Stipendiary Steward, appeared on behalf of the Stewards.
Des O'Keeffe, Chief Executive VJA, appeared on behalf of Craig Williams.

At Moonee Valley on Wednesday 30 September 2009, jockey Craig Williams pleaded guilty to a charge under the provisions of AR 137A(5)(a)(ii), in that he used his whip on 10 occasions prior to the 100m, 5 more than is permissible.

The charge relating to his ride on *Flying Tessie* in Race 7 the *Transpacific Cleanaway Handicap* (1200m).

Craig Williams had his licence to ride in races suspended for a period to commence midnight Saturday 3 October 2009 and to expire midnight Wednesday 7 October 2009, a total of 4 country meetings.

A Notice of Appeal against **the severity of the penalty** was lodged on Thursday 1 October 2009.

A stay of proceedings was not requested.

DECISION: **Appeal allowed – penalty varied to a fine of $500.**

Georgie Curtis
Registrar - Racing Appeals & Disciplinary Board

TRANSCRIPT OF

PROCEEDINGS

RACING APPEALS AND DISCIPLINARY BOARD

HIS HONOUR JUDGE R.P.L. LEWIS, Chairman
MR G. ELLIS
MR R. TAYLOR

EXTRACT OF PROCEEDINGS

IN THE MATTER OF THE TRANSPACIFIC CLEANAWAY HANDICAP OVER 1200 METRES AT MOONEE VALLEY ON 30 SEPTEMBER 2009

DECISION

JOCKEY: CRAIG WILLIAMS

MELBOURNE

MONDAY, 5 OCTOBER 2009

MR B. McGINLEY appeared on behalf of the Stewards

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

CHAIRMAN: On 30 September 2009, jockey Craig Williams pleaded guilty before the Stewards to a charge laid under Australian Rule of Racing 137A(5)(a)(ii). The particulars of the charge were that prior to the hundred metres at Moonee Valley, Williams used his whip on 10 occasions, five times more than the permissible five strokes.

After taking into account Williams' plea of guilty but giving it limited weight, the Stewards suspended him for four country meetings, commencing midnight 3 October and expiring midnight 7 October. Craig Williams now appeals against that decision on the grounds that the Stewards failed properly to exercise their discretion when arriving at the penalty and that the penalty was inappropriate.

On this appeal, Mr McGinley appeared on behalf of the Stewards and Mr Desmond O'Keeffe appeared on behalf of the appellant.

In arriving at their decision, the Stewards had regard to a document described as Rider Penalty Guidelines For Whip Rule Breaches. In the body of that document, the following appears:

> *To be used as a guide only, with all circumstances of the breach to be considered. Penalties to remain at the discretion of the stewards.*

Below that sentence are set out in tabulated form the list of penalties for

specific offences. It transpired during the course of the hearing that in a media release dated 23 September 2009, the following statement appears at page 2:

> *The Board has approved this as a trial which will run to the 1st of February 2010. During this trial period, Stewards have been instructed to closely police the matter in which this discretion is exercised with appropriate penalties imposed for deliberate overuse.*

This exhortation concerning discretion appears to contradict what appears in the guidelines document and so much was admitted by Mr McGinley.

In coming to their decision to penalise the appellant by suspending him for four country meetings, the Stewards ignored the appellant's previous record of whip breach, having been instructed to do so by the chief steward, Mr Bailey. Thus, the Stewards were obliged to treat the appellant as a first offender and were obliged to take into account all the circumstances and mitigating factors, principal among which were the plea of guilty and the fact that apart from one strike in the last hundred metres, Williams did not use the whip again.

The case for the appellant is that the Stewards' proper exercise of discretion was swamped by the application of so-called guideline penalties and therefore the penalty was excessive. Further, it was argued by the appellant that on the same day, the same panel of Stewards penalised jockey Damien Oliver by fining him $400 as a first offender for use of the whip prior to the

hundred metres four times more than was permitted, that is, one less than Williams. Oliver also pleaded guilty to that charge.

Thus, the appellant submits that whilst each case should be decided upon its own facts and circumstances, there is such an obvious inconsistency between Oliver's penalty and the appellant's penalty that the penalty imposed in relation to the appellant cannot stand.

It is well known that this new and controversial use-of-whip legislation has been the subject of considerable debate and amendment. In reaching a decision, the RAD Board found it instructive and helpful to have regard to the background to the introduction of the legislation.

The justification for and the rationale behind the changes to the whip rules are contained in material issued by the Australian Racing Board. In particular, I refer to a media release dated 19 March 2009 and an undated document entitled Changes to Whip Rules, which appears to have been published about the same time.

In paragraph 1 of that latter document, the ARB declares that it has a responsibility inter alia to protect the welfare of horses and to maximise public confidence. Obviously the welfare of horses relates to the type of whip which has been used in the past. On page 2, paragraph 1 of the media release, the ARB chairman, Mr Bentley said that:

The best scientific advice available to us suggests padded whips do not inflict pain or injury and that is the outcome we want.

As we now know, padded whips have been introduced and therefore, as a matter of logic, it would seem that the welfare of the horse has been accommodated. However, in paragraph 4 of the undated document, the ARB states:

The advice from Stewards was that it was important to make other changes, limiting the manner and circumstances of whip use so to effect the substantial change to the public presentation of racing.

In other words, it is abundantly clear that "other changes" related to the matter of perception. Then on page 2, paragraph 5 of the media release, the following appears:

In this respect, the April 2009 meeting of the National Chairmen of Stewards has been instructed to examine the development of a national template for penalties of breaches of controls on use of the whip.

Such a template was brought into being but because of amendments to the whip rules, has now become irrelevant. However, when it was first introduced, debate raged over whether it was a template as such, in effect mandating penalties, or whether, as the Stewards claim, it simply represented guidelines to

which the Stewards could or would have reference whilst exercising their discretion. The most recent edition of Rider Penalty Guidelines For Whip Rule Breaches has not resolved the debate.

As I have already indicated, the whip rules relating to how often and where a horse may be hit have perception as their genesis. Bearing in mind rule AR.137A(5)(a)(ii), it would appear to follow that hitting a horse in a forehand manner up to five times before the hundred metres satisfies the requirements of the protection of the image of racing or, if you like, "the public presentation of racing", but hitting a horse six times or more does not, and offends public sensibilities and tarnishes the image of racing.

Now, as a result of a further amendment, the adverse perception concept has evaporated in relation to whip use in the last hundred metres, since a rider may have unrestricted use of the whip in that final and busiest part of the race, subject to the long-existing rule of AR.137A(3).

Whatever the validity or merit of these observations, the fact remains that there is now in existence for use by the Stewards a document essentially in tabulated form prescribing penalties, subject, it is said, to exercise of discretion. The penalties only relate to overuse of the whip up to the hundred metres. If the perception argument has any substance, it does seem odd that the authorities would not include the last hundred metres as the linchpin of their legislative intent.

Putting to one side the vexed question of whether the penalty guidelines are in reality a template, where only lip service is paid to discretion, the Board is more concerned with the penalties the Stewards have prescribed, depending on the extent of the breach. As chairman of the Board, I have a particular concern that the guidelines prescribed by the Stewards offend a fundamental principle of sentencing, which is the principle of proportionality or, if you like, the principle that the punishment should fit the crime.

Now, it is beyond argument that the vast majority of riding offences relate to charges of careless riding which are substantive offences. It is a golden rule of race riding that when crossing the running of other horses in a race, you must be two lengths clear. The reasons for this rule are manifest. They relate to the safety of riders and their mounts. It is impossible to predict the ultimate consequences which might flow from careless riding. Sometimes an act of carelessness may result in catastrophic consequences; sometimes an act of carelessness may result in minor interference or harm to others, but nevertheless be the result of carelessness.

Almost invariably, the penalties for careless riding is a period of suspension. Since the act of carelessness is one of degree, the Stewards, when considering penalty, characterise the carelessness as being low, medium or high, and within those categories they build in parameters. So for careless riding in the low range, the period of suspension is, generally speaking, seven to 10 meetings; medium range, 10 to 14 meetings; high range, 14 meetings plus. I say "generally speaking" because in some cases before the RAD Board, all

Stewards do not agree on the parameters.

Then in order to achieve proportionality, the Stewards look at the circumstances and any mitigating factors, including a plea of guilty, the rider's previous record, good or bad, contribution by other riders, the time of year when the offence occurred and matters personal to the particular rider.

Demonstrably, offences relating to the safety of rider and horse are far more serious than whip-related offences which are related to perception. If one considers the guidelines which are presently in place, some of the penalties for exceeding the permitted five strokes prior to the hundred metres are on a par with or greater than penalties for careless riding. For a first offence, being an additional one to two strokes, the guideline penalty is suspension up to one week, which is the equivalent of a careless riding offence in the low range. For a third offence, being an additional three to four strokes, the guideline penalty is also suspension up to one week. For a fourth offence, an additional three to four strokes attracts a $600 fine, plus suspension of up to one week. For a fifth offence, an additional three to four strokes attracts a $600 fine, plus suspension for up to two weeks, which is the equivalent of the lower register of the high range for careless riding. The guideline penalties for an additional five or more strokes range from an equivalent offence in the low range of careless riding to an equivalent offence in the high range of careless riding to an equivalent offence for reckless riding.

In my opinion, the penalty guidelines for whip-related offences prior to the hundred metres offend the principle of proportionality and distort the notion of punishment fitting the crime. Can it be seriously argued that the penalty for hitting a horse in excess of the permitted number of strikes with a whip that causes neither pain nor injury to the animal may be equated to a penalty imposed for careless riding where the safety of riders and their mounts are involved? In my opinion, such a proposition is absurd.

Obviously, breaches of AR.137A, in particular 137A(5)(a)(ii), will involve punishment. However, in my opinion the correct approach, save in an extreme case, is for the rider to incur a financial penalty in the form of a fine. The amount of the fine would be entirely within the discretion of the Stewards, taking into account the facts and circumstances and considerations such as the number of impermissible strikes prior to the hundred metres, the behaviour of a rider thereafter, the rider's previous history of whip-related offences, whether the horse concerned earned prizemoney, the quality of the race and the prizemoney available, and any mitigating considerations, including a plea of guilty and matters personal to the rider.

In the present case, I am of the opinion that the penalty of suspension for four meetings is manifestly excessive. First, for reasons I have endeavoured to explain, a period of suspension is inappropriate, except for an extreme case. Further, mitigating factors in this case are the plea of guilty to which the Stewards gave insufficient weight, absence of any relevant previous offences and the fact that the appellant did not use the whip, save for one stroke in the

last hundred metres. Further, the penalties are not fair, having regard to the penalty imposed in relation to Damien Oliver.

I would allow the appeal and vary the penalty to a fine of $500.

MR ELLIS: I would like to add, on behalf of Mr Taylor and myself, that the Board's decision is unanimous and we fully endorse the judgment in its entirety.

END OF EXTRACT