

## Appeal decision

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**Date:** 26 March 2014

**Code of racing:** Thoroughbred

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**Appeal panel:** Judge W Carter (chair), Mr P James and Mr N Thomson

**Appearances:** Apprentice jockey Ruby Ride appeared on her own behalf.  
Mr M Knibbs, stipendiary steward, appeared on behalf of the stewards.

**Decision being appealed:** \$500 fine – AR175(q).

**Appeal result:** Appeal upheld.

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### **Extract of proceedings – in the matter of conduct in the scales area after the weigh-in following Race 3 at Eagle Farm on 14 March 2014. Apprentice jockey: Ruby Ride**

THE CHAIRMAN: On Saturday 15 March 2014 at Eagle Farm, apprentice jockey Ms Ride was charged by stewards with improper conduct AR175(q). The particulars of the conduct alleged to be improper and relied on by stewards were:

*“that after having made comment of the track you (Ms Ride) then walked away from the scales and loudly and clearly audibly to me (Mr Knibbs), used the words ‘fuck off’ in reference to comments that I (Mr Knibbs) made.”*

Mr Knibbs, an experienced and competent steward, was on the day acting as the chairman of the stewards panel. The other members of the panel were Messrs Aurisch and Gillard.

The Stewards inquired into the alleged improper conduct and thereupon charged Ms Ride with a breach of the rule. After hearing the relevant evidence provided only by Mr Knibbs and Ms Ride, the panel deliberated and found her guilty. She was fined \$500.

At the hearing of the appeal (26 March 2014) Ms Ride was not represented. Mr Knibbs appeared for the stewards. Prior to hearing submissions, the question of Ms Ride being represented was raised with her by the board. She advised that Mr Hanna, her Master, had become unavailable and that she was prepared to argue her case which was simply that she denied using the offending words, as alleged by Mr Knibbs. In the stewards inquiry, she had already persistently denied using the relevant words. Both in the Stewards Room and at the appeal the question was essentially one of credibility – Mr Knibbs alleged that she did it; Ms Ride denied it.

Prior to hearing submissions at the appeal, the board invited Mr Knibbs to discuss its concerns in relation to the procedure used by the panel; in particular that Mr Knibbs was allegedly the only person who had heard the offending words; it was he who reported this event to the other members of the panel; as chairman he convened the Inquiry and his was the only evidence on behalf of the stewards; as chairman he charged Ms Ride with the relevant offence and, finally, having deliberated her guilt or otherwise with his colleagues, he then advised Ms Ride that the stewards were satisfied of her guilt and imposed the penalty.

The *Racing Act 2002*, amended by the *Racing and Other Legislation Amendment Act 2012*, established this board as the appellate body (section 149B) and it has operated as such since 1 August 2013. Section 149ZE provides that the board:

- a) must observe natural justice; and
- b) is not bound by the rules of evidence; and
- c) may inform itself in any way it considers appropriate; and
- d) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.

It has long been held that administrative law requires that stewards act in accordance with natural justice principles. Bias or the perception of bias must therefore be avoided.

At the outset it seemed to us that the circumstances of this case raised an issue of perceived bias on the part of Mr Knibbs in that not only was his the only evidence put forward by the stewards to support the alleged breach of the rules, there was a credibility issue to be resolved, given Ms Ride's denial. Nonetheless Mr Knibbs maintained this position as chair of the panel which deliberated upon Ms Ride's guilt or otherwise and which ultimately found her guilty and imposed a penalty upon her.

It was on this account that the board sought submissions from Mr Knibbs before considering the merits of the appeal; the core issue being whether in the circumstances of this case Mr Knibbs ought to have withdrawn himself from the panel and to have taken no part in the decision-making process. He submitted:

- that he did not regard the words allegedly spoken as addressed to him, nor that the words were intended to offend him, nor were they directed at him on a personal basis
- that he heard the words and simply reported their use by Ms Ride to his colleagues on the basis that irrespective of to whom they were directed there had prima facie been a breach of the rules, and
- that his participation in the stewards' process was no different from cases where stewards give evidence of what they saw in the course of a running and handling inquiry or in one concerned with careless or other offending riding by a jockey.

We say at once that we do not consider the procedures adopted by stewards in this case to be supportable by the last submission. In the cases referred to by Mr Knibbs it has long been held that in those cases, it is permissible for stewards to give evidence about and to adjudicate upon matters which they had seen when pursuing their stewarding duties in the course of a race. This issue was considered by the Privy Council in *Calvin v Carr* [1980] AC 574 where it was held that in such cases stewards were entitled to use the evidence of what they saw and of their experience when adjudicating on matters relating to a race. Further it was said that the appeal process was an essentially domestic proceeding "*in which*

*experience and opinion as to what is in the interests of racing as a whole plays a large part and in which the standards are those which have come to be accepted over the history of this sporting activity”.*

This, in our view, is a very different case.

Turning to the other submissions of Mr Knibbs, we are satisfied that what was said was not an impersonal or stray comment. If the offending words were used (and it is unnecessary for us to form a concluded view), they were immediately preceded by a robust exchange between steward and jockey of such a kind as was not unlikely to provoke comment by the jockey. This is supported by the evidence at the stewards inquiry but more cogently by the particulars of the charge which Mr Knibbs gave to Ms Ride when charging her with a breach of the rule. We will deal with that in a moment.

It is common ground that when weighing in the jockey made a disparaging remark about the state of the Eagle Farm track. This led to a response by Mr Knibbs who said words to this effect:

- “If the track doesn’t suit you, it’s best that you don’t ride here”.
- “You ride at Toowoomba and Chinchilla and Bullamakanka and you want to come to town and bag the tracks here”.
- “If it (the track) doesn’t suit you, stay at Dalby and Goondiwindi, stay at Chinchilla”.
- “Can we expect to see you not accept rides at Eagle Farm?”.

The fact that the alleged offensive remark was a response to the steward’s comments is expressly supported by the particulars of the charge:

- *“that after having made comment of the track you then walked away from the scales area and loudly and clearly audibly to me used the words ‘fuck off’ in reference to comments that I made”.*

We are comfortably satisfied that immediately after this robust exchange about the track which did include a “personal” element the steward alleges that he heard the words spoken by the jockey. The latter who concedes the details of the earlier exchange persistently has denied both at the inquiry and at the appeal hearing that she spoke the words the subject of charge.

In these circumstances it was incumbent upon Mr Knibbs, having reported to his colleagues, to then withdraw and allow Messrs Aurisch and Gillard to determine the proper process.

Alternatively, once it became apparent to the stewards that the jockey denied using the words and that there was a critical conflict in testimony, it was essential that Mr Knibbs retire from any adjudication and allow the other two stewards to determine the matter.

By not retiring and continuing to adjudicate, the perception of bias in the fact finding process was overwhelming. Accordingly, the process miscarried and Ms Ride was not afforded natural justice in the Stewards Room.

It is our view that, in any case, where there is an evidentiary conflict in a case of this kind between steward and licensee in relation to any key issue of fact, that the steward should withdraw and engage in the process only as a witness as required. The remaining panel would thereupon assume the obligation of adjudication.

We would allow the appeal and quash the conviction and penalty.

Further right of appeal information: The appellant and the stewards may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **14 days of the date of this decision**. Information in relation to appeals to QCAT may be obtained by telephone on (07) 3247 3302 or via the Internet at [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au)