

# RACING APPEALS TRIBUNAL

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RAT 7/06

**DATE:** TUESDAY, 30 APRIL  
2006

**TRIBUNAL: PRESIDENT:** MR G LE POIDEVIN

**ASSESSOR:** MR J JOHNSON

**THOROUGHBRED RACING SA LTD:**  
MR J PETZER, DEPUTY CHAIRMAN OF STEWARDS

**MR S WARD:**  
APPEARING FOR THOROUGHBRED RACING SA LTD

**APPELLANT:** MR D TOURNEUR

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

**BREACH OF RULE:** ARR 135 (b)

*Rule 135 (b):*

*"The rider of every horse shall take all reasonable and permissible measures throughout the race to ensure that his horse is given full opportunity to win or to obtain the best possible place in the field".*

**PENALTY:** SUSPENSION OF LICENCE FOR 10 MEETINGS

## DETERMINATION

This is an appeal from jockey Dominic Tourneur in respect to a charge of failing to take all reasonable and permissible measures throughout the race, etcetera, a breach of 135 (b), arising from a race at Cheltenham on the 1<sup>st</sup> of April this year. He was found guilty of the offence, and in short the issue which arises is failure to use the whip on the horse, it having been beaten by a long neck.

I start by saying this is not an easy matter. Matters of this nature can never, I suspect, be easy. However, the contention of the Stewards is that viewed objectively he could have, and should have used the whip. It was reasonable and permissible for him to do so. On the other hand Mr Tourneur says his horse was giving him everything under vigorous hands and heels riding, and he felt it was unnecessary to use the whip.

I repeat what was said by Mr T Hughes QC when analysing this rule in his judgment in the matter of Munce:

“The task of administering this rule is not always easy. One must keep it clearly in mind that on its true interpretation it is not designed to punish a jockey unless on the whole of the evidence in the case the Tribunal considering a charge under the rule is comfortably satisfied that the person charged was guilty of conduct and that all the relevant circumstances fell below the level of objective judgment reasonably to be expected of a jockey in the position of the person charged in relation to the particular race.

The relevant circumstances in such a case may be numerous: they include the seniority and experience of the person charged.

They include the competitive pressure under which the person charged was riding in the particular race.

They included any practical necessity for the person charged to make a sudden decision between alternative courses of action.

The rule is not designed to punish jockeys who make errors of judgment unless those errors are culpable by reference to the criteria that I have described”.

I am of the view that the appeal should be dismissed. I take the view the Stewards were right in convicting Mr Tourneur with failing to exercise all reasonable measures in that he failed to utilise the whip. I have come to this conclusion having observed several videos of the race, other videos of other rides, and carefully perused the transcript. In short, he had the ultimate winner on his outside, and he elected to ride his mount hands and heels. Rather he could and should have given his mount a crack or two with the whip to fully test her. I think any reasonable member of the public watching the race would have been surprised by his failure to do so. I think he had every opportunity to do so. The fact that he felt his horse was giving him everything is not the test. The test is an objective one, and as I am reminded by counsel in this matter, it is a matter of perception and appearance, as observed by the Tasmanian Racing Appeals Tribunal in the matter of Michaelides. I agree with the Stewards the Appellant rode in a manner which departed dramatically and blantly from an earlier winning ride on the same mount. I have not overlooked an earlier winning ride at Murray Bridge on another horse, where the Appellant only used hands and heels, because it was a winning ride.

For these reasons the appeal is dismissed.

The original suspension, was from 3 May 2006 to 21 May 2006, and resulted in suspension for three city meetings. In an endeavour to give some parity, I suspend the Appellant from midnight Saturday, 3 June 2006 until midnight Saturday, 17 June 2006. In the result this is for seven meetings including three city meetings which was the core of the previous suspension. Although it is a lesser number of meetings, it is a comparable period, and more importantly it is the same number of city meetings. I exercise my discretion slightly differently to the Stewards, notwithstanding I agree it is a serious offence, but I think some moderation in the tariff is appropriate.

The bond will be refunded.