

Appeal J McDonald v RIU 20 January 2012 - Decision dated 20 January 2012

Rules:

[638\(1\)\(d\)](#)

Repondent(s)/Other parties:

Mr J Oatham - on behalf of the Racing Integrity Unit

Name(s):

Mr M McKechnie - Appeal Tribunal Chairman, Mr R Seabrook - Appeal Tribunal Member, Mr P Vela - Advocate for Mr McDonald, Mr G Cossey - Manager of Mr McDonald, Mr S Dye - Jockey, Mr A Coles - Stipendiary Steward, Mr M Williamson - Registrar

Decisions:

JAMES MCDONALD v NZ RACING INTEGRITY UNIT

Heard at Matamata Racecourse, Matamata

Friday 20th January 2012

APPEALS TRIBUNAL: Mr Murray McKechnie, Chairman and Mr Richard Seabrook

PRESENT: Mr James McDonald, Licensed Jockey, Mr Peter Vela, Advocate for Mr McDonald, Mr Gary Cossey, Manager for Mr McDonald,

Mr Shane Dye, Jockey, Mr John Oatham, Stipendiary Steward, Mr Alan Coles, Stipendiary Steward, Mr Matthew Williamson, Registrar

Decision of Appeals Tribunal

1. Introduction

1.1 This is an appeal by licensed jockey James McDonald following a hearing at the Waikato Racing Club meeting at Te Rapa on 12 January 2012. Mr McDonald was charged with careless riding under Rule 638(1)(d). His mount in Race 8 was *Keep Winning*. Mr McDonald pleaded not guilty to the charge. It should be recorded that he had on that day been charged with careless riding in an earlier race, had pleaded guilty and on that occasion had been suspended for three (3) days.

1.2 The Judicial Committee on the day found the charge proved and suspended Mr McDonald for a further five (5) days. As a result of those cumulative suspensions Mr McDonald would not have been able to ride until towards the end of the month. When this appeal was lodged, both against the guilty finding and the penalty, there was a telephone conference to schedule this hearing today and at that conference it was accepted that a stay should be put in place to cover racing on Saturday 21 January, that is to say tomorrow, where Mr McDonald has commitments already notified .

1.3 The careless riding charge arose from events soon after the start in Race 8. It was a 2100 metre race. It was said that as a result of Mr McDonald's riding of the horse *Keep Winning* interference was caused to the horse *Coffee Club* ridden by Mr Shirahama and to the horse *Gallivant* ridden by Mr Waddell.

2. Discussion

2.1 It is appropriate to say right now, before we go into any further detail, the view we take is that the appeal must be dismissed. However we take a very different view of what occurred from the view taken by the Judicial Committee on the day. Our interpretation of what took place and the respective levels of culpability is significantly different from that arrived at by the Judicial Committee and this will reflect in the penalty which we will come to after these reasons for dismissing the appeal have been set out.

2.2 It is our view that the initial interference to the horses *Coffee Club* and *Gallivant* came from the horse *Roamin* ridden by Mr Innes. At the time that this occurred there was a significant gap between Mr McDonald's horse *Keep Winning* and *Roamin*. We are not persuaded that at this time *Keep Winning* had taken *Roamin*'s line or was dictating that horse's line. There is no evidence that the horse *Roamin* was intimidated by the presence of *Keep Winning*. A close study of the films both back, front and side on persuades us that there was interference to *Coffee Club* and *Gallivant* before any movement by *Keep Winning* had effected the position being taken by *Roamin*. In our judgment as *Keep Winning* continued forward it did after a time take *Roamin*'s line when approximately only $\frac{3}{4}$ length clear of that horse. By that time, in our view, the interference to *Coffee Club* and *Gallivant* was already underway and was caused by the horse *Roamin*. That later part of *Keep Winning*'s forward move of which we have just spoken compounded the

interference which was already occurring to *Coffee Club* and *Gallivant*. But in our view the significant aspect of this is that the interference to *Coffee Club* and *Gallivant* did not in the first instance arise from the actions of Mr McDonald on *Keep Winning*. In crossing when he did later in the manoeuvre only $\frac{3}{4}$ length clear of *Roamin* this served to compound the interference which in our judgment was already well underway. This compounding effect came about because at that time *Keep Winning* was not sufficiently clear of the horse *Roamin*.

2.3 It is our judgment that the principal cause of the undoubted interference caused to *Coffee Club* and *Gallivant* was not the conduct of Mr McDonald but rather had to do with the riding of the horse *Roamin*. The jockey who rode that horse was not charged with any breach of the rules. This view, is as stated earlier, significantly different from the view arrived at by the raceday Judicial Committee.

2.4 We have been assisted in reaching this decision by helpful submissions from Mr Peter Vela and Mr John Oatham. We have also heard from Mr Shane Dye the well known international jockey. There was placed before us the transcript of the hearing of the protest which took place after the race. What occurred was that the horse *Roamin ridden* by Mr Innes narrowly won the race ahead of the horse *Gallivant* ridden by Mr Waddell and the second placed horse protested against the first placed horse. The raceday Judicial Committee dismissed the protest. The transcript of that protest hearing was of limited assistance to us particularly because the evidence given by some of the persons at that protest hearing is not consistent with what was said when the careless riding charge against Mr McDonald was determined later in the day.

Penalty:

3. Penalty

3.1 We now turn to the question of penalty. It is apparent for the reasons set out above that in our view the breach by Mr McDonald was not as serious as was determined by the raceday Judicial Committee. Indeed at the risk of reiteration in our view the primary cause of the undoubted interference lay not with Mr McDonald's conduct but with the conduct of another jockey. In these circumstances we consider that the breach which occurred was at the very lower end of the scale of seriousness.

3.2 Mr Vela urged upon us a number of mitigating considerations in relation to penalty in the event that the appeal was dismissed. Amongst those were Mr McDonald's very good riding record in New Zealand. We were told that he had not been suspended for any period in the previous twelve (12) months save for the suspension imposed earlier on the very same day. Mr Oatham quite properly drew attention to some periods of suspension in Australia. It is well known to the Appeal Tribunal how successful Mr McDonald has been in recent years and his good record and general conduct are also matters well known to the Tribunal.

3.3 As noted earlier there has been a stay in place which permits Mr McDonald to ride tomorrow at Trentham. In our view for the reasons explained a suspension of three (3) days would be appropriate and that will therefore take effect at the conclusion of racing on Saturday 21 January (tomorrow) and will conclude at the conclusion of racing on Thursday 26 January 2012. In fixing that date we note that Mr McDonald told the Judicial Committee on the day that he was a national rider and might be offered rides at Gore on the 26 January. We have proceeded on the footing that this is still the position so the three (3) suspensions will be the 23rd Wellington, 25th Hastings and 26th Gore.

3.4 The appeal has not succeeded but it had substantive merit and the view which this Tribunal has taken is significantly different from that of the raceday Judicial Committee. In those circumstances it is not appropriate to make a costs award against Mr McDonald. Ordinarily an unsuccessful appellant is required to make a contribution towards the costs of both the RIU and the Judicial Control Authority but for the reasons just explained that will not be the position here. There will be no costs award in any direction.

3.5 We thank you all gentlemen for your assistance. That concludes the hearing.

Dated this 20th Day of January 2012

Murray McKechnie
Chairman

Signed pursuant to Rule 920(5)