

CITATION: *Lacy v Queensland Racing Integrity Commission* [2018] QCAT 106

PARTIES: Stephanie Maree Lacy
(Applicant)
v
Queensland Racing Integrity Commission
(Respondent)

APPLICATION NUMBER: OCR167-17

MATTER TYPE: Occupational regulation matters

HEARING DATE: 16 January 2018

HEARD AT: Brisbane

DECISION OF: **Member Paratz**

DELIVERED ON: 5 April 2018

DELIVERED AT: Brisbane

ORDERS MADE:

- 1. The Internal Review decision of the Queensland Racing Integrity Commission made on 7 August 2017, to confirm the decision of the Queensland Racing Integrity Commission made on 23 July 2017, to suspend Stephanie Maree Lacy for a period of 4 weeks for breaching AR 135(b) of the Australian Rules of Racing, is set aside.**
- 2. A decision is substituted that Stephanie Maree Lacy did not breach AR 135(b) of the Australian Rules of Racing in her riding of Kulaba on 23 July 2017.**

CATCHWORDS: PROFESSIONS AND TRADES – LICENSING OR REGULATION OF OTHER PROFESSIONS, TRADES OR CALLINGS – where a jockey was found guilty of a breach of AR 135(b) of the Australian Rules of Racing for failing to ride her horse with vigour – where the jockey said the horse was hanging out – where no veterinary inspection was conducted after the race on that day – where an eye injury to the horse was observed the next day

The Australian Rules of Racing, AR 135(b)

APPEARANCES:

APPLICANT: Mr G Hutchinson, Solicitor, Butler McDermott
Lawyers

RESPONDENT: Ms A Turner, In-house Counsel

REASONS FOR DECISION

- [1] Stephanie Maree Lacy was the jockey of the horse 'Kulaba' in Race 7 conducted by the Sunshine Coast Turf Club at Caloundra in Queensland on 23 July 2017.
- [2] The horse finished fourth. After the race, a Stewards' inquiry was held, and Ms Lacy was found guilty of a charge under AR 135(b) of failing to take all reasonable and permissible measures to ensure her mount was given full opportunity to win or be placed in the best possible position in the event, and was suspended for 4 weeks.
- [3] The day after the race, the horse was found to have a significant injury to its right eye.
- [4] Ms Lacy sought an Internal Review of the decision, and on the 7 August 2017, the Queensland Racing Integrity Commission ('the Commission') made a decision confirming the Stewards' decision.
- [5] Ms Lacy filed an Application to Review the Internal Review decision, together with an Application to Stay the decision, in the Tribunal on 8 August 2017.
- [6] The Tribunal made an Order by Consent on 9 August 2017, staying the Internal Review decision until the hearing of the application was determined.
- [7] The Application was heard in an oral hearing before me on 16 January 2018.

The QRIC Evidence

- [8] The Commission called Mr James Williamson as its sole witness.
- [9] Mr Williamson was the Chair of the Stewards' inquiry. He is a Stipendiary Steward, and has been Chief Steward at the Sunshine Coast Turf Club since 2009.
- [10] Mr Williamson commented on a video of the race which was played at the hearing. He said that his observation was that at the 400 metre mark there was an opportunity to urge the horse ahead, as the horse in front, 'Tycoon Tyke' moved away. He said that he saw no sign of the horse 'hanging out'.

- [11] He described 'hanging out' as a horse not proceeding as straight as the rider would like.
- [12] He said that he could see no trouble with Ms Lacy keeping the horse straight, and that it later moved into the rail, which it wouldn't do if it was hanging out. He said that in the final 200 metres there was no vigour shown.
- [13] He thought it was not likely that Kulaba was struck by a clod of dirt and grass, as the track was a 'good 3', which is not very wet, and there were not significant clods. However, he could not rule out the possibility of a clod hitting the horse on the right eye.
- [14] He said that at the 500-metre mark the horse had 'blundered' and dropped its head. He said this was more than likely when the horse changed its stride. He did not believe that the dropping of the horse's head could be because of it being hit by a clod.
- [15] Mr Williams played a video of another race at Gatton on 12 January 2018 which showed the horse 'Red Dalton', which he said displayed 'hanging out' and was difficult to ride.
- [16] He said that Ms Lacey did advise that the horse was 'hanging out' when she returned to the scales.
- [17] He said that the Stewards were very busy on that day, as there was an urgent inquiry involving two other jockeys who had an altercation, and that there was no veterinary advice obtained as to Kulaba after the race.
- [18] He said that there was nothing about the betting market in relation to the race that caused the Stewards any concern.

Evidence called on behalf of Ms Lacy

Ms Lacy

- [19] Ms Lacy said that she was an apprentice jockey and had ridden Kulaba on track work multiple times before the race.
- [20] She said that the horse felt like it come off the bridle when it dipped, and had not changed stride, and 'laid out' after he dipped. She said there were more clods than would usually be expected on a good track. She said it was her home track and she knew it well.
- [21] She said that she was 'sitting high' to the 300-metre mark, but when she asked him to go after the 300-metre mark, he was hanging out. She said she did not have issues with him hanging out before the 300-metre mark.
- [22] She said that she attempted to put pressure on the horse from the 300-metre mark, but was concerned for his well-being and decided to just look after him. She described it as a personal decision as to how the horse was feeling. She said the horse was hanging out and trying to run to the left.

- [23] She said that she had other rides on that day, and that this was a totally different ride. When she got back to the scales she told the trainer and the Steward that the horse had been hanging out.
- [24] She said the horse was never going to do better than fourth, and that she looked after him.
- [25] She said that the horse was hit in the face with a clod during the race, and that there was no way for a horse to get the injury which was observed the following day without being hit by a clod. She could not give an exact time when the horse was hit.
- [26] She described him as a big heavy horse, and that she thought the video showed her struggling to control the horse from hanging out. She said that she was the one riding the horse, and to her, he was 'hanging out heavy'.

John Symons

- [27] Mr Symons was the trainer. He said he was disappointed with the horse's performance.
- [28] He said that when Ms Lacy came in she said the horse didn't feel right. He said that the Stewards asked Ms Lacy to speak to them. He said that he thought the inquiry was 'a load of baloney' and he told them that.
- [29] He said that after the race the horse went back to his box, and there was nothing there to injure him. He said that he didn't believe the horse injured himself in the box. He said the race was the only time the injury could have happened, and he would say without a doubt that it happened in the race.
- [30] He said that the injury explains why the horse was 'laying' as a horse will run away from where he is hurting. He said he had been training horses since 1980.

Sheila Laxon

- [31] Ms Laxon said she was one of the trainers of Kulaba. She said she had been an amateur rider in the 1980's, had been a trainer since 1997, and was the first female trainer of a Melbourne Cup winner.
- [32] She saw the race. She said that the horse jumped out and travelled mid-field, but towards home did not look very happy.
- [33] She did not see the horse after the race on that day, but early the next morning at 4.00am she went to the stables and saw the horse had an extremely serious eye injury. She took photos of the injury, which were tendered in evidence.
- [34] She said that she had seen a number of horses come back from that track with that type of injury, but this was the worst she had seen. She thought it could have been caused by a hit from a loose shoe, or another jockey's whip, or a clod coming up.

- [35] She said that she called the vet, Dr Doherty, who came out. She said that such an injury, if not treated, could cause blindness.
- [36] She said that obviously something went amiss in the race, and the horse would have been running away.
- [37] She watched the video in the hearing and said you could see the horse was not happy. She said that Ms Lacy 'did quite a job to ride him hands and heels'.
- [38] In her written statement she made the following comments:¹

There is absolutely no doubt in my mind that Stephanie, being the great horse woman she is, was aware that Kulaba had gone amiss and, although she, at all times, was riding to the best of her ability to ensure that Kulaba would race as well as he could under the circumstances, she would have been foolish to have tried to have ridden him out with an unknown problem occurring. In fact, it would have been dangerous to herself, the horse and other riders in the race for her to have ridden him in any other way than how she rode him over the last 600m.

Dr Doherty

- [39] Dr Doherty had written a report dated 13 August 2017, which was filed. He was not required for cross-examination.
- [40] He said that he was an equine veterinarian with in excess of 27 years' experience, 18 of which were in intensive equine practice both as a clinical and regulatory racetrack veterinarian.
- [41] He described the injury to Kulaba as a corneal ulcer, and said it would be unlikely that it would have been picked up immediately after the race or even several hours later unless a detailed ophthalmic examination including corneal staining was performed.
- [42] He notes as to the cause and effect of such ulcers as follows:

Corneal ulcers such as the one suffered by Kulaba are a relatively common injury due to kick back from other horses in the race. Certain racing surfaces or if the grass has been recently top dressed with sand etc may result in a higher incidence of injury. These types of ulcers are usually due to very small particles of sand or soil hitting the corneal surface. The initial impact will induce a 'menacing response' in that the horse would tend to shy or move away from the insult as would be expected, and the offending particle is then usually washed from the surface of the cornea by the tears into the conjunctiva from where it is expelled. This menace reflex may well have accounted for the horse shifting outwards in the race away from the offending insult.

¹ Statement Sheila Laxon, 15 September 2017.

[43] He noted as to the course of development of such an ulcer as follows:

Once the superficial structure of the cornea is damaged it is no longer water resistant and the tears are absorbed through the damaged layer into the underlying cells of the corneal stroma. This result is swelling and rupture of these cells and resultant corneal swelling and pain. This process will take several hours hence there would be no clinical signs immediately post race or for several hours. In fact the normal progression in this process is that the horse is only observed the following morning showing signs of discomfort namely blepharospasm, excessively tear production, holding the eye closed and sometime anterior uveitis which is extremely painful and takes many hours to develop.

[44] He commented that the assumption made in the internal review that the ulcer did not occur during the race due to lack of clinical signs immediately or several hours post race are inherently flawed and cannot be substantiated on a scientific basis. He also commented that the assumption that the injury occurred in the stable rather than during the running of the race was again questionable, and though not impossible, was highly unlikely based on the facts outlined, and the fact that the horse had actually raced that day.

Discussion

[45] Ms Lacy was charged under AR 135(b) of the Australian Rules of Racing which provides as follows:

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 obtain the best possible place in the field.

[46] The Commission has pointed to the conduct of Ms Lacy as the jockey over the last 400 metres of the race, and has submitted that she did not ride the horse with vigour in that part of the race.

[47] Ms Lacy concedes that she did not press the horse over the last 400 metres, and says she did this because she felt there was something wrong with the horse which was trying to move to the left, and she was concerned to take care of it.

[48] The next day the horse was found to have a serious eye injury. If the eye injury was caused during the race, the behaviour of the horse as described by Ms Lacy, and the course of development of its eye injury, is entirely consistent with the expert opinion of Dr Doherty, which was unchallenged.

[49] The Stewards based their findings upon their observation of the race and subsequent viewings of videos of it, as well as evidence heard at the inquiry from Ms Lacy and Mr Symons.

[50] I accept the evidence of Ms Lacy. I found her to be a straightforward and entirely believable witness. She expressed an acute and intuitive

awareness of the behaviour of the horse, and a concern for the welfare of the horse that impressed me as genuine and admirable.

- [51] Ms Lacy's version of events was accepted and supported by the trainer Mr Symons who gave her emphatic support from the time of the end of the race, and at the Stewards' inquiry following it.
- [52] I was particularly impressed by the evidence of Ms Laxon. She presented as a woman of considerable experience, capability and insight. She praised Ms Lacy's capacity as a horsewoman, and was completely accepting of Ms Lacy's version of events.
- [53] I am satisfied that Ms Lacy's actions in riding the horse over the last 400 metres were prompted by a well-developed awareness of the behaviour of the horse, and an appropriate consideration for the welfare of the horse. I do not consider that Ms Lacy in any way failed to have proper regard to the requirement for a jockey to competitively press her horse.
- [54] I find that it was most likely that the horse was struck on the right eye by a flying clod at some time in the last 600 metres of the race, and responded by moving to the left.
- [55] I find that Ms Lacy did her best to control the horse in a firm but humane manner once it began to hang out, and that her actions in not pressing the horse thereafter were appropriate, reasonable and in the best interests of the horse.
- [56] I accept that the horse was not in a position to win the race or do better than fourth, as described by Ms Lacy, once the injury occurred and the horse began to hang out and become difficult to control.
- [57] I do not find that the riding of Ms Lacy contravened AR 135(b), as no action of hers deprived the horse of a full opportunity to win or obtain the best possible place that was available to the horse in the circumstances.
- [58] I set aside the decision of the Internal Review made on 7 August 2017 and substitute a decision that Ms Lacy did not breach AR 135(b) of the Australian Rules of Racing in her riding of Kulaba on 23 July 2017.