

## Appeal decision

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**Date:** 4 September 2014

**Code of racing:** Thoroughbred

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**Appeal panel:** Mr B Miller (Chair), Mr P James and Mr G Casey.

**Appearances:** Mr J E Murdoch QC appeared on behalf of jockey Michael Hellyer.  
Mr D Aurisch, Stipendiary Steward, appeared on behalf of the stewards.

**Decision being appealed:** Suspension of licence to ride in races for a period of six weeks  
– AR135(b).

**Appeal result:** Appeal upheld.

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### **Extract of proceedings – in the matter of the Bundaberg Distilling Co Benchmark 75 Handicap over 1200 metres at Eagle Farm on 30 July 2014. Jockey: Michael Hellyer**

THE CHAIRMAN: The appellant Michael Hellyer was charged under Rule 135(b) of the Australian Rules of Racing which states:

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

At a stewards' inquiry convened on Wednesday 30 July and subsequently adjourned to 19 August 2014 and then 20 August 2014, the appellant was questioned as to his riding tactics adopted aboard Beau Boy over the distance of 2200 metres when the horse was ridden from the barriers, after slightly missing a start, and slapped up with the whip to take a forward position and then continued to travel forwards attempting to challenge and at one stage to race adjacent to the then leader in the race Adenarus. The stewards were concerned that the jockey had to work hard from the wide gate, but from near the mile mark when settling outside of Adenarus the jockey then seemed to apply significant pressure to his mount and attempted to get the lead off that horse.

It was apparent that the stewards who officiated at the meeting were cognisant of the racing pattern of both horses and in particular were aware that Adenarus the top weight was a front runner. Steward Gillard agreed that he did not have major concerns with Beau Boy being ridden hard early and going forward at that time. However, he did have concerns coming into the back straight when Beau Boy persisted in pressuring Adenarus and continued to do so for the length of the back straight. It is apparent that between the 1600 metre mark and the 1000 metre mark or near thereto, Jockey Hellyer did urge his mount forward in an

attempt to take the lead. The film of the race showed that just prior to the 1000 metre mark, apprentice jockey Orman reacted to the challenge and dug his horse up. In doing so, Adenarus responded and eased away from Beau Boy. From that point on, Jockey Hellyer did not persist in his endeavours.

The stewards were concerned at the initial stages that Jockey Hellyer had urged his horse forward at a speed that was, in their opinion, unjustified. In fact, it became apparent that the stewards believed that the first 1000 metres of the race was covered at a very fast clip which was at one time suggested to have been 58 seconds. That time was later identified as having been inaccurate and the true time for the first 1000 metres was identified at a little more than 60 seconds. The stewards of course have an obligation and a duty to ensure that each horse is given every available opportunity to win or obtain the best possible place in a race. A jockey has that same obligation and if the jockey does not do so, then he will breach Rule 135(b). That of course presupposes that the jockey did not intend for the horse not to win as were that to be the position, then a far more serious charge under Rule 135(a) would have been appropriate.

Nevertheless, during the course of the investigation, Jockey Hellyer made it plain that he had never ridden the horse before and had been retained by the trainer Mr Kropp. The trainer gave evidence on the first day of the inquiry that the horse was lazy out of the barriers and would only do its best when ridden aggressively. Mr Kropp was at pains to identify to the stewards that the horse had failed dismally when not ridden by a strong jockey and ridden aggressively towards the front and placed under pressure.

The inquiry was adjourned and evidence then taken from Mr Kelly the owner of the horse. He also confirmed that he had discussed the matter with the trainer and had wanted an aggressive ride by the jockey and for that reason the trainer and owner had identified that Michael Hellyer should be retained as the jockey. It is not relevant at this point in time, but perhaps interesting to note that a very senior jockey Michael Cahill had ridden the horse the start before and been given similar instructions but had not been able to goad the horse aggressively enough for it to take up a forward position. Both trainer and owner were strongly supportive of the ride of Michael Hellyer, notwithstanding the fact that the horse did not perform to its best in the concluding stages and in fact did drop out of the race from near the 1000 metre mark to finish in the last four or thereabouts.

The facts were, according to Mr Murdoch QC, counsel for the appellant, straightforward and non-contentious. His view was that the jockey followed his instructions to the letter and rode vigorously in an attempt to get the horse to take the lead and he persisted in doing so until near the 1000 metre mark. The issue for the stewards was whether or not that jockey should have shown more initiative in realising that his horse had no prospects of attaining the lead. The stewards in fact believed that it would have been far more appropriate for the jockey to have realised that the instructions given by the trainer were inappropriate and

believed that he should have restrained the horse to give the horse the best opportunity to win.

In hindsight it is easy to be aware of what should and should not have occurred. Whether or not the horse would have finished in a better position had it been restrained is something that one will never know but the board members were shown films of other races in which the horse had performed well in winning over similar distances to that in which it was engaged on this occasion. In each of those races, the horse was drawn closer to the inside (whereas on this occasion the horse was drawn near the outside of the line of horses) and whilst ridden forward, the horse responded well winning on each occasion. The stewards believe that the performance of the jockey on Beau Boy satisfied the criteria that the rider's conduct was culpable in the sense that, objectively judged, they found it to be blameworthy. They did so notwithstanding the evidence that had been presented from the trainer and the owner. It is that dichotomy that concerns this board to a great degree. The question is should the jockey, because of the seniority of his position and experience, be compelled to disregard definite instruction on how he should ride this horse bearing in mind that this was the first time he was so riding same?

After much deliberation, this board has come to the inevitable conclusion that it would have been improper for the jockey to disregard entirely the instruction given to him. He did ride the horse aggressively which was a requirement made of him by the trainer and owner. He did also persist in riding the horse forward as he had been instructed to do because of the waywardness and lazy habit of the horse. This board is of the opinion that the jockey may have erred in perhaps overdoing the instruction but the simple fact is that prior to reaching the 1000 metre mark he eased the horse to allow it to have a breather. There is some suggestion that the horse, some days later, manifested signs of an abscess which may have had an impact on how it raced. That may have had some bearing on the horse's poor performance at the end but it certainly does appear to the members of this board that the time that the horse ran over the distance was not a sole contributing factor to its failure to finish off the race. It had been seen to run at a faster clip and complete distances of a like nature in faster times more comfortably than it did this time. The stewards opined that it being ridden from the barriers in the manner in which it was may have contributed to that issue but all of the stewards agreed that there seemed to be nothing untoward or wrong with the early forward urgings of jockey Hellyer from the barrier. In the circumstances, this board allows the appeal as it does not believe that the performance of the jockey was culpable or blameworthy.

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)