

## Appeal decision

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**Hearing date:** 2 December 2015

**Decision date:** 2 December 2015

**Code of racing:** Thoroughbred

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**Appeal panel:** Mr B. Miller (chair), Mr G. Casey and Mr D. Kays.

**Appearances:** Mr M. Tutt, solicitor, appeared on behalf of jockey Matheson. Mr I. Brown, stipendiary steward, appeared on behalf of the stewards.

**Decision being appealed:** Three months suspension of licence to ride in races – AR135(b).

**Appeal result:** Upheld.

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### **Extract of proceedings—in the matter of the Attwood Marshall Lawyers Maiden Handicap over 1,200 metres at the Gold Coast on 17 October 2015: Jockey K. Matheson.**

THE CHAIRMAN: Jockey Kirk Matheson was the rider of Cocoa Bar when it performed at the Gold Coast Turf Club. We have seen the film of events leading up to the race. We are told that the horse was fractious before the start and a viewing of the film indicates that it missed the start at the relevant time when it was hopeful by the evidence given by Mr Herne, the trainer, and by jockey Matheson, that the horse would have taken up a position more forward than that which it was able to eventually obtain. The stewards don't take any exception to the failure of the horse to jump properly. That is a racing incident per se. As a result of that incident the horse was racing last and second-last to the inside of four other horses, the leading horse ridden by Rolls, and the horse in the 3-back position ridden by jockey Hellyer. Matheson on Cocoa Bar was in a position four back on the rails.

The stewards allege that the evidence supports, and indeed the film supports, the fact that rounding home turn there was a run available to the outside of jockey Hellyer which jockey Matheson failed to take, and that they believe is a culpable error on his part and one which infringes 135(b) of the rules.

It is the opinion of this Board that explanation given by Matheson is a reasonable explanation in the circumstances. In the view of this Board, Hellyer, the jockey, was on a

horse that wasn't racing as tractably as what could be envisaged, but the fact that jockey Matheson did not take the run or proceed with the run to the outside to improve his position would not, in the opinion of this Board, warrant a charge being levelled against him.

Be that as it may, there is a second element to the charge, and that occurs at or between the 100 and 150 metre mark or just after the 200 metre mark when a run opened, and there is no doubt, in the opinion of this Board, that jockey Matheson could have if he persisted obtained that run.

The question to be decided of course is whether his failure to do so is a breach of AR135(b), and at the same time whether had he taken the run it would have improved his position more than what occurred. In other words, would he have been successful in overturning a significant reduction of six to seven lengths in arrears to something closer where he would be able to challenge with the first, second and third horses that were there.

This Board is of the opinion that jockey Matheson did fail to take the run in question. It is however not prepared to identify that it was sufficient to justify a breach of Rule 135(b).

Rule 135(b) has been adequately provided, advertised and constructed, and many jurists and tribunals have identified what is appropriate in respect to what are the circumstances which would constitute a breach. In particular, the decision in Cassidy affirmed the principles that were enunciated in Raedecker and Queensland Racing, and they are identified in the submissions by Mr Tutt, but we will quote them here.

"The relevant circumstances in such a case maybe numerous. They include the seniority and experience of the person charged. They include the competitive pressure under which a person charged that was riding in a particular race. They include any practical necessity for the person charged to make a sudden decision between alternative forms or courses of action. The rule is not designed to punish jockeys who make errors of judgement unless those errors are culpable by reference to the criteria that has been proscribed."

The important element of that determination is that it is for the determination of this Board as to whether this is an error of judgement which is culpable. There is no doubt in our opinion that there was an error of judgement. He should have taken the run but he would not have improved his position anymore than what was reasonable. He did not, in the opinion of this Board, exceed the parameters of the rules of 135(b).

In our view, the charges should be dismissed and the appeal should be allowed.