

RACING APPEAL PANEL OF NSW

APPEAL OF BRENTON AVDULLA

Appearances: Mr M Van Gestel, Chairman of Stewards, for Racing NSW

Mr P O'Sullivan, Solicitor, for the Appellant

Panel: Mr R Beasley SC, Presiding Member; Mr J Murphy; Mr J Nicholson

REASONS FOR DECISION (1/11/18)

1. The appellant, Brendon Avdulla, rode the horse Evalina in Race 1 at Randwick on Saturday 27 October 2018. The horse started second favourite at \$4.
2. Following the race, the Stewards conducted an Inquiry into the appellant's ride. He was subsequently charged with careless riding, a breach of AR 137(a). The particulars of the charge, are as follows:

"We specify careless riding and the careless riding being at the Australian Turf Club meeting at Randwick on 27 October that in race 1, as the rider of Evalina, that near the 1200 metres you did shift your mount, resulting in it making contact with Nicco Lad and taking it from its rightful running and taking it towards the heels of Thunderous Strike, resulting in Nicco Lad being checked away from the heels of Thunderous Strike.

3. The appellant pleaded not guilty to breach of the rule. The Stewards found him in breach however, and suspended his licence to ride for 4 race meetings (by application of the careless riding penalty guidelines). That penalty commences on Midnight 4 November, and unfortunately takes in the Melbourne Cup carnival.
4. The appellant has appealed against the finding of breach, and the severity of penalty imposed. He was represented today by Mr P O'Sullivan, solicitor. The Stewards were represented by Mr M Van Gestel, the Chairman of Stewards.

5. The appeal book, including transcript of the Stewards' Inquiry, was tendered and marked as exhibit A, and film of the race, which was shown to the Panel many times, became exhibit B. The appellant also gave oral evidence, carefully explaining in detail with use of the film why in his view he did not breach the rule.
6. Mr Van Gestel's submission, consistent with the particulars of the charge, was that Mr Avdulla on Evalina made deliberate contact with Mr Berry's horse Nicco Lad. This caused that horse to over-race, lose its rightful running, and become hampered to a degree and put in a dangerous position, close behind the heels of Thunderous Strike, ridden by Jeff Lloyd.
7. Mr Avdulla disagreed. He said he had made contact with Nicco Lad, but this was no more than competitive ridding. Had Mr Lloyd not shifted out on Thunderous strike, no problem would have occurred. He also asserted that Nicco Lad was at least 2 lengths behind Thunderous Strike when he commenced to pressure or contact or ride competitively against that horse.
8. Mr O'Sullivan, emphasising his client's evidence, said that the appellant had not engaged in careless riding, and focused on 3 central points:
 - If Lloyd on Thunderous Strike had not shifted out, no charge would have been laid.
 - The incident was impacted by a slackening of the pace of the race
 - Nicco Lad's poor race manners – the horse over-races – was the main reason it ran up close behind Thunderous strike.

In totality, Mr O'Sullivan submitted, Mr Avdulla did no more than ride competitively, and when he commenced to do so, could not have anticipated either Mr Lloyd shifting out or the sudden drop in the pace.

9. The Panel does not agree. Yes, Mr Lloyd did shift out a half a horse on his mount, perhaps a touch more. The pace may have slowed. Our observations of the film however are that Mr Avdulla aggressively pushed his horse into Mr Berry's. That caused that horse to over-race, and it was placed in a position of danger close behind

Thunderous Strike. As we said, the pace of the race may have slowed, and Mr Lloyd did shift a bit, but these are matters a jockey should consider when riding in close proximity to other horses and commencing an aggressive manoeuvre of making contact with another horse.

10. The Panel finds the breach proven. We also agree that the appropriate grade is a medium level of carelessness, not low.
11. As to Penalty, we are not bound by the template, but would only depart from it in special circumstances. The only concern we have is that 3 suspensions have been counted against the appellant, including a 1 meeting suspension for “interference” in Japan on 2 September. This impacts the issue of further reduction of penalty on the Guideline. While we are of the view this probably does relate to a careless riding offence, we have no particulars of the offence, and note that given a one meeting penalty only was imposed, this virtually equates to a reprimand. Clearly the carelessness involved must have been low. Exercising our discretion, we will ignore it for the purposes of penalising the appellant. This makes him entitled under the guideline to a further 15 % discount.
12. Mr O’Sullivan submitted that more than a 25% discount should be applied for the fact that the appellant will miss all but day 1 of the Melbourne Cup carnival. While it is very unfortunate for a capable rider like the appellant, who has a good record, to be suspended at this time of year, we think a 25% discount is relatively generous, and one we would adopt.
13. Adding in a further 15% discount to the other discounts – 25% for important meetings, and 15% for contribution – results in a 55% discount on the 7-meeting base penalty. As such, we would impose a 3-meeting suspension in lieu of 4.
14. The orders of the panel are:
 1. Appeal against finding of breach of AR 137(a) dismissed.
 2. Finding of breach of AR 137(a) confirmed.
 3. Appeal against severity of penalty allowed.

4. In lieu of a 4-meeting suspension, a 3-meeting suspension is imposed.
5. Appeal deposit forfeited.