

RACING APPEAL PANEL OF NEW SOUTH WALES

APPEAL OF GLEN BOSS

Panel: Mr R Beasley SC, Presiding Member; Mr J Murphy; Ms S Skeggs

Appearances: Racing NSW: Mr Marc Van Gestel, Chairman of Stewards

Appellant: Mr Paul O'Sullivan, Solicitor

Date of hearing: 4 November 2019

Date of decision: 4 November 2019

REASONS FOR DECISION

Principal Member, Mr R Beasley SC

Introduction

1. On Saturday, 26 October 2019, Jockey Glen Boss rode the horse Attention Run in the Clubs NSW Tattersalls Cup run over 2400m at Randwick Racecourse. Attention Run finished 6th in the race, starting at \$4.40.
2. Following the race, the Stewards conducted an inquiry into the appellant's ride. Evidence was given at that inquiry immediately after the race. The appellant was ultimately charged with a breach of AR 131(a) of the Australian Rules of Racing, which is the careless riding rule. The particulars of the charge were as follows:

"...near the 350m you permitted [Attention Run] to shift in when not clear of Re Edit, resulting Re Edit losing its rightful running at that point and having to be severely checked by its rider Brenton Avdulla."
3. Mr Boss pleaded guilty to a breach of the rule.

4. In assessing penalty, the Stewards graded the carelessness as “medium”, and the consequences as “severe check”. Under the Penalty Guidelines for Careless Riding (**Penalty Guidelines**), this resulted in a base penalty of a ten-meeting suspension. The Stewards then applied a ten percent discount for Mr Boss’s guilty plea, and a further thirty percent reduction because any penalty covers upcoming “feature” race meetings. This resulted in a reduction of the base suspension down to a six-meeting suspension, which started on Sunday 3 November 2019, and expires on Saturday 16 November 2019.
5. Mr Boss has now appealed against the severity of penalty imposed upon him. He is represented with leave today by Mr Paul O’Sullivan, solicitor. Racing NSW is represented by the Chairman of Stewards, Mr Marc Van Gestel.
6. On the appeal, the appeal book, which includes the transcript of the Stewards’ Inquiry, was admitted as Exhibit A. Film of the race was marked as Exhibit B. Mr Boss also gave oral evidence.
7. At the commencement of the appeal, Mr O’Sullivan indicated that there was no challenge to the Stewards grading of the carelessness here as “medium”, nor was there any dispute that the consequence of the appellant’s conduct was a “severe check” to Re Edit. There thus was no challenge to a base suspension of ten-meetings under the Penalty Guidelines.
8. Two matters however were raised by Mr O’Sullivan as reasons for a reduction in the penalty imposed beyond the forty percent reduction applied by the Stewards.

Careless riding in Singapore

9. The first matter was that a discount should have been applied for the appellant’s good record, rather than this being a neutral factor. The evidence was that since returning to ride in Australia in May this year (having ridden in Singapore for three and a half

years), the appellant has an unblemished record. In that time, he has had approximately 250 rides.

10. What the Stewards however considered for the purposes of the Penalty Guideline, was four careless riding suspensions imposed on the appellant in Singapore between January and May this year.
11. Mr Boss's evidence about those suspensions was that the Singapore careless riding rule (MRA rule 44(9)(A)(ii)), is imposed more strictly than the careless riding rule is by NSW Stewards, who deal with AR 131(a). His view was that for some of the rides he has been found to have engaged in careless riding in Singapore, his actions would not have resulted in a finding of careless riding in NSW. He also said that in his view the Stewards in Singapore make a relatively high number of findings of breach of the careless riding rule.
12. Mr O'Sullivan's submission was that taking this evidence into account, together with the appellant's unblemished recent record in NSW, a discount of at least ten percent should be applied for the appellant's good record.

Discount for feature meetings

13. The second ground of appeal was based on the feature races which are caught by the suspension. It seems agreed that as a result of his suspension, the appellant has lost the ride on one of the current Melbourne Cup favourites. Further, a six-meeting suspension means the appellant will be unable to ride on Melbourne Cup Day, Oaks Day, or Stakes Day next Saturday. Mr Boss's evidence was that he had a full book of rides for Tuesday and Thursday, and expected to have several rides on Saturday. The Panel accepts that evidence.
14. Bearing in mind that the meetings described above are obviously very significant meetings in the Australian racing calendar, Mr O'Sullivan's submission was that at least a forty percent discount should have been applied to the penalty for this. Taking into account a ten percent reduction in penalty for plea, and ten percent for the "Singapore issue", Mr O'Sullivan was contending for at least a sixty percent

reduction of the ten-meeting base penalty, rather than the forty percent total reduction applied by the Stewards.

15. Mr Van Gestel submitted that in relation to the Singapore issue, the Stewards' here have always considered rule breaches from other states of Australia, and that taking into account findings of carelessness in Singapore is no more than a logical extension of that. As to the significance of the meetings coming up in Melbourne, Mr Van Gestel pointed to the relatively large discount – thirty percent - already applied, which is consistent with the long-term approach of Stewards, and consistent with the Panel's reasoning in the *Appeal of Tye Angland* (12/10/18).

Panel resolution – Singapore suspensions

16. In relation to the submissions made in respect to how the Panel should treat the evidence concerning the careless riding suspensions incurred by the appellant in Singapore earlier this year, the Panel has reached a unanimous view. While we respect the opinion of an experienced and successful rider like the appellant, his view alone is not enough for the Panel to form the opinion that Stewards in Singapore approach careless riding in a materially different way to how the Stewards in this state apply the careless riding rule under the Australian rules. We have insufficient evidence before us to responsibly make such a finding. In the circumstances, we consider the Stewards' approach here was logical, and aids consistency. We too consider that we should take into account the appellant's record in Singapore.

Panel resolution - feature race discount

17. As to the issue of the significance of the meetings this week, the Panel has not reached a unanimous view. Before discussing that, it is important to note these matters upon which all members of the Panel agree.
18. The purpose of imposing penalties for careless riding is not to punish jockeys. It is to uphold the image and integrity of the sport. In particular, it is to uphold the principle that safety is paramount. Racing, like many other sports, is one that contains its own inherent and obvious dangers. The careless riding rule is part of how those charged

with regulating the sport emphasise the need for safety to be a matter of prime concern.

19. Mr Murphy and I are of the view that the thirty percent discount applied by Stewards for upcoming feature races is appropriate. We appreciate that the Melbourne Cup might be described in some circles as the most significant day of racing in Australia, and perhaps it is. Oaks Day and Stakes Day are also important race meetings. We understand the significance to a jockey of being suspended for such race days. These are hugely important days in the career of riders. They are significant beyond even the financial rewards that are potentially available. But this is why a thirty percent discount was applied by the Stewards, in addition to the ten percent discount for plea. That is a significant discount, and one we also consider to be appropriate. Mr Murphy and I agree then that a 6-meeting suspension is appropriate. Our view about this is reinforced given that we consider the carelessness here to be in the higher range of medium, and noting the severity of the interference caused.

20. Ms Skeggs has a different view. Noting – correctly – that the Panel is not bound by the Penalty Guidelines, she is of the view that the appropriate penalty to be imposed on the appellant is one of 3-meetings, allowing him to ride on Saturday 9 November. She has not reached this view by applying maths, but through a consideration of these factors:

(a) the appellant's unblemished record since May.

(b) the fact that the appellant has lost the ride on a horse with what is considered a real chance in the Melbourne Cup, and that is one of the current favourites; and

(c) the significance of missing rides on both Melbourne Cup Day, and Oaks Day, which include several Group 1 Races.

21. Bearing these matters in mind, while still considering the Penalty Guidelines, Ms Skeggs feels a 3-meeting suspension is appropriate.

22. By majority (Presiding Member and Mr Murphy; Ms Skeggs disagreeing) the Panel makes these orders:

1. Finding of breach of AR 131(a) confirmed.
2. Appeal against severity of penalty dismissed.
3. Penalty of a 6-meeting suspension confirmed. That suspension commenced on 3 November 2019, and expires on Saturday 16 November 2019, on which day the appellant may ride.
4. Appeal deposit forfeited.