

RACING NEW SOUTH WALES APPEAL PANEL

IN THE MATTER OF THE APPEAL OF LICENSED JOCKEY AARON BULLOCK

Appeal Panel: **Mr R. Beasley SC, Presiding Member; Mrs J. Foley; Mr C. Tuck**

Appearances: **Racing New South Wales: Mr S. Railton, Deputy Chairman of Stewards**
Appellant: Mr P. O’Sullivan, Solicitor

Date of Hearing: **4 February 2022**

Date of Reasons: **8 February 2022**

REASONS FOR DECISION

Introduction

1. On 6 December 2021, Licensed Jockey Aaron Bullock (the Appellant) was found to have breached AR131(a) in relation to “improper riding” alleged to have occurred during Race 2 run at the Tuncurry Racecourse that day. The particulars alleged by the Stewards were as follows:

“The particulars of the charge are that you, Aaron Bullock, as the rider of *Fairey Barracuda* out of race 2 the 4 year old + maiden handicap 1,200m at the Tuncurry Racecourse on Monday 6/12/2021, did engage in improper riding in that approaching 1,000m, when attempting to manoeuvre *Belleplaine*, ridden by Andrew Gibbons, closer to the running rail, you raised your right elbow, which made contact with the body of A. Gibbons.”

2. The Appellant pleaded not guilty to the breach of the rule, but having been found guilty by the Stewards his licence to ride in races was suspended for one month.
3. The Appellant has appealed to the Panel against the finding of breach of the rule and against the severity of the penalty imposed upon him. He was represented by Mr P. O’Sullivan, solicitor, while the Stewards were represented by Mr S. Railton, the Deputy Chairman of Stewards.

4. An Appeal Book containing transcript of the Stewards' Inquiry was tendered in evidence, as was film of the race. Both licensed jockey Mr Andrew Gibbons, and the Appellant, gave oral evidence.

Evidence

5. Both riders are highly experienced. The Appellant, while only in his early thirties, has been riding professionally since his late teens, and rides in hundreds of races each year. Mr Gibbons has been a licenced jockey for over twenty-five years, and also rides in hundreds of races each year. From a reading of the transcript of the Stewards' Inquiry, a view could be taken that the Appellant and Mr Gibbons are not the best of friends. That available impression was not explored in the evidence however, and so was ignored by the Panel in its decision making.
6. In his oral evidence to the Panel, Mr Gibbons was adamant that at about the 1,000m mark the Appellant, who was racing to his outside and was seeking to force his horse closer to the fence, jabbed him with his right elbow in the bicep and then for a period of about three strides placed pressure with his elbow on Mr Gibbons' chest.
7. There was support for Mr Gibbons' version of events from the film of the race. It clearly shows the Appellant with a raised right elbow at the relevant time, when he is ridding right next to Mr Gibbons. The film is evidence that would support a strong suspicion that the Appellant had used his elbow in the improper fashion alleged by the Stewards. That film evidence was of course supplemented by the evidence of Mr Gibbons. It is fair to say that Mr Gibbons was as emphatic with the Stewards on race day as he was with the Panel that the Appellant had elbowed him in the manner he alleged. His conviction that this had occurred was not shaken in cross-examination.
8. The Appellant denied using his elbow in the manner alleged by Mr Gibbons. He did, however, accept one aspect of the particulars put against him. He readily agreed that he was trying to manoeuvre Mr Gibbons' mount closer to the running rail. He was on the favourite in the race and Mr Gibbons was on an outsider. He said he engaged in competitive but lawful riding to attempt to manoeuvre Mr Gibbons' horse closer to the rails. As an experienced jockey, he said this was really the only course available to him as the "rails is the shortest way home". From both the transcript at the

Stewards' Inquiry, and from his evidence before the Panel, it was clear that the Appellant was to a degree frustrated that Mr Gibbons was not of his own accord moving his mount closer to the running rails.

9. As to the film, the Appellant admitted that his elbow appears raised at about the 1,000m mark. He was adamant, however, he had not made contact with Mr Gibbons. He explained his raised right elbow partly from the fact that he is a "wingy" rider, and partly because he was bracing because a number of horses to his outside were drifting into the fence onto him, and he had to move closer to the fence to relieve some of that pressure, or at least the potential pressure as he saw it.

Resolution

10. The improper riding rule has been considered previously by the Panel in *The Appeal of Licensed Jockey Dean Holland* (5 October 2018). In that decision, the Panel accepted that the test for improper riding was as set out by the Racing Appeals and Disciplinary Board of Victoria in *The Appeal of Schofield* (26/9/14) where the Board said:

"The Board accepts Dr Pannam's characterisation that it involves an element of deliberate or intentional conduct which creates danger or potential for danger."

11. Mr O'Sullivan for the Appellant made the submission that, in addition to preferring the evidence of the Appellant, the burden of proof was also relevant. He submitted that improper riding was a more serious charge than careless riding under the same rule, and the Panel, if in doubt as to who was telling the truth between Mr Gibbons and the Appellant, could not be comfortably satisfied that the particulars to the charge had been made out.

Resolution

12. The Panel has carefully considered the evidence of the Appellant and Mr Gibbons in this appeal. A consideration of that evidence, combined with viewing the film, leaves us comfortably satisfied that contact was made by the Appellant's elbow with Mr Gibbons in the manner that Mr Gibbons said it was and in the manner particularised by the Stewards. We would have entertained the possibility that the contact was

accidental, but the Appellant was adamant that not even accidental contact had been made. His explanations about being a “wingy” rider and of bracing because of outside horses as an explanation for his raised elbow were not particularly convincing. In any event, we prefer the evidence of Mr Gibbons in combination with the evidence of the film. We are comfortably satisfied that the Appellant has deliberately made contact with his elbow with Mr Gibbons which at least created the potential for danger, and hence we are comfortably satisfied that breach of the rule has been established. The appeal against breach of the rule is dismissed.

13. While the Appellant’s actions were potentially dangerous, and the use of the elbow in this manner cannot possibly be condoned and must be the subject of sanction under the Rules, it does not appear to us that much actual danger was (fortunately) caused to Mr Gibbons. The Panel has heard many appeals involving the careless riding rule where more actual danger has been caused to horse and rider.
14. While we do not consider that the four-week penalty imposed by the Stewards is excessive, we consider the more appropriate penalty to be a suspension of the Appellant’s licence to ride for 3 weeks. The Panel therefore makes the following orders:
 - (1) Appeal against breach of AR131(a) (“improper riding”) dismissed.
 - (2) Finding of breach of AR131(a) confirmed.
 - (3) Appeal against severity of penalty allowed.
 - (4) In lieu of a one-month suspension, the Appellant’s licence to ride in races is suspended for 3 weeks. That suspension is to commence on 8 February 2022, and expires on 1 March 2022 on which day the Appellant may ride.
 - (5) Appeal deposit forfeited.