

RACING NEW SOUTH WALES

APPEAL PANEL

19 February 2016

MR R CLUGSTON — PRINCIPAL MEMBER
MR J FLETCHER
MR K LANGBY

IN THE MATTER OF THE APPEAL OF
JAMES INNES

REASONS FOR DECISION

CHAIRMAN: This is an appeal by licensed apprentice jockey James Innes (hereinafter referred to as “the Appellant”) against a finding of guilt and the penalty imposed by Stewards at the Archer Racecourse Nowra on 11 January 2016 in respect of a breach of “improper riding” under AR 137(a). That rule provides that:

“Any rider may be penalised if, in the opinion of the Stewards

(a) He is guilty of careless, reckless, improper, incompetent or foul riding”.

The particulars of the charge were that as the rider of *Appeals* in Race 5 the Kinghorn Motor Group Maiden Handicap over 1400 metres at Nowra Racecourse on 11 January 2016 the Appellant did passing the 150 metres deliberately extend his right hand carrying his whip towards the left leg of Grant Buckley the rider of *Summer Forever* resulting in his whip improperly making contact with Grant Buckley’s left leg.

The Appellant entered a plea of not guilty to the charge before the Stewards however the charge was found proved and the Appellant’s licence was suspended for a period of three (3) weeks to commence on Thursday 21 January 2016 and to expire on Thursday 11 February 2016 on which day he may ride. The Appellant was granted a stay of proceedings on 13 January 2016 until further order of the Panel.

The Appellant maintained his plea of not guilty to the charge in the proceedings before the Panel. Consequently, this appeal is a rehearing on the questions of guilt and penalty. The Stewards were represented in the proceedings before the Panel by Mr R

Murrihy, Chairman of Stewards and Mr R Whyburn, Solicitor, appeared for and with the Appellant by leave. The transcript of the Stewards' inquiry conducted at the Nowra Racecourse on 11 January 2016 and the hearing of the charge which took place on the same day and the video recording of the race in question have been admitted into evidence in the proceedings before the Panel.

The undisputed facts are that approaching the home turn in the race in question *Appeals* (ridden by the Appellant) and *Summer Forever* (ridden by G Buckley) were both travelling in a rearward position in a field of fourteen (14) horses. As the field entered the straight both horses continued to travel at the rear of the field in a level position with *Appeals* travelling about five (5) horses wider on the track than *Summer Forever*. At that point of the race the Appellant struck his mount twice with the whip whilst carrying it in his left hand after which *Appeals* shifted in towards the other horse. Thereafter the Appellant moved the whip from his left hand to his right hand and wielded his whip three (3) times, the first strike contacting his horse, the second strike contacting G Buckley's left leg in the area of the knee and the third striking his horse. Both horses then travelled abreast of each other to the winning post as the two (2) riders verbally communicated with each other. The issue in this appeal is whether the evidence supports a finding that the Appellant intentionally struck jockey G Buckley with his whip.

The Stewards' inquiry opened on race day on 11 January 2016 in the presence of Appellant, jockey G Buckley and licensed trainer G Hickman who was the trainer of *Appeals* and who was caring for the Appellant on the day with the permission of his master, trainer Mr J O'Shea. The Stewards indicated from the outset that they had concerns regarding the Appellant's whip action in the home straight. Those concerns were expressed by the inquiry Chairman, Steward Mr J Walshe, who said (at page 2 lines 42-47):

"I also advise all the parties that this is a matter of significant seriousness, so you should be aware of that. To define more succinctly the matter that we are inquiring into, I have indicated that it was an incident passing the 150 metres. What we are inquiring into, App Innes, is your action with your right arm and, specifically, the whip that was carried in your right hand and the proximity to Grant Buckley's mount, *Summer Forever*. Are you clear on that?"

Evidence was taken from jockey G Buckley. His version was given in response to a series of questions put to him by Mr Walshe as follows (at pages 2 and 3 lines 64-80):

"**Q:** And for some distance passing the 150 metres you were not aware of anything unusual with App Innes' whip?"

A: No, not really, sir. Like sure, he hit me. I've been hit that many times in races and I just didn't think anything of it. I was going out the back door and I was just minding my own business.

Q: When you say you were hit, where were you contacted? Where did you feel it touch you?

A: Just on my leg. It just brushed on my leg.

Q: And you are looking down to your left leg?

A: Yes.

Q: And what part of that leg, Grant?

A: Yes, he just brushed me down the leg.

Q: The lower leg, beneath the knee, or—

A: Probably beneath the knee I suppose, yes.

Q: How would you describe the contact?

A: It was very slight; just sort of a brush. Like I said, that happens at every race.”

Jockey Buckley gave further evidence that after being struck with the Appellant's whip the Appellant said “sorry mate” and they then had a conversation to the effect that each of their mounts was “a slow one”.

The Appellant was questioned extensively by Mr Walshe in relation to his manner of riding in the straight. The initial comment made by the Appellant was as follows (at page 5 lines 128-132):

“Well my horse was obviously going nowhere. It started to wander in; I pulled it through, which I've been instructed under the boss to practice. I gave it one and nearly lost it. I threw a wonky one in and then hit it again and then sat up and said, ‘Sorry, Buck, nearly dropped the stick.’ Then we started talking about what we said. That's about it. It was bobbing up and down.”

The Appellant then conceded that his whip had made contact with jockey Buckley's left knee. After that concession was made the following exchange took place between the Appellant and Mr Walshe (at page 6 lines 166-170):

“**Q:** I put the question to you: Did you deliberately extend your arm out to Grant Buckley? Did you attempt to make contact with him? I am not making any assumption that there was any animosity with Grant Buckley, but playfully making contact with Grant Buckley?”

A: No, sir.”

The Appellant was then questioned by Mr Walshe in relation to the position of his right elbow as follows (at page 8 lines 218-239):

Q: Just here at 03.43, what do you say in relation to your elbow? I am talking about the upper part of your arm from your shoulder to your elbow, in terms of that action being a normal action in the drawing of the whip. What do you say in respect of that?

A: It's different because I've got a different hand movement for the stick.

Q: It's different. So you do concede—my point being, does your elbow come out further away from your body than your usual whip—

A: Than my natural action? Yes sir.

Q: It does, so you concede that.

A: Yes.

Q: So why would that be the case?

A: The stick is actually floating in my hand. That is what I'm trying to say.

Q: All right. Do you believe, looking at the video, that your whip is, in fact, floating?

A: Just rewind it a bit. Up there, it's not even my stick's length away from Grant. I didn't hack anything. I'm not sure obviously (inaudible), but I'm telling you when the stick was near lost I've gone, regathered and the next stride I've gone back to my normal hit. We are second last and last.

Q: If we are to look at the action of your whip at 00.83, and you do concede that there is a different action with your elbow—

A: Yes, well my elbow comes out naturally with my hip. But the second one was obviously more exaggerated as I was losing grip of my whip.

Q: And when did you regather the whip in your hand?

A: When I've swung it back round for the second hit."

Evidence was taken from licensed trainer G Hickman. He offered the following comment in relation to the evidence at the inquiry (at page 12 lines 339-342):

"Look, I just think he was practising something, trying something but it hasn't affected it. It has only been a slight brush and, you know what I mean, the boys are good workmates together and I just think it's one of those things, as they said, they were on two tiring horses going to the line."

The Appellant gave oral evidence before the Panel and he gave a demonstration, using a whip and reins, of the manner in which he says he lost his grip on the whip when it was in his right hand. The Appellant's evidence was that his middle finger slipped as he moved his grip on the whip from the middle of the shaft to the end of the grip of the whip whilst holding it with his right hand.

The Panel has considered the evidence and the submissions made on behalf of both parties on the question of guilt. This Panel has regard to observations made by the

Queensland Racing Disciplinary Board in the Appeal of Chris Munce (1 October 2013) which was a case involving a charge of improper riding and an allegation of a deliberate use of the whip to strike another horse or rider. In that case the Board observed that:

“Legal authority leads clearly to the view that if a person is charged with an offence and intention has to be inferred, then intention must be inferred clearly and persuasively before the tribunal can, in accordance with the appropriate standard of proof which is applicable in these matters, be sufficiently satisfied for that inference rather than any other to be drawn.”

Furthermore, the Panel accepts Mr Murrhys’s submission that improper riding includes cases where something is done which ought not have been done and which is judged to be wrong as specified in the guidelines to Stewards issued by the British Horseracing Authority.

The Panel considers that the essential facts of this case are clearly depicted in the videorecording of the race which is in evidence before the Panel. The head on video shot of the field from the entrance to the straight to the winning post clearly depicts the position of *Appeals* (ridden by the Appellant) and *Summer Forever* (ridden by G Buckley) at the rear of the field from the top of the straight to the winning post. The video also clearly shows the Appellant striking his mount twice whilst holding the whip in his left hand before that horse shifted in towards *Summer Forever*. The video then shows that the Appellant moved the whip from his left hand to his right hand with imperfect precision. The video then shows the Appellant striking his mount whilst his right hand held the end of the whip and then with his right elbow protruding and wielding the whip at an angle contacting jockey G Buckley in the area of his left knee. The video then shows the Appellant holding the whip in his right hand strike his mount for the second time.

The Panel is comfortably satisfied that the only available inference on all of the evidence is that the Appellant’s actions were intentional, but not malicious, and for the purpose of contacting jockey G Buckley’s leg with his whip. In drawing that inference the Panel rejects the explanation given by the Appellant on the basis that he is seen to strike his mount whilst holding the whip in his right hand in his normal manner on two (2) occasions being the first and third strikes but contacts G Buckley’s left knee with the second (middle) strike. For those reasons, the Panel is satisfied that the Appellant’s manner of riding constitutes improper riding within the Australian Rules of Racing.

The Panel has considered the evidence and the submissions made on behalf of both parties on the question of penalty. The Panel considers that the offending behaviour of the Appellant was a significant breach of the obligations of a licensed jockey to behave

appropriately in relation to other jockeys whilst riding in a race. Consequently, the Panel considers that it is appropriate to impose a penalty of a short licence suspension and a fine.

In assessing the appropriate term of licence suspension the Panel takes into account that the charge was defended before the Stewards and the Panel with the result that there is no discount available to the Appellant for contrition. The Panel also takes into account that the Appellant has been a licensed apprentice jockey since the beginning of 2012 and is currently apprenticed to leading trainer Mr J O'Shea and the Panel notes that his time as an apprentice ceases in approximately six (6) months' time and there have been no previous "improper riding" breaches.

The Panel has given consideration to the schedule of results in other cases involving improper riding breaches. The Panel notes that in the vast majority of cases in that schedule a penalty of licence suspension was imposed.

Ultimately, the Panel considers that the appropriate penalty in this case is licence suspension for one (1) week and a monetary penalty of \$300.

The orders of the Panel are as follows:

1. the appeal against the finding of guilt is dismissed;
2. the finding of guilt made by Stewards on 11 January 2016 is confirmed;
3. the appeal against penalty is upheld;
4. the penalty of three (3) weeks licence suspension imposed by Stewards is varied to a licence suspension of one (1) week to commence on 22 February 2016 and to expire on 29 February 2016 on which day he may ride;
5. the Appellant is to pay a monetary penalty of \$300;
6. the appeal deposit of \$200 is forfeited.