

APPEAL PANEL OF RACING NEW SOUTH WALES

APPEAL OF LICENSED JOCKEY MR JAMES McDONALD

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

Appearances: **Mr S Railton, Chairman of Stewards for RNSW Stewards
Mr D Kane for the Appellant**

Date of Hearing: 13 March 2023

Date of Reasons: 13 March 2023

Rule involved: AR 131(a): careless riding

REASONS FOR DECISION ON PENALTY

The Panel

Introduction

1. On Wednesday 8 March 2023, licensed jockey Mr James McDonald (**the Appellant**) pleaded guilty to a breach of AR131(a) of the Australian Rules of Racing (the Rules). The particulars of the charge alleged were that the Appellant engaged in “careless” riding in that:

“...on Wednesday 8 March 2023 in Race 8, as rider of Cholante, over the final 50 metres you did allow your mount under hard riding to shift out and then near the finish line you did allow your mount to continue to shift out into the running of Look Only, which was severely crowded between your mount and Super Bright, and resulting in Look Only striking our mount’s heels and blundering badly past the winning post.”

2. Applying the Careless Riding Penalty Template (**the Template**), the Appellant was penalised with a 6-meeting suspension, which unfortunately for the Appellant includes Saturday 18 March 2023 (the Golden Slipper meeting at Rosehill).

3. The penalty imposed by the Stewards resulted first from their assessment that the grade of careless involved was “high”. The consequences of the carelessness (which were not in dispute) were assessed as “severely checked (numerous horses involved), almost fell”. This results in a base penalty of a 14-meeting suspension. This base penalty was then discounted by 10 percent on account of the Appellant’s plea, a further ten percent to reflect the “feature meetings” occurring at this time of year, and a further forty percent on account of the appellant’s good riding record – he has been found to have breached the careless riding rule only once in the last twelve months. This forty percent discount reflects a scale in the Template. A ten percent discount is typically applied for a plea to the careless riding rule. The further ten percent discount for “feature meetings” appears to be even more discretionary. The total discount of 60 percent reduced the penalty to a 6-meeting suspension from the 14-meeting base, or very technically 5.6 meetings which the Stewards rounded up.
4. The Appellant has appealed against the severity of the penalty imposed upon him. He was represented at the appeal hearing by Mr D Kane, his solicitor. The Racing NSW Stewards were represented by Mr S Railton, the Chairman of Stewards. An appeal book containing the transcript of the Stewards’ Inquiry, and the Template as completed by the Stewards, was tendered in evidence. Film of the race from multiple angles was also shown to the Panel, and tendered as an exhibit.

Submissions

5. The first argument raised by Mr Kane in support of his submission that the suspension should be reduced was that the grade of carelessness should be found to be “medium” rather than high. This would reduce the base penalty to 12 meetings down from 14. In oral evidence, the Appellant, while accepting his ride was careless which is reflected in his plea, told us he did not receive a “call” from Amy McLucas on Look Only. He said if he had, he would not have relaxed in the manner he did after the line, which was where the most serious part of the incident took place.
6. Mr Railton submitted that there were two main factors taken into account by the Stewards in determining a high level of carelessness. The first was the extent of the shift in. The second was that the Appellant kept riding with great vigour in circumstances where he should have stopped and straightened his mount. While

Cholante was clearly fighting out the finish, there is a point at which safety rather than winning must be paramount. As to the absence of a “call”, Mr Railton correctly pointed out that the onus to ride safely here was on the Appellant.

7. Having consider these submissions, Mrs Foley and I agree with the Stewards as to grading. We do so with great respect to the contrary view of Mr Langby who is a former senior rider. We consider that the level of carelessness was appropriately determined as high (albeit at the lower end of high). Mr Langby’s view is that the ride was at the higher end of a medium level of carelessness, noting that the appellant was fighting out the finish, was focused on that, did not receive a call, and that the incident took place primarily after the winning post.
8. Mr Kane’s other submissions can be summarised as follows:
 - (a) Any discretion exercised by the Panel should take into account the appellant’s very good record, over and above the mitigation percentage reflected by the Template. The Appellant has had nearly 700 rides in the last two full seasons, and about 170 so far this season. His last breach of the rule was in Victoria in November 2022. Before that, it was in 2021. By any standard, this is a good safety record, a matter acknowledged by Mr Railton.
 - (b) The consequences of suspension this coming Saturday for the Appellant are potentially severe. He would miss the ride on the current favourite in the Golden Slipper, as well as favourites in other feature races such as the Group 1 George Ryder Stakes.
 - (c) The mitigation for “feature meetings” should be increased to 20%.
 - (d) The penalty should start with today’s Canberra meeting, at which the Appellant has forgone rides for today’s appeal.
 - (e) The Panel should also consider including the meeting at Goulburn on 17 March as part of the penalty, given a \$150,000 race is involved.

9. In response, Mr Railton submitted:
- (a) The Template is not binding, but should not lightly be departed from. It serves the purpose of consistency in penalty, and transparency of reasons.
 - (b) There is a quandary of sorts in the application of a discount for “feature meetings”, particularly if, when applied, it actually allows a rider to ride in races for which the discount was given.
 - (c) The Stewards do not oppose the penalty commencing today.
 - (d) The Panel should not include the Goulburn meeting. The policy of counting only metropolitan and provincial meetings in penalties is well settled, with input by the Board of Racing NSW. There is one exception, which is where a country meeting has a race with prizemoney of \$200,000 or more on its card. The Panel agrees that we should not interfere with that policy. Exercising penalty discretion is one thing. Overruling a policy of the Board of Racing NSW seems, at least arguably, beyond the Panel’s jurisdiction.

Resolution

10. The Panel can begin by stating that the Template is an important tool for the imposition of penalties for careless riding. The Panel rarely departs from it, even if not strictly bound by it. The reason for that are:
- (a) **first**, the Template promotes consistency in penalties, an important objective for principled and fair imposition of penalties for breach of AR131(a).
 - (b) **Secondly**, the Panel is aware its development was the result of considerable work and analysis by both the Stewards and the Jockey’s Association. That work should not lightly be undone.
 - (c) **Thirdly**, the Template supports the most important goal for the imposition of penalties for breach of the careless riding rule – the promotion of safety.

(d) **Fourthly**, were the Panel to regularly depart from the Template, we would undermine its integrity and usefulness.

11. Our decision today on this careless riding penalty appeal must serve the purpose of promoting safety. It is an unfortunate “look” for racing when there is a fall, not to mention the possible consequences of any fall. It is a dangerous sport, and nothing we do should increase those dangers. Rather, this rule exists to promote safety.
12. We have taken the majority view that the grading should be maintained at high. The Appellant starts with a 14-meeting base given the consequences of his conduct. We consider that a 15% factor in mitigation is appropriate for “feature meetings”. Applying the other discounts for good record and plea, that would leave the penalty at 4.9 meetings.
13. Ordinarily, we would round that up. In an exercise of discretion however, which should not be seen as precedent setting, Mr Langby and I would reduce the penalty to a 4-meeting suspension. While it is true that the Template provides a substantial discount for good record, we take the view that there is scope here for further leniency in light of the Appellant’s exceptionally good record in relation to AR 131(a). We have also considered the potentially severe consequences for the Appellant were he to miss a marquee meeting like the Golden Slipper. While we have taken that into account, the Appellant’s good record is more central to the exercise of our discretion – riders cannot expect more leniency with respect to a penalty under AR131(a) only because they have bookings for promising rides in upcoming important meetings.
14. The four-meeting suspension Mr Langby and I would impose covers Canberra today, Hawkesbury 14/3, Warwick Farm 15/3, and Gosford 16/3. The appellant is free to ride on Saturday 18/3 (and from 17 March 2023).
15. Mrs Foley, while by no means outraged at the ultimate result, would for safety reasons have determined a five-meeting suspension.
16. The Panel’s orders (by majority) are:

1. Appeal allowed.
2. Penalty of a 6-meeting suspension reduced to 4 meetings. The penalty covers Canberra today, Hawkesbury 14/3, Warwick Farm 15/3, and Gosford 16/3. The appellant is free to resume riding on Friday 17 March 2023.
3. Appeal deposit forfeited.