

RACING NEW SOUTH WALES

APPEAL PANEL

Friday, 5 August 2016

MR R BEASLEY SC — PRINCIPAL MEMBER
MR T CARLTON
MR K LANGBY

IN THE MATTER OF THE APPEAL OF
APPRENTICE BLAIKE McDUGALL

REASONS FOR DECISION

PRINCIPAL MEMBER:

1. The racehorse Choix De Roses finished fifth in the Stanwell Tops Class Handicap over 1000 metres, held at Kembla Grange Racecourse on Saturday, 16 July 2016 (the race). The margin between fifth and fourth was a short head. Choix De Roses finished less than half a length from the third horse.
2. Choix De Roses was ridden by the appellant, Blaike McDougal. Apprentice McDougall returned to scale 1 kilogram overweight.
3. As a consequence of this he was charged under AR 145, which is in the following terms:

If a horse carries more than a half a kilogram in any race over the weight imposed or declared, the rider and any other person at fault may be penalised.

4. The offence was Apprentice McDougall's first of this kind. He gave the following explanation to the Stewards as to the cause of the breach of the rule (transcript page 2 line 55):

“I was making the weight and now we are allowed to weigh in 0.4 over I helped myself to a drink and followed with something to eat. I probably had a little bit too much to drink.”

Then again on transcript page 3 line 110:

“I rode all week and I’m riding light a lot. I don’t get to sit down too often and have a nice meal. Today I’ve had a full book and you know by the second race I was buggered and, like I said, I just put a bit of fluids into my body. I wasn’t feeling too well. That’s all I can add, but I am guilty and that’s all I can say, sir.”

5. Having taken these matters into account the Stewards imposed a five day suspension on Apprentice McDougall’s permit to ride. Of particular relevance to the penalty imposed was the relatively close margins between Apprentice McDougall’s mount and the horses placed fourth and third in the race.
6. Apprentice McDougall has appealed against the severity of the sentence imposed.
7. Mr Livingstone, a Senior Stipendiary Steward, who appeared for Racing NSW today, submitted that the penalty of a five day suspension was warranted for the following reasons:
 - (i) The key aggravating factor here was that Choix De Roses was beaten only a head from fourth and 0.4 lengths from third. It was submitted a rule of thumb is that 1 kilogram equals approximately 1 length for a 1000 metre race like this and that the overweight ride had, therefore, cost the horse third place. This results in a lost of prize money for connections and also a loss to punters who took the horse each way.
 - (ii) In relation to Apprentice McDougall’s explanation as to riding overweight - which we will come to - Mr Livingstone’s submission was that in taking food and drinking prior to the race Apprentice McDougall had been reckless.

8. Finally, Mr Livingstone drew the Panel's attention to a number of authorities, some as to principle and some as to analogous penalties. In relation to principle Mr Livingstone took the Panel to the decision of *Pearson* dated 20 April 2014, where the then Principal Member said:

"Of course the circumstances of overweight on returning to scale have serious consequence in the racing industry. All form students and those who follow know that weight is a very important factor to be taken into account when assessing the form of a horse."

And again:

"All jockeys must take on board the importance of their weight. The Panel does not for one moment condone riding overweight, particularly in the circumstances where allowances are made for the jockey's vest and fractions of weight are disregarded when taking into account a jockey's declared weight."

9. The Panel's attention was also drawn to the decision of *Thornton* dated 31 January 2014 where the Chairman of the Panel said regarding riding overweight:

"This is a serious matter in that impacts adversely on the racing industry participants who depend on jockeys riding at their correct weight."

And again:

"The racing public must have confidence in the systems in place that it is efficient and the rules complied with by the jockeys."

10. Finally, Mr Livingstone said the five day suspension imposed on Apprentice McDougall was consistent with cases dealing with similar breaches of the rule. He took the Panel to the matters, firstly, of Apprentice Brent Evans, who rode 1 kilogram overweight on 19 April 2016 and was suspended for a month when his horse was beaten a nose from first; also to the case of Apprentice Rider Samantha Clenton for again 1 kilo overweight, placed second, beaten half a length, the penalty imposed a suspension from 22 February to 5 March; to the case of Apprentice Rider Hyeronimus, again 1 kilo overweight, finished second, beaten a head, suspended 15 November 2015 to 29 November 2015, which was eight meetings; and also to what he said was perhaps the most analogous case

of Apprentice Brodie Loy, 24 June 2015, who weighed in 1 kilo overweight, ran fourth, beaten a neck for third, and was suspended 4 July to 11 July.

11. Mr Livingstone submitted that a principle of consistency in sentencing should be applied such that the five days suspension should be confirmed.
12. Mr Pasterfield, solicitor, for Apprentice McDougall made the following submissions in support of an overall submission that the appropriate penalty here should be a reprimand or fine.
13. First, he drew the Panel's attention to the fact that by reason of AR 118 riders can weigh out up to 400 grams over the allocated weight. Similarly, it is permissible for riders to weigh in up to 900 grams over the allocated weight. The relevant weight here for Choix De Roses was 53 kilograms. Apprentice McDougall legally weighed out at 53.4 kilograms. He could have weighed in at 53.9 kilograms and not have been in breach of the rule. While weighing in at 54 kilograms he was 1 kilogram overweight, he was in reality, it was submitted, only 100 grams over being safe from a breach of the rule.
14. Secondly, Mr Pasterfield submitted that the Panel could not find that 1 kilogram equals 1 length for race of this kind or that the horse would have run third in the race.
15. Thirdly, he drew the Panel's attention to Apprentice McDougall's good record and that he had not previously breached the rule.
16. Fourthly, he drew the Panel's attention to the following previous matters involving this rule, which he contends supported his submission of a penalty of a fine or a reprimand. Those were the case of Brenton Avdulla, 9 July 2016, 1 kilo over declared weight, a \$200 fine; the case of Apprentice Mitchell Bell, 1 kilo overweight, placed sixth, beaten 4 lengths, fined \$100; the case of James Innes in a Saturday race at Rosehill Gardens, 1 kilo overweight, place fifth, beaten 0.3 from fourth, fined \$200; the case of Tommy Berry, a Group 1 race, 1 kilo overweight, placed sixth, beaten 2¼ lengths from the placings, fined \$300, the

case of Huet (which we have disregarded, given that horse finished 15 lengths behind) and to the reported decisions of McDonald, 21 September 2012 and Robinson. He submitted that the penalties imposed in relation to which those cases supported his submission that the penalty here should be a fine or a reprimand.

18. The Panel has considered all these submissions.
19. The Panel finds that Apprentice McDougall's breach of AR 145 was aggravated to an extent by the close margin between Choix De Roses and the third horse.
20. The Panel cannot make a precise finding that 1 kilogram of weight in a 1000 metre sprint equals 1 length. It cannot and does not conclusively find that the extra kilo cost Choix De Roses third. Commonsense indicates, however, that there was a real chance it did cost the horse fourth or third place. This kind of aggravating factor ordinarily would result in a suspension, not a fine or reprimand.
21. Apprentice McDougall gave evidence that he felt unwell before the race. He had three rides before and heavy commitments at previous meetings. He had a quarter of a sandwich and drink before the race. Clearly that was too much. If he felt unwell he should have told the Stewards. He weighed out at 53.4 kilograms. He therefore had to be careful what he ate and drank after that. We do not agree that he was reckless, but he was certainly not as careful as he should have been.
22. In mitigation Apprentice McDougall clearly is of good character and has no relevant previous offences.
23. The Panel agrees with the statements of principle in the decisions of Pearson and Thornton. It is important that horses are ridden at weights that comply with the rules. It reflects very badly on the image of racing when this does not occur. However, looking at previous penalties, we can see the penalties imposed support Mr Livingstone's submissions regarding penalty and some would support Mr Pasterfield. We reiterate the position that ordinarily an offence of this kind can expect to result in a suspension. However, Apprentice McDougall is a first time

offender here and he was very honest with the Stewards. He has pleaded guilty at an early opportunity. Because of those mitigating factors on this occasion the Panel feels that a more appropriate penalty here is a fine rather than a suspension.

24. The orders made are as follows:

- (1) Finding of guilt in relation to AR 145 confirmed.
- (2) Appeal in relation to penalty upheld.
- (3) The penalty of five days suspension is to be varied and replaced with a penalty of a fine of \$300.
- (4) Appeal deposit refunded.
