

APPEAL PANEL OF RACING NEW SOUTH WALES

APPEAL OF LICENSED RIDER MR ASHLEY MORGAN APPEAL OF APPRENTICE RIDER MR RONALD SIMPSON

Appeal Panel: **Mr R. Beasley SC, Presiding Member; Mr J Murphy; Mr P Losh**

Appearances: **Racing New South Wales: Mr T Moxon**

Appellant (Morgan): Mr W Pasterfield, Solicitor

Appellant (Simpson): Self represented

Date of Appeal: **4 July 2022**

Date of Orders: **4 July 2022**

Date of Reasons: **4 July 2022**

Rule involved: **AR132(7)(a)(ii) – Whip Rule**

REASONS FOR DECISION

Mr R. Beasley SC, Principal Member, for the Panel

Introduction

1. Following the running of Race 4 at Dubbo on 26 June 2022 (The Dubbo RSL Motel Benchmark 58 Handicap over 2200 metres), licensed rider Mr A Morgan (**Mr Morgan**), and apprentice rider Mr R Simpson (**Mr Simpson**) were both charged with a breach of AR132(7)(a)(ii) (**whip rule**) as a result of using their whips in excess of the limit of 5 prior to the 100m mark of the race. Mr Morgan used his whip on 11 occasions prior to the 100 metres on his mount Dunlee, which ran a close second. Mr Simpson used his whip on 19 occasions prior to the 100 metres on his mount Careering Away, which was a narrow winner.
2. Both Appellants pleaded guilty to breach of the rule. For Mr Morgan, the Stewards imposed a penalty of a 5-day suspension on his licence to ride, in relation to which regard was had to the *Rider Penalty Guidelines for Whip Rule Breaches* (**Guidelines**). Mr Simpson was penalised with a suspension of his permit to ride in races for a period

of 3 weeks, and was fined \$900 (his \$250 ridding fee, and all of his winning percentage for his ride). The Appellants appealed to the Panel in relation to the severity of the suspension imposed on them, and their appeals were heard consecutively. Given the offending occurred in the same race, it is convenient to deliver one set of reasons.

Whip Rule

3. The relevant parts of the whip rule are in the following terms:

AR 132 Limits on the use of a whip by a rider

.....

(5) In a race, official trial, jump-out or trackwork, or elsewhere, a rider must not use his or her whip in an excessive, unnecessary or improper manner.

.....

(7) Subject to the other requirements in this rule:

(a) *prior to the 100-metre mark in a race*, official trial or jump-out:

(i) the whip must not be used in consecutive strides;

(ii) the whip must not be used on more than 5 occasions except where there have only been minor infractions and the totality of the whip use over the whole race is less than permitted under subrules (7)(a) and (b) and also having regard to the circumstances of the race, including distance and context of the race (such as a staying race or a rider endeavouring to encourage the rider's horse to improve);

(iii) the rider may at the rider's discretion use the whip with a slapping motion down the shoulder, with the whip hand remaining on the reins;

(b) in the final 100 metres of a race, official trial or jump-out, a rider may use the whip at the rider's discretion.

4. It is clear from AR132(7)(a)(ii) that (subject to exception) prior to the 100m mark of a race, the whip may only be used on a maximum of 5 occasions. The exception includes a consideration as to whether there have been only "minor infractions", a term that is not defined, but is probably directed to matters such as the "lightness" of touch or lack

of force with the strikes¹. Also stated to be relevant to whether the rule has been breached are “*the circumstances of the race, including distance and context of the race (such as a staying race or a rider endeavouring to encourage the rider’s horse to improve)*”.

5. In a number of the precedent decisions involving the whip rule, reference has also been made to the purpose behind its introduction. In *The Matter of Ben Melham* (RAP, 31 March 2017) the Panel had regard to what was said by Mr R. G. Bentley, the then Chairman of the Australian Racing Board, at the time that the whip rule commenced in August 2009. Mr Bentley said:

“These changes send a clear message that Australian Racing is fully attuned to the contemporary community expectations. The need for change is clear and there was no point fiddling around at the edges. There is no point procrastinating where there is industry and public expectation that practices of the past are no longer condoned.”

Mr Bentley went on to add that: “*Compliance with the new requirements must be supported by a suitable set of deterrents.*” As noted by Mr Hale SC in *The Appeal of Damian Lane* at [19]:

“Mr Bentley was making the point that unrestricted use of the whip was contrary to the expectations of the public and the racing industry. To meet those expectations, a limit was to be placed on the use of the whip.”

Morgan Appeal

6. Mr Morgan was represented with leave by Mr W Pasterfield, while Mr T Moxon appeared for the Stewards. The transcript of the Stewards’ Inquiry was tendered in an appeal bundle, and film of the race was shown and tendered. Also tendered was a record of how many rides Mr Morgan had had since his last breach of the rule. Under the Guidelines, a rider’s record refreshes after 400 rides (or 12 calendar months), and in penalising Mr Morgan the Stewards used the Guidelines assuming his breach was a first offence. In fact, his riding record showed 355 rides since his last breach of the Whip Rule, which could have caused the Stewards to impose a greater suspension.

¹ *The Appeal of Damian Lane* (RAP, 13 April 2018) at [17]

7. Film of the race clearly showed the 11 uses of the whip as asserted by the Stewards prior to the 100 metres. Not each use was as forceful as they could have been, with some being described by Mr Morgan in his evidence to the Panel as mere “flicks of the wrist”.
8. Mr Pasterfield asked the Panel to consider in particular these matters during the course of his submission that Mr Morgan should be penalised by way of a fine, or by a lesser suspension and fine:
 - While there were 11 uses of the whip, some were rightly described by Mr Morgan as flicks of the wrist.
 - The horse was improving, and was in a competitive position to win.
 - Mr Morgan has a relatively good record, and pleaded guilty at the first opportunity.
9. For the Stewards, Mr Moxon emphasised the importance of the rule and the reasons for its introduction, and the need for any penalty to have a useful and proper deterrent effect.
10. The Panel accepts the submissions made by both Mr Pasterfield and Mr Moxon as to what we should take into account. In particular, we make the following findings:
 - (a) The Rule was clearly breached. The whip was used on 11 occasions prior to the 100m, or 6 more times than the limit.
 - (b) Not every use appeared to be particularly forceful. We agree that some uses were more akin to a flick than a strike.
 - (c) The horse was in contention to win the race when the whip was used, and we note it was a 2200m race.
 - (d) The appellant may have been treated leniently by the Stewards in regard to the Guidelines, as they treated him as a first offender, when he was really a second offender (having breached the rule in February 2022, some 355 rides back).
11. Were Mr Morgan penalised only with a modest fine, we consider the purpose of deterrence would not be served. A suspension is in the interests of protecting the image of the sport, the integrity of the rule, and as a deterrent. Although the limit of the rule was exceeded by 6 uses of the whip, in light of the fact that some of those uses were

quite minor, we will reduce the penalty from 5 days to 3, but also impose a fine in the sum of \$400.

12. In the Morgan Appeal, the Panel makes these orders:
 1. Appeal against severity of penalty upheld.
 2. In lieu of a suspension for 5 days, the appellant's permit to ride in races is suspended for 3 days. Such suspension commences on 4 July 2022, and expires on 7 July 2022, on which day the appellant may ride.
 3. Fine imposed in the sum of \$400.
 4. Appeal deposit to be refunded.

Simpson Appeal

13. Film of the race was shown to the Panel again. It confirmed that Mr Simpson used his whip on 19 occasions prior to the 100-metre mark.
14. It would be hard to imagine a graver breach of the rule than that involved here. Mr Simpson rode as if the Whip Rule does not exist, or, put in the terms of the Chairman of Stewards, the "rule book was thrown out the window". Full force appeared to be used for each strike of the horse, and the whip was on occasion used in consecutive strides (a separate breach for which the appellant was not charged). Mr Moxon was correct in his submission that the Guidelines offer reduced assistance to a breach of the rule of this magnitude.
15. To his credit, Mr Simpson did not attempt to "sugar-coat" his breach. He said he "wasn't thinking straight", and "the rule book went out of the way" :T3 L134. He said much the same to the Panel, and did not offer any hollow excuses.
16. Apart from his early plea and frankness, the best things that can be raised in mitigation here are the appellant's personal circumstances. He is a young rider (22 years of age), who while he commenced as a track rider in 2018, has had his career hampered by a severe injury, and then a breach of the rules relating to a prohibited substance. He has only recommenced riding again a few months ago, and is now apprenticed to Mr Bridge. He says he felt "pressure" in the race, explaining that as being the pressure to win on a horse that was in a winning position. He said he felt "fatigued". That would

have to be mental fatigue, as his use of the whip was not evidence of a rider struggling physically. Mr Simpson was frank and honest with the Panel.

17. Had a more senior rider breached the Whip Rule in the manner done here, the appeal is likely to have been dismissed. It is possible a *Parker* warning would have been at least contemplated. The appellant though is a young apprentice, and is attempting to build a career back from injury. A suspension of significance must be imposed or the purposes of protection of the sport and deterrence will not be served, but we consider a two-week suspension is appropriate in lieu of three weeks. The appellant did not challenge the fine imposed upon him, and so that will stand.
18. In the Simpson Appeal, the Panel makes the following orders:
 1. Appeal against severity of penalty upheld.
 2. Penalty of a three-week suspension set aside, and in lieu the appellant's permit to ride in races is suspended for two weeks. That suspension commenced on 2 July 2022, and expires on 16 July 2022, on which day the appellant may resume riding in races.
 3. Fine in the sum of \$900 confirmed.
 4. Appeal deposit to be refunded.