

**IN THE MATTER OF THE APPEAL OF LICENCED APPRENTICE JOCKEY NICK
HEYWOOD AGAINST THE DECISION OF THE STEWARDS GIVEN ON
THURSDAY 31 AUGUST 2017
Racing NSW**

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Racing NSW Offices
Sydney

Friday 8 September 2017

APPEAL PANEL: Mr T Hale SC (Convenor)
Ms L Olsen
Mr J Nicholson

APPEARANCES: Mr P Snowden - licensed trainer assisted Apprentice Heywood
Mr P C Dingwall (Deputy Chairman of Stewards) appeared on
behalf of Racing NSW Stewards

The Convenor gave the decision of the Panel.

1. Nick Heywood ("the Appellant") is a licensed apprentice jockey.
2. On Thursday, 31 August 2017 he rode the horse, *Notre Reve* in Race 7 at Murrumbidgee Turf Club in the Class 3 Handicap over 1200m.
3. Later that day the Stewards inquired into the running in the race, which was chaired by Mr T J Davidson. The Appellant was charged with careless riding in breach of AR137(a). He pleaded guilty to the charge. The Stewards suspended him from riding for nine race meetings being a period from 3 September 2017 to 19 September 2017 on which day he was permitted to resume riding. The dates of the suspension were later amended at the request of the Appellant to commence on Sunday, 10 September and end

on Sunday, 24 September 2017, on which day he was permitted to resume riding.

4. The Appellant has appealed to this Panel from the decision of the Stewards, both on conviction and penalty, pursuant to s42 of the *Thoroughbred Racing Act, 1996*. The appeal is by way of a new hearing.
5. At the hearing of this appeal:
 - Mr P Dingwall appeared on behalf of the Stewards;
 - the Appellant was assisted by Mr Peter Snowden, to whom the Appellant is apprenticed.

6. AR137(a) 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...”

7. The particulars of the charge are:

That as the rider of *Notre Reve* in race 7, the Class 3 Handicap 1200 metres, run at the Wagga Wagga racecourse on Thursday 31 August 2017 did near the 1000 metres permit your mount to shift inwards when insufficiently clear of *Yawkey Way*, which was carried in onto *I'm Peter* ridden by Adrian Layt, which in turn was carried in onto *Crisalli*, ridden by Apprentice Megan Taylor, which in turn was carried into *Sharif*, ridden by Apprentice Carly Frater-Hill, resulting in *Sharif* being severely crowded onto the running rail and having to be severely checked. As a result of your shift severe crowding was caused to Megan Taylor's mount and Adrian Layt's mount.

8. The Appellant entered a plea of not guilty to the charge,
9. The Stewards' tendered on the appeal the appeal book, and film of the race taken from various angles, which were marked as exhibits A and B respectively. Exhibit A contained the transcript of the hearing before the

Stewards. Mr Dingwall drew the Panels' attention to various parts of the evidence given at the inquiry by riders in the race. He showed the Panel the film. He made submissions about the conclusions we should draw from what could be seen in the film. So also did Mr Snowden. We found the submissions of both Mr Dingwall and Mr Snowden about what we should conclude from the film to be of great assistance. The Appellant did not give evidence.

10. As the particulars disclose, the charge concerns what occurred near the 1000 metre mark, where it is alleged that the Appellant permitted his mount *Notre Reve* to shift inwards when insufficiently clear of *Yawkey Way* ridden by Alan Chau. It is this that is alleged to amount to careless riding.
11. As the particulars of the charge also disclose, Alan Chau on *Yawkey Way* was carried into *I'm Peter* ridden by Adrian Layt. It was alleged in the particulars and submitted by Mr Dingwall that this was a consequence of the careless riding of the Appellant. *I'm Peter* was then carried into *Crisalli* ridden by Megan Taylor which in turn was carried into *Sharif* ridden by Carly Frater-Hill. *Sharif* then heavily collided with the running rail. *Sharif* and Carly Frater-Hill were very fortunate to escape injury.
12. The issue before us is whether the evidence establishes that on the balance of probabilities the Appellant was guilty of careless riding based upon the particulars of the charge. Based upon the evidence we make the following findings of fact:
 - (i) The Appellant and Alan Chau on *Yawkey Way* started from outside barriers. The Appellant from Barrier 7 and Allan Chau from Barrier 8.
 - (ii) The Appellant came across from that outside barrier towards the rails. Mr Snowden described the Appellant "going across in a gradual line" and that "he more or less kept a straight course" from the barrier towards the rail.

We agree with that description. Mr Snowden also described the Appellant as being cautious and careful in coming across and said that the Appellant was “a bit gun shy” because he had just come off a suspension. We, of course, cannot speculate about what the Appellant had in mind, but we agree that his riding appeared cautious and careful and the evidence does establish that the Appellant had been suspended three weeks earlier.

- (iii) The film shows that as the Appellant came across he looked inside on at least five occasions. Mr Snowden said that this was to ensure that he was adequately clear of the horses on his inside as he continued his running line across. We accept this.
- (iv) While the Appellant was coming across Alan Chau on *Yawkey Way* also came across. He took a different line from the Appellant. He started outside the Appellant and more than three lengths behind. In coming across Alan Chau came behind the Appellant. At the point Alan Chau crossed behind the Appellant he was approximately two lengths behind. The Appellant continued coming across on his gradual line but now Alan Chau was inside and behind him rather than outside and behind him.
- (v) The Appellant then crossed in front of Alan Chau who at that point was just inside him and approximately 1 $\frac{3}{4}$ lengths behind.
- (vi) Alan Chau responded by shifting inwards, which then crowded *I'm Peter* ridden by Alan Layt. We accept the submission by Mr Snowden that in the circumstances Alan Chau had other options available to him. Being 1 $\frac{3}{4}$ lengths behind he could have shifted outwards.
- (vii) Before the Stewards Alan Chau explained what occurred in the following terms:

Leading up to the incident, I'm happy to let Nick cross there. I was already restraining my mount, but it just got to a stage where I couldn't. If anything, I just skipped across his heels and like it would – you know, just put myself in a bad spot.(lines 530-33)

(viii) What we conclude from the film is that although the Appellant looked inside on at least five occasions he did not see that Alan Chau had crossed behind him. In his evidence before the Stewards the Appellant said that "I didn't even know he was there" (line 310). We accept that evidence. The Appellant was otherwise aware of the horses inside him. However, Alan Chau and *Yawkey Way* were in his blind spot.

13. Based upon these facts I could not be comfortably satisfied that the Appellant was guilty of careless riding. My view, however, is the minority view as the other two members of the panel Mr Nicholson and Ms Olsen have formed the view that the evidence establishes that the Appellant is guilty of careless riding.

14. In coming to my conclusion, I am mindful of the importance of riders being two lengths clear of horses whose running they intend to take. In a decision of this Panel of 15 January 2009 in the matter of Patrick Ferris the Chairman said:

"it is a well-accepted fact that jockeys must NOT shift their ground in races in circumstances where they are likely to interfere with the running of other horses or cause unnecessary interferences. The rule generally is that a rider must be two lengths clear of horses whose running they intend to take and that, as has been said by the Panel on numerous occasions, is the golden rule when shifting ground."

15. Put another way, if a rider is two lengths clear of horses who's running he or she intends to take, that will generally be considered sufficient clearance to enable the riders to respond to unforeseen movements of the horses. It is a distance which builds in a margin for error and safety. If a rider shifts ground without that clearance and without that margin for error he or she will generally have to accept the consequences and responsibility for being too close. A defence that he or she had insufficient time to respond to what might have occurred is unlikely to be persuasive.

16. The Appellant crossed in front of Alan Chau without two lengths clearance. He was only $1 \frac{3}{4}$ quarter lengths clear. The circumstances were, however, unusual. The Appellant had been coming across in a gradual straight line. It was not a case of a sudden shifting of ground. The other riders could see the line that the Appellant was taking. The Appellant was riding cautiously and looked inside as he crossed on at least five occasions. The Appellant did not see or otherwise know that Alan Chau had come from outside and behind him to inside and behind him. As Mr Snowden put it, Alan Chau came into a narrowing gap.
17. In all these circumstances I am not comfortably satisfied that the Appellant was guilty of careless riding, despite the fact that when he crossed in front of Alan Chau he did so with only $1 \frac{3}{4}$ lengths clearance.
18. Ms Olsen and Mr Nicholson have formed a different view. They consider that Appellant interfered with the rightful running of Alan Chau on *Yawkey Way* when he crossed in front and without two lengths clearance. They take the view that in crossing in front of Alan Chau it was incumbent upon the Appellant to ensure he had two lengths clearance. The fact that Alan Chau might have been in the Appellant's "blind spot" did not relieve the Appellant of his obligation to ensure that he crossed with two lengths clearance. In coming across the Appellant's line was gradual. He should have anticipated that other horses might come in behind him. In those circumstances it was incumbent on the Appellant to check the position of all horses who might be interfered with as he came across. In those circumstances they consider that the charge of careless riding has been established, although it was of a very low order of carelessness.

19. It therefore follows that by majority the appeal on conviction is dismissed and the conviction is confirmed.

Decision on Penalty

20. The Panel has dismissed the Appellants appeal against conviction on the charge of careless riding. It is now necessary for us to consider the appropriate penalty that should be imposed as a consequence of the confirmation of the finding of careless riding.
21. We take into account the matters referred to in the submissions but we particularly take into account and give weight to the fact that this was a very low level of carelessness
22. The Appellant was not riding aggressively at the time of the incident and was endeavouring to be careful. We note the seriousness of the interference but we have formed a view that this was not primarily due to the careless riding of the Appellant. We also note the very unusual circumstances which led to the interference. We also take into account the Appellant's record which is not good; he has had four prior suspensions in the last 12 months. Those, however, were occasions of aggressive riding by him, which is not the case here. In all the circumstances we consider that the period of suspension should be reduced to five meetings.

Orders:

23. We make the following orders:
 - a. Appeal on conviction dismissed.
 - b. Conviction and orders of the stewards confirmed.
 - c. Appeal against severity of penalty allowed.
 - d. The penalty of a nine meeting suspension set aside, in lieu a penalty of a five meeting suspension is imposed commencing on Sunday, 10 September 2017 and to expire on Monday, 18 September 2017 on which day he may ride.
 - e. Appeal deposit refunded.

