

## RACING APPEAL PANEL NEW SOUTH WALES

### IN THE MATTER OF THE APPEAL OF APPRENTICE JOCKEY JENNY DUGGAN

Heard at Racing NSW Offices on Wednesday 24 April 2019

APPEAL PANEL: Mr R Beasley SC - Principal Member  
Mr J Murphy  
Mrs J Foley

APPEARANCES: Mr Marc Van Gestel for the Stewards  
Mr Wayne Pasterfield for Apprentice Duggan

### REASONS FOR DECISION

1. **PRINCIPAL MEMBER:** On Saturday, 26 January 2019, the Appellant, Apprentice Jockey Jenny Duggan, rode the horse Time of Glory in race 5 at Newcastle Racecourse on the Beaumont track. Time of Glory ran fourth, beaten a head out of third place.
2. Following the race, the Hunter and North West Stewards conducted an inquiry into the Appellant's ride. That inquiry continued on 26 February 2019.
3. The Appellant was subsequently charged with a breach of what is now AR 129, which is in the following terms:

*AR 129(2) - A rider must take all reasonable and permissible measure throughout the race to ensure that rider's horse is given full opportunity to win or to obtain the best possible place in the field.*

The particulars of the breach I will not read, but they are attached as annexure A to the Reasons for Decision.

4. The Appellant pleaded not guilty, but was found by Stewards to be in breach of the rule. She was penalised with a one-month suspension of her licence to ride. The Appellant has appealed the finding of breach, and the severity of penalty imposed to the Panel today. She was represented by Mr Wayne

Pasterfield, solicitor. The Stewards were represented by Mr Marc Van Gestel, the Chairman of Stewards.

5. The appeal book, including transcript of the Stewards' Inquiry, was marked as exhibit A on the appeal. The film was marked as exhibit B.
6. Mr Van Gestel called evidence from Mr Shane Cullen, the Chairman of the Hunter and North West Stewards. The Appellant also gave sworn evidence. During the course of both Mr Cullen's evidence, and that of the Appellant, the Panel had the opportunity to see the film multiple times.
7. In Mr Van Gestel's submission, consistent with the evidence of Mr Cullen, all three particulars of the charge have clearly been made out. In essence Mr Van Gestel, and Mr Cullen through his evidence, contended that the Appellant was in breach of the rule based on her ride from about the 350-metre mark to inside the 100-metre mark of the race, for not taking an inside run.
8. Mr Cullen's evidence was that, on entering the straight, it was reasonable for the Appellant to explore the option of taking a run to the outside of the two leaders of the race, Fratellino and Clifton County. That run, however, was not available. It was incumbent upon the Appellant, Mr Cullen said - as all jockeys are instructed - to look for an alternative and reasonable option. His evidence was that there was one. The alternative, reasonable and permissible option, Mr Cullen said, was to take the inside run - that is a run inside Fratellino. There was clear room between the fence and that horse to allow that.
9. Mr Cullen's evidence was that the position was no different at the 350-metre mark, inside the 350-metre mark and from the 250-metre mark to the 100 metres. The outside option was not safely available. The inside option always was. That evidence was supported to a degree by the Appellant's evidence at the Stewards' inquiry (T4 L165-180), and on appeal.
10. The inside option was, according to Mr Van Gestel, the only reasonable option to take. Failure to take that run, Mr Cullen said, cost Time Of Glory at least third place ahead of Clifton County. At the Stewards' Inquiry, the

Appellant agreed with this (T6 L270). She was not so sure in her evidence on appeal, and she is entitled to change her opinion.

11. Mr Van Gestel drew the Panel's attention to the appeal of *Munce* (5 June 2013) when the then Principal Member, Mr T Hughes AC QC explained the rule this way:

*“The task of administering the rule is not always easy. One must keep clearly in mind that on its true interpretation it is not designed to punish a jockey unless, on the whole of the evidence in the case, the tribunal considering a charge under this rule is comfortably satisfied that the person charged was guilty of conduct that in all the relevant circumstances fell below the level of objective judgement reasonably to be expected of a jockey in the position of the person charged in relation to a particular race*

*The relevant circumstances in such a case may be numerous. They include the seniority and experience of the person charged. They include the competitive pressure under which the person charged was riding in a particular race. They include any practical necessity for the person charged to make a sudden decision between alternative courses of action. The rule was not designed to punish jockeys who make errors of judgement, unless those errors are culpable by reference to the criteria that I have described.”*

12. Mr Van Gestel submitted, even factoring in that the Appellant is an apprentice, that objectively viewed the Appellant's ride involved not just error of judgement, but culpable error - that is, there was a clear, reasonable and permissible option open on three occasions that the Appellant failed to take.
13. Ms Duggan's evidence and explanation as to why she was not in breach of the rule can be summarised as follows:
  - (a) At the top of the straight ,and at the 350-metre mark, she did not take the inside run because she was concerned that the horse Fratellino would tire, it having run fast from the beginning of the race, and that it might shift in on her. Her horse, she said, was also not going well enough at that stage for her to view it was a good judgment to take an inside run.
  - (b) Thereafter she hoped the horse Clifton County would take her into the race. She thought this horse was going to easily go past Fratellino.

- (c) Thereafter she heard a call from Jockey Gibbons behind her on Chilcotin. She became concerned for his safety and developed a form of “tunnel vision”. She determined to hold her line thereafter for safety reasons.
14. In addition to these matters, Mr Pasterfield submitted that the Panel needed to factor in that the Appellant is still an apprentice jockey and has only been back riding effectively for the last six months after a five-year break. The Panel does take that matter into account, but also notes that the Appellant has ridden in about 1200 races, and has ridden 130 winners.
  15. The Panel accepts that the Appellant gave honest evidence. However, we also accept the evidence of Mr Cullen, and the submissions of Mr Van Gestel. They are supported by the film of the race.
  16. We consider each particular of the charge has been made out. The film of the race demonstrates that there never was a reasonable or safe option for the Appellant to take an outside run. There always was a reasonable and permissible option to take an inside run.
  17. The Appellant’s error of judgement here was not one made in the ‘spur of the moment’. She was not required to make a snap or split-second decision. The Appellant had most of the straight to take a safe, reasonable and permissible inside run. Failure to do that, in our view, did cost her horse third place. Her decision not to take an inside run when it was both safe, permissible, and her only real option was not a reasonable decision in our view.
  18. We are therefore comfortably satisfied that a breach of the rule has been established. Based on past breaches of the rule, one month seems to be a minimum penalty.
  19. We note the Appellant has stated that she is the sole money earner for her two children, but we are also view a one-month suspension is the minimum for a breach of this rule.
  20. The Panel’s orders are as follows:
    - (1) Appeal dismissed.

(2) Breach of AR129 confirmed.

(3) Penalty of a one-month suspension confirmed.

(4) Appeal deposit to be forfeited.

(5) The suspension is to commence on Saturday, 27 April 2019 and will end on 27 May 2019, on which day the Appellant may ride.

---

## **Annexure A**

Apprentice jockey Jenny Duggan you are hereby charged with a breach of AR129(2), for failing to take all reasonable and permissible measures to ensure your mount was given full opportunity to win or obtain the best possible place in the field.

### ***AR 129 Running and handling***

- (2) A rider must take all reasonable and permissible measures throughout the race to ensure that the rider's horse is given full opportunity to win or to obtain the best possible place in the field.*
- (4) If, in the opinion of the Stewards, this rule has been breached:*
  - (a) any person who was a party to the breach may also be penalised.*

The details of the charge being that when you, licensed apprentice jockey Jenny Duggan rode Time Of Glory in Race 5, the Benchmark 70 Handicap 1350 metres at the Newcastle Jockey Club race meeting conducted on the Beaumont track on Saturday 26 January 2019 you failed to take all reasonable and permissible measures on that gelding throughout the said race to ensure that Time Of Glory was given full opportunity to win or obtain the best possible place in the field in that by reason of all or part of the following particulars;

- 1) After failing to obtain a run between Fratelino and Clifton County at the entrance to the home straight you continually rode your mount outward into an area where there was no clear running and failed to avail yourself of a run to the inside of Fratelino, when it was reasonable and permissible to shift in and take that run. Such riding contributing to Time Of Glory failing to finish in at least 3<sup>rd</sup> position.
- 2) That inside the 350m when clear running was available inside Fratelino you persisted in attempting to shift your mount wider where there was no available avenues to improve your position or clear Chilcotin, to enable Time Of Glory to be shifted out, when it was reasonable and permissible for you to shift to the inside of Fratelino and obtain clear running, which would have enabled Time Of Glory to be ridden forward. Such riding contributing to Time Of Glory failing to finish in at least 3<sup>rd</sup> position.
- 3) That from near the 250m to a position near the 100m, when racing in restricted room you continued to attempt to shift your mount wider and failed to avail yourself of the option of obtaining clear running to the inside of Fratelino, when it was reasonable and permissible for you to take that option. Such riding contributing to Time Of Glory failing to finish in at least 3<sup>rd</sup> position.