

APPEAL PANEL OF RACING NEW SOUTH WALES

APPEAL OF AMY MCLUCAS

Panel: Mr R Beasley SC, Principal Member; Mr C Tuck; Mr K Langby

Appearances: For the Stewards: Mr J Walshe, Chief Steward, South East Racing
NSW

For the Appellant: Mr T Crisafi, CEO Jockey's Association

Date of Hearing: 23 September 2021

Date of Reasons: 23 September 2021

REASONS FOR DECISION

Mr R Beasley SC, for the Panel

Introduction

1. On 28 August 2021, apprentice jockey Amy McLucas (the appellant) rode the horse "Obelos" in Race 7 run at the Goulburn Racecourse that day. The race was run over 1400m, and Obelos started at \$18.00 (having opened in betting at \$20), and finished 6th in a field of 9. The horse started slowly, and raced at the rear of the field for almost all of the race but for the final 150m.
2. The Stewards conducted an Inquiry into the appellant's ride following the race, and took evidence on 31 August and 15 September 2021. The evidence included oral

evidence from the appellant, from the trainer of the horse Mr J Ponsonby, and film of the race from various angles. On the later date, the appellant was charged with a breach of **AR 129(2)** of the Australian Rules of Racing, which is in the following terms:

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.

3. The particulars alleged in support of the charge were as follows:

“The details of the charge being that you...did fail to take all reasonable and permissible measures ...to ensure that Obelos was given full opportunity to win or obtain the best possible place in the field in that by reason of all or the following particulars:

1. *Between approximately the 800m and the 600m you continually restrained your mount when it was reasonable and permissible for you to have shifted out to obtain an advantageous position behind Rockarosa...*
2. *Between approximately the 600m and ...the 400m you failed to improve your position to be closer to Rockarosa...*
3. *That between the 400m and until the 300m you rode Obelos with insufficient vigour to improve ...into a more competitive position.*
4. *That between the 300m and the 150m you remained positioned behind Rockarosa where you did fail to ride Obelos with sufficient vigour when it was reasonable and permissible for you to have shifted to the outside of Rockarosa...*
5. *In all the circumstances from the 600m until the 150m you did ride Obelos with insufficient vigour and purpose.*
6. *Obelos was not given full opportunity to win or obtain the best possible place in the race as the result of the matters alleged in the previous five particulars.*

4. The appellant pleaded not guilty to the alleged breach of the rule, but was found guilty by the Stewards. She was penalised with a 3-week suspension of her permit to ride in

racers. She has appealed both the finding of breach, and the severity of penalty imposed. At the appeal hearing, she was represented by the CEO of the Jockeys Association, Mr T Crisafi. The Stewards were represented by the Chief Steward of the South East Region Racing NSW, Mr J D Walshe. The evidence on appeal comprised an appeal book containing the transcript of the Stewards' Inquiry, and film of the race. A document analysing the speed of the race was also tendered, which indicated that the speed was below average for this track and distance. The Panel was told there were no integrity issues involved. The appellant also gave oral evidence.

Facts

5. The following matters were accepted or not in dispute:
 - (a) The appellant is a 3-kilogram claiming apprentice jockey. She has ridden in about 560 races, but has limited experience in racing at "Provincials". She has been riding for just on 2 years, and is 20 years of age.
 - (b) The appellant had not ridden the horse before.
 - (c) The horse had been in what could be described as relatively poor or disappointing form prior to the race.
 - (d) The appellant was given clear instructions prior to the race by the horse's trainer, Mr Ponsonby. Those instructions, as recorded in the transcript (T2 L50-56) from the Stewards' Inquiry were:

CHAIRMAN: We will start and from you obtain the instructions that were issued please.

A MCLUCAS: Look, I was told he's only got about a 200 metre sprint, sort of just come back out of the wide draw and just have him settle in the run and just expose him as late as possible. Watching the replays and stuff, every time he has gone early he has been warned for going quite fast.

- (e) Film of the race showed the horse a couple of lengths behind Rockarosa between the 800m and 600m as set out in Particular 1. The appellant appears to be restraining the horse at least to some degree, and is clearly not letting it run freely. The horse remains in the same position from the 600m to the 400m as particularised in the charge (2), without any effort from the appellant to move her horse closer to the leaders.
 - (f) From the 400m to the 150m the appellant rides with some degree of more purpose, but it is not until passing the 150m that she takes her horse to the outside

and shows more vigour. No attempt appeared to be made by the appellant to get closer to the leaders from the 600m to the turn, or from the turn to the 150m.

Construction of AR129(2)

6. The leading decision about how to construe and apply this rule remains the *Appeal of Munce* (5 June 2003). In this appeal the then Principal Member, Mr TEF Hughes QC, said that a rider should not be found to be in breach of the rule unless the Panel 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*”. As to the relevant circumstances, Mr Hughes said they would include:
 - (a) the seniority and experience of the rider charged;
 - (b) the competitive pressure they were under in the race; and
 - (c) whether they had to make a sudden decision between alternative courses of action.
7. As stated in the *Appeal of Ms K O’Hara* (25/3/21) at [7], these should be considered to be inclusive factors, not exclusive. For example, to the list could be added factors like how a horse is travelling, and what instructions a jockey has been given. It is fundamental of course that the rule is not designed to find jockeys to be in breach of it “*who make errors of judgement unless those errors are culpable by reference*” to the various circumstances relevant to the race and the conduct. As the Panel said in *The Appeal of Bowman* (24 September 2020), the rule should not be given an entirely literal construction. Any error by a rider might as a matter of logic - even a minor one - mean that the rider has not taken “all reasonable and permissible measures” to ensure a horse is given full opportunity to win or obtain the best possible placing. But not every error is caught by the rule. It requires the application of judgment, common sense, and a reasonable consideration of all the factors that are relevant to a particular error or lapse of judgment in deciding whether that error is culpable under AR 129(2). While it is crucial to the integrity of the sport that riders ride in a manner that does give full opportunity to their mount to win or obtain its best place in a race, it is also important that this Panel show appropriate restraint and judgment in making

determinations about whether AR 129(2) has been breached. Riders, like other professional sportspeople, are going to make errors. Not all of these errors should be judged to be errors that result in a finding that the rule has been breached. The error has to be a bad one, or too many jockeys will be penalised under the rule.

8. The onus of persuading the Panel that the rule has been breached is on the Stewards, to the standard of balance of probabilities, but with what is known as the “Briginshaw”¹ gloss: The Panel must be “comfortably satisfied” that the rule has been breached.

Submissions

9. Mr Walshe correctly submitted that the instructions given to a rider cannot be held up as some kind of immunity for a ride that would otherwise be found to be in breach of the rule: see the *Appeal of Robyn Freeman*, RAP, 2 September 2010. The instructions given to a jockey are an important consideration for the Stewards, and for the Panel on an appeal, but will not exonerate a jockey who has ridden in such a manner that there ride evidences an error (or errors) of judgment such that they should be found in breach of the rule.
10. Mr Walshe’s submissions can otherwise be summarised this way: from the 800m right to the 150m, the appellant has shown no endeavour on her horse to put it in a more forward and advantageous position when it was always open for her to do so, and when she was in fact bound to do so in order to give the horse its best chance in the race. She instead let it amble along at the back, and only showed anything approaching appropriate urgency and vigour inside the 150m, when the race was well over in any event.
11. For his part, Mr Crisafi emphasised the instructions given to the appellant, and her lack of experience. He pointed to the reasons she gave over and above these matters for her manner of riding – in particular, she felt Rockarosa was hanging from the 800m, and did not want to go up to or pass that horse in case she got pushed very wide by it. She felt she was obliged to ride the horse quietly until well into the straight, and from the 150m rode it with full vigour. Riding with such vigour earlier

¹ *Briginshaw v Briginshaw* [1938] HCA 34; (1938) 60 CLR 336

would not have improved this horse's chances for the best possible placing in the race.

Resolution

12. The Panel accepts that the appellant was instructed to ride Obelos in the manner she told the Stewards and the Panel. This was confirmed by Mr Ponsonby the trainer, who felt he was more to blame for the run than the appellant because of the forthright nature of his instructions.

13. The Panel also accepts that at all times the appellant was endeavouring to ride the horse consistently with the instructions she had been given, and felt obliged to do this. Even so, we are in no doubt that the rule has been breached by the appellant's ride. It is unnecessary for the Panel to go through each particular of the charge in turn, suffice to say that from the 800m it was open to the appellant to show more initiative on the horse than she did. By initiative, we do not mean she should have set the horse "alight", or ridden with full vigour from the 800m, but she had the chance to ride the horse along and put it in a far closer position than it was at the turn, and at the 200m mark. Such riding would not have been inconsistent with her instructions, nor would it have cruelled the horse's chances in the race. Rather, it would have improved them. It would have meant, when the time came to ride the horse with full vigour, he would have been better positioned to win or finish in the highest placing possible. The appeal against the Stewards' finding of breach of the rule is therefore dismissed.

14. As for penalty, the penalty of a 3-week suspension imposed by the Stewards (4 weeks, less 1 taking account of the appellant being an apprentice) is entirely in the appropriate range for this offence. The Panel however considers some further leniency should be afforded the appellant for this reason: although her ride involved culpable error under the rule, it occurred because she interpreted her instructions in a manner of an inexperienced rider, but was nevertheless genuinely committed to riding the horse in the manner she felt she was obliged to. For that reason, we would impose a 2-week suspension in lieu of a 3-week suspension.

Orders

15. The orders are as follows:

1. Appeal against finding of breach of AR129(2) dismissed.
2. Finding of breach of AR 129(2) confirmed.
3. Appeal against severity of penalty allowed
4. In lieu of a 3-week suspension, the appellant's permit to ride in races is suspended for 2-weeks. That suspension started on 20 September 2021, and expires on Monday 4 October 2021, on which day she may resume race riding.
5. Half of the appeal deposit to be refunded.