

RACING APPEAL PANEL OF NEW SOUTH WALES

APPEAL OF MR BLAKE SHINN

Appeal Panel: **Mr R. Beasley SC – Principal Member; Mr T Marney; Mr C Clare**

Date of hearing: **13 February 2018**

Date of decision: **13 February 2018**

Appearances **Appellant – Mr P O’Sullivan, Solicitor**
Racing New South Wales – Mr P Dingwall, Deputy Chairman of Stewards

REASONS FOR DECISION

Mr R Beasley SC

Introduction

1. In this appeal, the Panel has been unable to reach a unanimous view. Mr Clare and Mr Marney consider that the appeal against penalty should be allowed, for the reasons commencing at [19] below.
2. For the reasons that follow, I would dismiss the appeal, and confirm the penalty of a seven-meeting suspension.
3. The appellant, licensed Jockey Mr Blake Shinn, rode the racehorse ‘Ruthless Agent’ in the Schweppes Shooting Star Hcp, which was race 6 run over 1250m at the Canterbury Racecourse on 2 February 2018 (‘the Race’). Ruthless Agent, which started at \$31.00, finished 5th in the Race.
4. Following the race, the Stewards conducted an inquiry into an incident at the 200m mark that involved the appellant’s mount, and the horse Reach for Heaven. Following evidence being given, the appellant was charged with a breach of AR 137 (a) of the Australian Rules of Racing, which is in the following terms:

AR 137 Any rider may be penalised if, in the opinion of the Stewards,
(a) He is guilty of careless, reckless, improper, incompetent or foul riding.

5. The particulars of the charge were as follows:

“...that near the 200m you permitted your mount to shift out when not clear of Reach for Heaven and as a result Reach for Heaven was steadied and lost its running to which it was entitled.”

6. The appellant sought to reserve his plea on the night of the alleged breach of the rule. The hearing was adjourned until 7 February, on which day the appellant pleaded not guilty. After hearing further evidence, the Stewards found the charge proved, and imposed a penalty of a seven-meeting suspension.

7. The penalty was arrived at by the application of the penalty guidelines for careless riding. The Stewards graded the level of carelessness as medium, and assessed the consequences as “lost rightful running”. This results in a base penalty of a seven-meeting suspension. The Stewards then discounted the penalty by 10% given the important meetings the penalty would prevent the appellant riding at. These discounts however were matched by a 10% penalty premium that was imposed on the appellant for his record – that is, as a rider who has competed in more than 400 rides in the last 12 months, he was been suspended 4 times. After relevant discounting and the application of the premium, the penalty remained a seven-meeting suspension.

8. On appeal to the Panel today, the appellant accepted the finding of guilt made by the Stewards. His appeal challenges only the severity of the penalty imposed. By leave, he was represented by his solicitor, Mr P O’Sullivan. The Stewards were represented by Mr P Dingwall, the Deputy Chairman of Stewards.

Evidence and submissions

9. While an appeal to this panel from a determination of the Stewards is by way of re-hearing, both parties relied on the transcript from the Stewards' Inquiry, and the film of the race (exhibits A and B on the appeal).

10. The only oral evidence called was from the appellant. He conceded to the Panel, as he did at the Stewards' Inquiry, that his action at about the 200m mark had caused Jockey K McEvoy to lose his rightful running on the horse Reach for Heaven. However, he raised these matters in mitigation, which were emphasised in submissions by Mr O'Sullivan:
 - (a) Well prior to the incident, his horse and Reach for Heaven were racing neck and neck. By the 250m mark into the straight, Reach for Heaven had dropped behind him, and he felt that horse was tiring.
 - (b) He had a sustained look behind him at about the 250m mark. The appellant felt that Reach for Heaven was sufficiently clear of his mount to shift out at that point.
 - (c) When he did shift out, it was not a dramatic shift.
 - (d) He did not cause Mr McEvoy to check. This was a matter confirmed by Mr McEvoy in his evidence at the Inquiry. That evidence was that McEvoy had to steer his horse, but did not suffer a check, and was not quite into his run.

11. Mr O'Sullivan also submitted that this case was distinguishable from the recent Panel decision in the *Appeal of Bowman* (6 February 2018), at which the Panel assessed the carelessness to be of medium grade. He emphasised that Bowman crossed in front of other horses in the early stages of a race, when those horses were also seeking to improve their positions. Further, in his submission, when Mr Shinn had his look in this case, his horse was comfortably clear of Reach for Heaven, and was 1.5 lengths clear when crossing that horse.

12. Mr Dingwall submitted that the carelessness of Mr Shinn in this matter was indistinguishable from that of Mr Bowman. Mr Shinn had looked behind 50m before crossing. At that point, Reach for Heaven was only 1.5 lengths clear of Ruthless Agent. At the point of taking that horses running, the margin was at most 1 and a quarter lengths. The combination of not taking a second look, and the margin between

the horses was indistinguishable from the Bowman appeal, and clearly carelessness of medium grade.

Resolution

13. I agree with Mr Dingwall's assessment. Having looked at the film many times, in my view Mr Shinn has shifted out at least a horse width or slightly more when only at most one and a quarter lengths clear of Reach for Heaven, which clearly lost its running and had to shift to the inside. While I appreciate jockeys don't have rear-view mirrors or eyes in the back of their heads, and have to be aware of what is in front of them, Reach for Heaven was only 1.5 lengths behind Mr Shinn's mount when he did look. In my view, assessing Mr Shinn's carelessness at less than a medium degree would be inconsistent with the Panel's decision in Bowman.
14. Another issue that emerged was whether, as submitted by Mr O'Sullivan, Mr Shinn should get a discount for accepting the Steward's finding of guilt before the Panel today. As discussed above, Mr Shinn ultimately was allowed to reserve his plea after the race on the night of 2 February. At the adjourned inquiry on 7 February, he pleaded not guilty to breach of the rule. However, the transcript shows that he indicated he was willing to plead guilty to the charge if the grading of carelessness was assessed as low: T 10 L 443. He was told by the Chairman of the Panel however that there was a prima facie case for a medium grading of carelessness: T 14 L647. In those circumstances, he pleaded not guilty.
15. I am prepared to accept that Mr Shinn suffered some confusion at the Stewards' Inquiry. He may have thought that by pleading guilty, he was conceding a medium degree of carelessness, rather than low. What should have occurred, if he considered he had breached the rule – as he apparently did – is for him to plead guilty to that breach, and then make submission that his grading for penalty purposes should be low.
16. Almost invariably, if a licenced person pleads not guilty to a breach of a rule at a Stewards' Inquiry, and then pleads guilty before the Panel on a penalty appeal, or does not challenge the Stewards' finding of breach, they will not be entitled on appeal to any discount for plea or acceptance of breach of a rule.

17. The position here is arguably different for the reason outlined above – Mr Shinn may have felt he was having to concede something he did not want to in relation to grading. In my view though he was also attempting to gain a concession from the Stewards that the grading should be low, before the Stewards had determined breach. I am not prepared in those circumstances to apply any discount for the fact that Mr Shinn does not challenge the finding of guilt today.
18. Accordingly, I would dismiss the appeal against severity of sentence, and confirm the 7-meeting suspension imposed by the Stewards.

Mr Clare and Mr Marney

19. We agree with the Principal Member's outline of the facts above.
20. We respectfully disagree with his assessment that the carelessness here was of medium grade, and would assess it as low. In making that finding we have had regard to the following:
- (a) Just after the top of the straight, at about the 250m mark, Mr Shinn does have a sustained look behind him at Reach for Heaven. That horse may well have appeared to be sufficiently clear of Mr Shinn's mount for him to start to shift out, and we accept the thought that horse was tiring.
 - (b) When Mr Shinn does shift out, it is not a dramatic shift, and at most a horse width.
 - (c) Mr McEvoy was looking to his inside for a run in any event.
 - (d) McEvoy conceded he was not quite into his run at the time, and his horse was not checked
21. In all those circumstances, while it is a close-run thing, we think the grading of carelessness should be in the low category, not medium.
22. We agree with the Principal Member that ordinarily a jockey who pleads not guilty to a careless riding charge at a Stewards' Inquiry should not get a discount for accepting guilt or pleading guilty before the Panel.
23. In this case however, we think the appellant was genuinely confused as to what he would be conceding by pleading guilty. We accept that he thought he would be conceding a medium grade of carelessness if he pleaded guilty in circumstances

where he was clearly prepared to plead guilty to a breach of the rule if the grading was of low carelessness. In those circumstances, we would give the appellant the benefit of a discount for plea.

24. As we assess the carelessness here to be of low grade, a penalty of a 6-meeting suspension applies. Applying a 10% discount for acceptance of the charge and the intent to plead guilty at the Inquiry (and rounding down), the penalty is reduced to a 5-meeting suspension.

The whole Panel makes the following order:

1. Finding of guilt for breach of AR 137(a) confirmed.

By Majority (Mr Clare and Mr Marney; Mr R Beasley SC disagreeing):

2. Appeal against severity of penalty allowed.
3. Penalty of a seven-meeting suspension set aside.
4. In lieu of that penalty, a penalty of a 5-meeting suspension is imposed. That suspension commenced on 11 February 2018, and concludes on 20 February 2018, on which day the appellant may ride.
5. Appeal deposit to be refunded.